ORDINANCE NO. 7,992-N.S.

AMENDING CHAPTER 13.63 OF THE BERKELEY MUNICIPAL CODE COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 13.63 is amended to read as follows:

Chapter 13.63

PROHIBITION ON THE SALE OR USE OF COORDINATED PRICING ALGORITHMS TO SET RENTS OR MANAGE OCCUPANCY LEVELS FOR RESIDENTIAL DWELLING UNITS

Sections:

13.63.010 Findings and Purpose
13.63.020 Definitions
13.63.030 Use and Sale of Coordinated Pricing Algorithms Prohibited
13.63.040 Remedies
13.63.050 Undertaking for the General Welfare
13.63.060 Severability

13.63.010   Findings and purpose.
The Council hereby finds and determines that the adoption of this chapter is necessary to the promotion of the public health, safety, and welfare.

A.   In recent years, a number of new software programs, often referred to as "coordinated pricing algorithms", have been reported as having an impact on rental housing markets in cities nationwide, including the City of Berkeley.

B.   These programs reportedly enable landlords to indirectly coordinate with one another through the sharing of nonpublic competitor data to impact rents and vacancy rates for rental housing. Participating landlords provide data to the programs, which in turn set or provide recommendations for rent and occupancy levels.

C.   More and more landlords in U.S. cities now use these programs.

D.   Numerous antitrust lawsuits have been filed against certain of these companies. These include lawsuits filed by the U.S. Department of Justice, state Attorneys General, and numerous private plaintiffs.

E.   Instead of waiting for court processes which may take years to resolve, this ordinance prohibits the sale or use of coordinated pricing algorithms for the purpose of setting rents on residential dwelling units in the city of Berkeley, to bring immediate relief to Berkeley tenants, as well as to put landlords on equal footing with their competitors.

F. This Chapter is not intended to prevent the development or sale of software to help landlords manage their units generally or through the use of public data. Nor does this Chapter regulate the amount of rent that a landlord may charge. This Chapter solely regulates the use and sale of the coordinated pricing algorithms, to prevent the harms described above.

13.63.020   Definitions.

A.   "Coordinated pricing algorithm" means any analytical or computation process that uses Competitor Data to calculate and recommend rent prices, fees, occupancy rates or other rental contract terms for future leases in coordination between one City of Berkeley landlord and one or more of such landlord's competitors, including through a third-party vendor. A "coordinated pricing algorithm" includes a product that incorporates a coordinated pricing algorithm, but does not include (a) a product or process that generates or presents any report, study, or presentation that publishes rental data in an aggregated and anonymous manner but does not recommend rent prices, fees, or occupancy rates or other rental contract terms for future leases; (b) a product used for the purpose of establishing rent or income limits in accordance with the affordable housing guidelines of a local government, the state, the federal government, or other political subdivision; or (c) a product or process that provides or uses, or the provision or use of, information for the purpose of (i) conducting market research for project financing, (ii) conducting an appraisal, or (iii) conducting research, testing, or training for software development. For clarity, "research, testing, or training for software development" includes without limitation the use or processing of Competitor Data in the development, training, or testing of predictive or machine learning models so long as any such data is not used as an input in the operation of the model at the time a recommendation is calculated for publication or provision to a City of Berkeley landlord.

B.   "Competitor Data" means information that is not available to the general public concerning actual rent prices, occupancy rates, lease start and end dates, and similar data regarding a property other than a property that is owned or managed by the landlord who is the recipient or user of the generated recommendation, when such data is less than 90 days old.

13.63.030   Use and sale of coordinated pricing algorithms prohibited.

A.   It shall be unlawful to sell, license, or otherwise provide to City of Berkeley landlords any coordinated pricing algorithm that sets or recommends rents or occupancy levels that may be achieved for residential dwelling units in the City of Berkeley.

B.   It shall be unlawful for a landlord to use a coordinated pricing algorithm described in subsection A when setting rents or occupancy levels for residential dwelling units in the City of Berkeley. Each separate month that a violation exists or continues, and each separate residential dwelling unit for which the landlord used the coordinated pricing algorithm, shall constitute a separate and distinct violation.

13.63.040   Remedies.

A.   The City Attorney may file a civil action for violations of section 13.63.030, subsections A and/or B, for damages, injunctive relief, restitution/return of illegal profits, and/or civil penalties of up to $1,000 per violation. The court shall award reasonable attorney's fees and costs to the City Attorney if the City Attorney is the prevailing party in such a civil action.

B.   An aggrieved tenant may file a civil action for violations of section 13.63.030, subsection B, for injunctive relief, money damages, and/or civil penalties of up to $1,000 per violation. The court shall award reasonable attorney's fees and costs to the tenant if the tenant is the prevailing party in such a civil action. A lease provision that limits a prevailing tenant from obtaining attorneys' fees shall not be enforceable against a tenant's claim for attorneys' fees that arises under this subsection 13.63.040(B).

13.63.050   Undertaking for the general welfare.

In enacting and implementing this Chapter 13.63, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

13.63.060   Severability.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall

be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on November 18, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: Bartlett.