

Ordinance to Prohibit Algorithmic Devices to Set Rents or Manage Occupancy Levels

Berkeley City Council
March 11, 2025

What is “Automated Rent Setting” or “AI Revenue Management”?

- Landlords delegate their rental price and supply decisions to a common decisionmaker
 - Landlords, who should be competing with each other as to price, share data with a common decisionmaker, and the common decisionmaker provides “daily pricing and ongoing revenue oversight”
 - Rather than function as separate economic entities, participating landlords make key competitive decisions regarding the price and supply of multifamily apartments collectively
 - This drives up rents and amounts to illegal price-fixing
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What it's Not

- Individual landlords independently researching websites such as Zillow or Craig's List to set rents
- Landlords who don't coordinate with one another to set rents
- Landlords who rent units as vacancies arise and who don't hold vacant units off the market

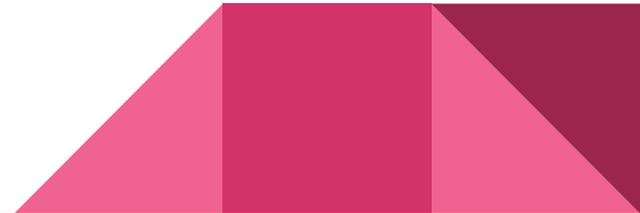


What is RealPage?

- RealPage “provides property management software, data analytics, and services to efficiently manage rental properties and real estate”
 - For several years, RealPage and its rent-setting software YieldStar has been the subject of controversy, especially due to a 2022 expose by ProPublica titled [“Rent Going Up? One Company’s Algorithm Could Be Why.”](#)
 - Aug. 2024 DOJ lawsuit accuses RealPage of being a monopoly, controlling 80% of the property management software market
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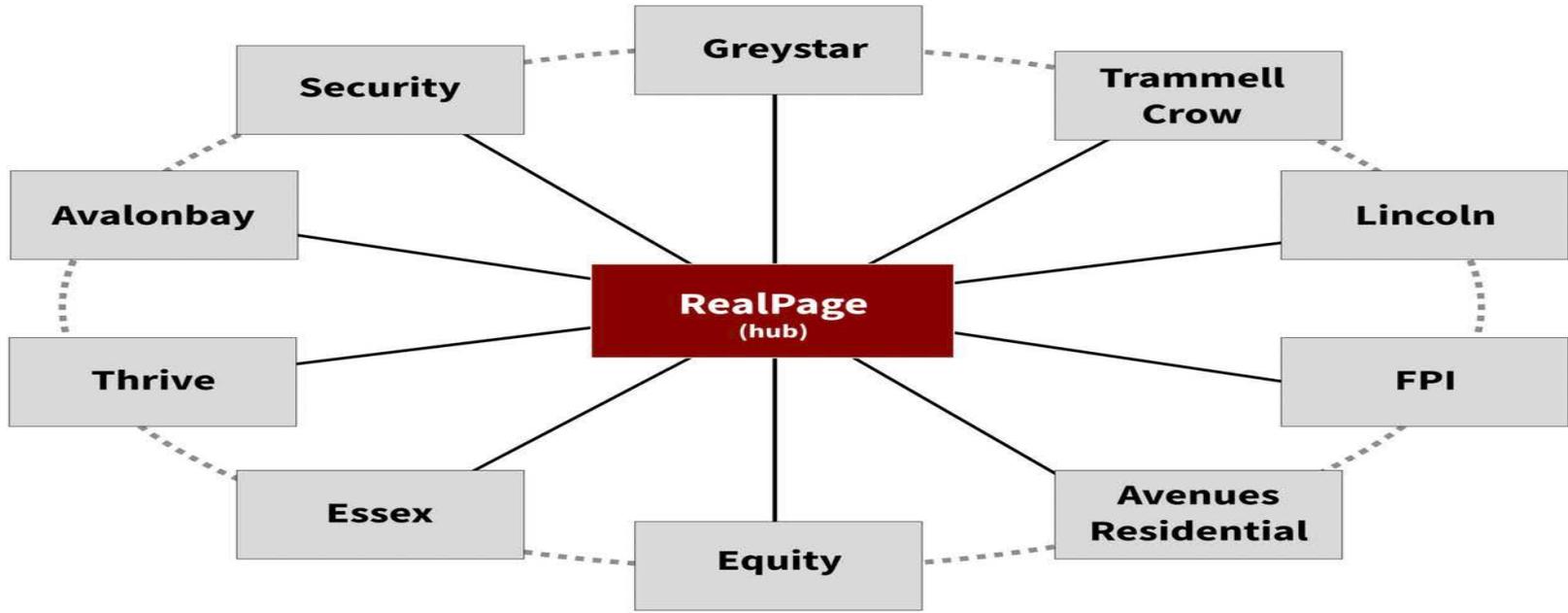
What is RealPage? (cont)

- “[W]e are all technically competitors . . . [but RealPage] helps us to work together . . . to make us all more successful in our pricing . . . [RealPage] is designed to work with a community in pricing strategies, not work separately . . . we rarely make any overrides to the [pricing] recommendations . . .”



“Hub and Spoke” Price Fixing

- Centralized company (data broker, trade association, software algorithm) facilitates illegal agreements among competitors
 - RealPage is the “hub” and landlords who depend on its recommendations regarding rent levels are the “spokes”
 - By agreeing to follow the rent recommendations, using competitively sensitive and/or proprietary data, landlords tacitly agree to fix rents without need to directly compete with each other
 - System allows landlords to conspire to limit rental supply and drive up rents, creating a cartel
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Legal Action to Date

- Over 30 class-action lawsuits have been filed against RealPage and landlords who use the software
 - The Department of Justice sued RealPage on August 23, 2024, “for its unlawful scheme to decrease competition among landlords in apartment pricing and to monopolize the market for commercial revenue management software.”
 - Eight Attorneys General (inc. CA AG) joined the DOJ lawsuit
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Legislative Action to Date

- San Francisco and Philadelphia have banned the sale and use of these pricing algorithms
- County of San Diego, Oakland, San Jose, Chicago, Miami, Washington State and Texas are considering similar bans
- Four bills to ban the sale and use of pricing algorithms have been introduced in the CA Legislature



Rationale for Ordinance

- **57% of Berkeley's population are renters:**
 - People of color are 3x more likely to rent than to own homes
 - 60% of tenants are lower income
 - ½ of all renters are rent burdened (pay more than 30% of income to rent)
 - **Increasing corporate concentration in housing :**
 - Q1 2024: six largest publicly traded apartment companies saw their combined net incomes climb by nearly \$300 million
 - Even in markets that don't have corporate concentration, landlord trade associations facilitate the use of algorithms among small and mid-sized landlords
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Rationale for Ordinance (cont.)

- Over the last nine years, rents have increased 19% in the East Bay
 - Housing Element notes that rents for rent-controlled and market-rate units have increased dramatically over the last decade
 - The city's Black population has declined rapidly over the last 20 years due to rising rents
 - Use of algorithmic devices is illegal price fixing and negatively impacts the rental market by artificially inflating rents and creating housing scarcity
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Why Take Local Action?

- Numerous lawsuits have been filed that allege harmful practices that could take years to litigate
- Acting locally to ban these practices protects tenants now



Recommendation

- HAC recommends that City Council adopt an ordinance banning the sale and use of algorithmic devices to set rents and manage occupancy rates
- TechEquity's letter of support includes recommendations to strengthen the proposed ordinance by:
 - Updating the definition of "algorithmic device"
 - Including algorithms that use all data, not just non-public data
- Council may want to consider those recommendations

