

March 5, 2025

The Honorable Mayor Ishii  
Councilmember Kesarwani  
Councilmember Taplin  
Councilmember Bartlett  
Councilmember Tregub  
Councilmember O'Keefe  
Councilmember Blackaby  
Councilmember Lunaparra  
Councilmember Humbert

## **RE: SUPPORT FOR BAN ON RENTAL PRICING ALGORITHMS**

Dear Mayor Ishii and Members of Berkeley City Council:

TechEquity writes to you in support of the ordinance to ban rental pricing algorithms, which will send a clear signal that technology cannot be used to circumvent price-fixing and other longstanding laws. Additionally, we wish to call the Council's attention to key considerations for how to strengthen the policy.

TechEquity's mission is to raise public consciousness about economic equity issues that result from the tech industry's products and practices and advocate for change that ensures tech's evolution benefits everyone. As recent investigations and lawsuits have made clear, pricing algorithms are harming consumers and worsening the cost of living crisis.<sup>1,2</sup>

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<sup>1</sup> Little, Heather Vogell, Haru Coryne, Ryan. "Rent Going Up? One Company's Algorithm Could Be Why." ProPublica, 15 Oct. 2022, <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

<sup>2</sup> Justice Department Sues Six Large Landlords for Algorithmic Pricing Scheme That Harms Millions of American Renters | United States Department of Justice. 7 Jan. 2025, <https://www.justice.gov/archives/opa/pr/justice-department-sues-six-large-landlords-algorithmic-pricing-scheme-harms-millions>.

We commend the City of Berkeley for drafting these common-sense protections to address technology’s facilitation of price fixing. A Biden White House Council of Economic Advisors report found that pricing algorithms conservatively cost American renters \$3.8 billion in 2023. The same study found that San Francisco metro area renters pay an average of 62 additional dollars each month because of pricing algorithms.<sup>3</sup> While competitor collusion to raise prices has long been illegal, technology can obscure where and when it happens, making it more challenging to combat.

Public officials must act urgently to rein in tech runarounds of longstanding law; we respectfully submit the following recommendations for how the Berkeley ordinance might do that more effectively:

#### **Update The Definition of “Algorithmic Device”**

The term “device” typically connotes a hardware item, or a piece of physical equipment. In reality, much of what undergirds an algorithm or AI is troves of data and math equations—simple inputs that might not be captured by traditional definitions of “device.” Our concern is that existing language leaves room for many pricing algorithms to claim that they do not meet the definitional requirements to be subject to the policy. We urge the Council to forego a “device”-based definition in favor of defining a pricing algorithm as any analytical or computation processes that use data to recommend or predict the price of consumer goods and services.

#### **Include Algorithms That Use All Data, Not Just Non-Public Data**

Price fixing lawsuits have historically relied on the use of non-public competitor data to prove collusion, a “bright line” standard but one that might not capture many current pricing algorithms. RealPage itself advertises that its software can recommend prices using only public data to help competitors maximize rents, and that existing policies that only ban

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<sup>3</sup> “The Cost of Anticompetitive Pricing Algorithms in Rental Housing | CEA.” The White House, 17 Dec. 2024, <https://bidenwhitehouse.archives.gov/cea/written-materials/2024/12/17/the-cost-of-anticompetitive-pricing-algorithms-in-rental-housing/>.

non-public data do nothing to address housing affordability.<sup>4</sup> Coordination amongst competitors to raise prices is illegal, regardless of the data (or technology) used to facilitate it. Regulation must focus on the coordination itself, rather than the inputs used to coordinate. To prevent loopholes, this ordinance should keep the existing ban for algorithms using non-public data, and add violations for all other pricing algorithms used to coordinate prices amongst competitors.

Price fixing is not new—what is new is how technology brings speed, scale, and secrecy to illegal behavior. Because so much of how algorithms work is blocked from public scrutiny by trade secret and proprietary business claims, **efforts to regulate them must focus not on how they are structured** (which is frequently changing and not widely known), **but on their impact.**

The tech-backed acceleration of wage inequality and profit-maximizing models is worsening a cost of living crisis that is already untenable for many Americans. TechEquity appreciates Berkeley’s action on this issue and urges the Council’s adoption of the ban on rental pricing algorithms.

Respectfully,

A handwritten signature in black ink, appearing to read "Hannah Holloway".

Hannah Holloway  
Vice President of Housing Programs | TechEquity

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<sup>4</sup> “RealPage Offers Its Revenue Management Software Customers the Ability to Remove.” RealPage Blog, <https://www.realpage.com/news/realpage-offers-its-revenue-management-software-customers-the-ability-to-remove-use-of-nonpublic-data/>. Accessed 13 Feb. 2025.