ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA PROHIBITING ANTI-COMPETITIVE AUTOMATED RENT PRICE-FIXING

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of Santa Ana hereby finds, determines, and declares as follows:

A. The housing rent burden and poverty faced by many residents in the City of Santa Ana (City) threatens the health, safety, and welfare to the City.

B. The City Council has provided relief to residents by enacting a Rent Stabilization and Just Cause Eviction Ordinance, directing City staff to apply for housing grants to lower the cost of living for residents and placing a priority on assisting residents by providing information about issues that can negatively affect their lives.

C. The high cost of living and housing shortage in the City have contributed to the City's unaffordability. According to an October 2025 Zillow report, a family must earn $220,000 a year to afford a home mortgage in Santa Ana. According to an October 22, 2025 Orange County Register article, the average rental rate for a residential dwelling unit in the City is $2,293, approximately 40.6% higher than the national median of $1,631.

D. According to the U.S. Census Bureau's 2023 American Community Survey (ACS), Santa Ana has approximately 79,691 occupied housing units, of which 44,151 are renter-occupied households, accounting for over 55% of the total occupied housing units in Santa Ana. Approximately 53% of renter households are considered cost-burdened, with housing expenses exceeding 30% of household income. The City's median household income has not kept pace with the growth in rental housing costs, placing disproportionate pressure on low-income and working-class families.

E. Landlords' use of algorithmic devices, which perform calculations of nonpublic competitor data concerning rental rates, occupancy levels, and other information, to set rental rates and occupancy levels has resulted in inflated rental rates an unfair rent increases and contributed to the City's unaffordability for families.

F. A 2024 study by the White House reported that renters nationally spent an extra $3.8 billion in rent in 2023 because of pricing algorithms, and that Los Angeles renters in units managed with algorithms paid an average of $408 more than

renters in units that were not managed with algorithms. The average monthly cost for Santa Ana is unavailable.

G. In response to the use of algorithmic devices to set rental rates and occupancy levels, in August 2024, the United States Department of Justice (DOJ) filed a lawsuit against RealPage, Inc. Eight Attorneys General, including California Attorney General Rob Bonta, joined the DOJ's lawsuit. The DOJ amended its lawsuit in January 2025 to add two Attorneys General and name landlords and defendants. This lawsuit was settled in November 2025 and per the DOJ, "the proposed settlement would help restore free market competition in rental markets for millions of American renters." Per the settlement, RealPage did not admit any wrongdoing or liability, RealPage must not use their competitors' non-public information, and an independent monitor will ensure compliance for seven (7) years. City renters cannot hope that RealPage does not violate the settlement nor that RealPage will be caught by the independent monitor.

H. RealPage filed a federal lawsuit against the City of Berkeley in April 2025 challenging their ordinance that bans landlords from using algorithmic revenue management software for setting rental rates. While the litigation is pending, and as RealPage will be monitored City renters cannot wait for this lawsuit to run its course. The Council wishes to provide immediate relief to City renters by prohibiting the sale, licensing, and use of algorithmic devices that use or incorporate nonpublic competitor data to advise a landlord on, or recommend to a landlord, rental rates or occupancy levels that may be achieved for residential real property in the City.

Section 2. The recitals and statements of fact set forth in the preamble to this ordinance are true and correct, constitute a substantive part of the ordinance, and are incorporated herein by reference.

Section 3. Article XXIII (Prohibition of Anti-Competitive Automated Rent Price-Fixing) is added to Chapter 8 (Buildings and Structures) of the Santa Ana Municipal Code to read as follows:

Section 8-3600 – Purpose and Intent

The purpose and intent of this Article is to protect the residents of Santa Ana from artificially inflated rental rates and unfair rent increases by prohibiting the sale, licensing, and use of Algorithmic Devices. This Article also provides Tenants with remedies for violations of this Article.

Section 8-3601 – Definitions

(a) For purposes of this Article, the words and phrases shall be defined as set forth herein, unless the context clearly indicates a different meaning is intended.

(b) Words and phrases used in this Article, which are not specifically defined, shall be construed according to their context and the customary usage of the language.

(c) Words and phrases defined:

"Algorithmic Device" means a software or product that uses or incorporates one or more algorithms to perform calculations of Nonpublic Competitor Data concerning rental rates, occupancy levels, or other information regarding the leasing of Residential Rental Property to advise a Landlord on, or recommend to a Landlord, rental rates or occupancy levels that may be achieved for a Residential Rental Property in the City of Santa Ana. Algorithmic Device does not include either of the following:

1) A software or product used by a Person to publish reports regarding rental rates or occupancy levels from aggregated historical Nonpublic Competitor Data that is more than 90 days old, or from information available to the general public, and does not recommend rental rates or occupancy levels for future Residential Rental Property Leases or renewals.

2) A software or product used by a Person to establish rental rates or income limits in accordance with local, state, or federal affordable housing program guidelines.

"Landlord" means an owner and any Person, acting as principal or through an agent, who has the right to offer Residential Real Property for rent, and includes a predecessor in interest to the Landlord.

"Lease" means any lease, sublease, or agreement, written or oral, for the use and occupancy of Residential Rental Property.

"Nonpublic Competitor Data" means information that is not available to the general public, whether the information is attributable to a specific competitor or anonymized or whether the information is derived from or otherwise provided by another Person. Nonpublic Competitor Data includes information about actual rental rates, rental rate changes, Residential Rental Property supply levels, occupancy levels, or Lease start and end dates.

"Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

"Residential Rental Property" means any dwelling or unit that is intended for human habitation, including any dwelling or unit in a mobilehome park.

"Tenant" means a tenant, subtenant, lessee, sublessee, or any other natural person entitled to Lease any Residential Real Property.

Section 8-3602 – Use and Sale of Algorithmic Devices Prohibited

(a) It is unlawful for a person to sell, license, or otherwise provide an Algorithmic Device to a Landlord.

(b) It is unlawful for a Landlord to use an Algorithmic Device to set rental rates or occupancy levels for Residential Real Property. For each month a violation of Section 8-3602(b) exists or continues, and for each Residential Rental Property a Landlord uses an Algorithmic Device, it shall constitute a separate and distinct violation.

Section 8-3603 – Remedies

(a) A Tenant may seek injunctive relief, damages, or civil penalties of up to $1,000 per violation of this Article, in a civil action against a Landlord. In an action brought under this Article, a prevailing Tenant shall recover costs and reasonable attorney's fees. A prevailing Tenant includes a Tenant granted an order for injunctive relief. A Lease provision that limits a Tenant from recovering attorney's fees shall not be enforceable against a Tenant's claim for attorney's fees that arise under this Article.

(b) The remedies under Section 8-3603 are cumulative and are in addition to any other remedies in this Article or at law, statute, or ordinance.

Section 4. The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change to the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project" as defined in section 15378 of the State CEQA Guidelines. Furthermore, the proposed Ordinance falls within the "common sense" CEQA exemption set forth in CEQA Guidelines section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

Section 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 6. This ordinance shall become effective thirty (30) days after its adoption.

Section 7. The City Clerk shall certify the adoption of this ordinance and shall cause the same to be published as required by law.