

March 2, 2020

## MEMORANDUM

**To:** Members of the Finance and Housing Committee  
**From:** Asha Venkataraman, Analyst  
**Subject:** CB 119752: Repealing a prohibition on use of rental housing bidding platforms

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On March 3, 2020, the Finance and Housing Committee will discuss and potentially vote on [Council Bill \(CB\) 119752](#). This bill would end early an existing prohibition on the use of rental housing bidding platforms by landlords and potential tenants.

Rental housing bidding platforms such as Rentberry or Biddwell are websites for online auctions that allow (a) landlords to list available rental units and (b) potential tenants to bid on those units. A landlord can then choose a tenant based on the tenant's bid and other application materials. The bill would also request the Office of Housing (OH) and the Office for Civil Rights (OCR) to conduct follow-up work regarding the use of rental housing bidding platforms.

This memorandum provides background information, summarizes recommendations provided through an OH study of rental housing bidding platforms, and analyzes potential impacts of CB 119752.

### Background

In 2018, the Council passed [Ordinance 125551](#), prohibiting landlords and potential tenants from using rental housing bidding platforms for property in Seattle for one year. This bill addressed the Council's concerns about whether such platforms were compliant with current City laws and if the platforms would have impacts on Seattle's rental housing market. The Council stated in a recital to Ordinance 125551 that the intent of the prohibition was to give the City time to determine whether and to what degree these platforms were a cause for concern and what, if any, regulatory action the City should take. To determine compliance and impact, OH planned to study whether rental housing bidding platforms comply with City law and to determine whether the platforms could have impacts on equitable access in the City's rental housing market. The prohibition established under Ordinance 125551 went into effect on April 30, 2018. Central Staff's March 7, 2018 [memo](#) has additional background and context about Ordinance 125551.

Shortly after passage of Ordinance 125551, Rentberry and a private individual sued the City, arguing that the prohibition interfered with freedom of speech. On March 15, 2019, the U.S. District Court for the Western District of Washington ruled in favor of the City. The Plaintiffs appealed to the Ninth Circuit Court of Appeals, where litigation on the current prohibition is pending.

The prohibition imposed by Ordinance 125551 expired April 30, 2019. At that time, OH did not anticipate completion of the study until July 2019, and Council planned on needing time to

review the study and discuss potential action. To address this issue, Council passed [Ordinance 125840](#) to place a prohibition on the use of rental housing bidding platforms for an additional year until July 17, 2020. Central Staff's May 31, 2019 [memo](#) has additional background and context about Ordinance 125840.

On July 11, 2019, OH submitted a report on compliance with Seattle's laws and the impact of the platforms on equitable access to Seattle's rental housing market ("Rent Bidding Study"). The Rent Bidding Study made several findings and provided some general recommendations on the use of rental housing bidding platforms. The report did not analyze the effects of these platforms on the Seattle housing market and on equitable access because of the brief period of operation of the rental housing bidding platforms in Seattle and the subsequent prohibitions.

The Rent Bidding Study addressed:

- Potential issues associated with compliance with fair housing protections and with the City's "[first-in-time](#)" tenant screening requirements;
- Analysis of the effects on landlords and tenants; and
- Compliance with provisions of the [Residential Landlord-Tenant Act](#) and other Washington State laws.

OH's Rent Bidding Study recommended that rental housing bidding platforms should show evidence of compliance and considerations of current law before reinstating the use of the platform by landlords and tenants and affirmatively demonstrate compliance with all federal, state, and local laws as well as consideration of fairness and equity.

The Rent Bidding Study also recommended that the City should modify the Seattle Municipal Code's regulation of unfair housing practices in Chapter 14.08 to require that rental bidding platforms:

1. Ensure compliance and equitable access for those persons with housing choice vouchers;
2. Make operations competitive for those with vouchers;
3. Anonymize user profiles;
4. Become accessible to persons with disabilities;
5. Provide multiple language support;
6. List screening criteria; and
7. Post an Open Housing Poster be posted on all platforms.

## **CB 119752**

After considering the recommendations in the Rent Bidding Study, Councilmember Mosqueda sponsored CB 119752, which would repeal the prohibition on use of rental housing bidding platforms several months earlier than anticipated in CB 125840.

Given the inability to collect data about the platforms and assess impact at the time OH completed the Rent Bidding Study, the Council via CB 119752 would ask OH to collect data to track whether rental housing bidding platforms are functioning for bidding purposes or only for advertising or other non-bidding functions. This will allow a better determination of whether the use of the platforms for bidding is having an impact on equitable access to Seattle's rental housing market. The Council via CB 119752 would request that OH provide the results of its data collection and analysis by June 1, 2021, allowing for one year's-worth of data collection and time for OH to complete its analysis of the data.

The Council would also direct OCR to conduct testing to determine if the use of the rental housing bidding platforms for bidding purposes is in compliance with SMC 14.08 (unfair labor housing provisions, including but not limited to first-in-time provisions) and provide the results of that testing by June 1, 2021.

If the data shows that the platforms are functioning for bidding purposes and if there is an impact on equitable access to rental housing, then the Council via CB 119752 would request that OH and OCR work with the Council to determine whether and how the recommendations outlined in the Rent Bidding Study should be implemented, including mitigating any unintended consequences.

Lastly, Section 6 of CB 119752 would encourage rental housing bidding platforms to post the Seattle Open Housing Poster on their website to ensure compliance by those utilizing their services.

### **Potential Impacts**

CB 119752 would end the existing prohibition on rental housing bidding platforms in April 2020. This would end the prohibition somewhat earlier than the July 17, 2020 date included in Ordinance 125840.

In repealing the prohibition on the use of these platforms and not immediately regulating their use, the City runs the risk that use of these emerging technologies could have impacts on the rental housing markets. The City would not be able to mitigate such an impact without regulation.

Data collection on the use and function of rental housing bidding platforms is not possible when a prohibition is in place. Moreover, without such data the City cannot determine whether bidding platforms have an impact on equitable access. The repeal of the prohibition could allow such an assessment and clarify if and how to amend the City code to address such impacts. In addition, allowing these platforms to function without submitting an affirmative plan to comply with fair housing laws as recommended in the report may increase the risk that violations of those laws occur. However, OCR's ability to test for such violations may give the City a better idea of whether these platforms are violating the law; which laws they are violating, if any; and what protections need to be in place to prevent against future violations.

cc: Kirstan Arestad, Executive Director  
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