

June 3, 2021

MEMORANDUM

To: Seattle City Council
From: Asha Venkataraman, Analyst
Subject: Council Bill 120090: Right of First Refusal for New Tenancies

[Council Bill \(CB\) 120090](#) is scheduled for a vote at the Full Council meeting on June 7, 2021. On May 25, 2021, the Sustainability and Renters Rights Committee recommended with a three-to-one vote that the Council pass the legislation. CB 120090 would require landlords to offer existing tenants who are at the end of the fixed term lease a new tenancy unless the landlord has just cause. This memorandum:

- provides background information;
- summarizes CB 120090; and
- describes proposed amendments for the Council’s consideration on June 7.

Background

Seattle’s Just Cause Eviction Ordinance

Seattle’s Just Cause Eviction Ordinance (JCEO), codified in [Section 22.206.160](#) of the Seattle Municipal Code (SMC), requires that landlords prove that they have one of the reasons (“just causes”) enumerated in SMC 22.206.160.C.1 to file an unlawful detainer action to evict a tenant. The just causes include, but are not limited to, the tenant’s failure to pay rent or comply with the terms of a rental agreement, as well as if the owner wants to move into their property or substantially rehabilitate, demolish, or change the use of their property.

However, for a tenancy under a fixed term lease that does not automatically convert into a month-to-month tenancy, a landlord does not need just cause to evict the tenant. Instead, the landlord can wait until the term ends, meaning that the tenancy expires when the lease term is over and if the tenant does not vacate the unit the landlord could proceed with an eviction. The lack of requirement for just cause in this instance is often referred to as a “loophole” in the JCEO, as it allows a landlord to simply wait until the term of the lease expires rather than proving just cause.

[CB 120056](#) & [CB 120057](#)

Prior to the introduction of CB 120090, the Sustainability and Renters Rights committee discussed two separate but related bills that addressed the JCEO “loophole,” and required that the landlord renew or extend an existing rental agreement unless there was just cause for failing to do so. CB 120090 replaces both of those bills by regulating the new tenancy rather than regulating the existing expiring tenancy.

CB 120090

This legislation would require that a landlord offer a new tenancy to a tenant with a lease for a specified time between 60 and 90 days before expiration of the specified time. The tenant would have 30 days to accept or decline the proposed rental agreement. The rental agreement would need to contain reasonable terms, and the legislation provides a rebuttable presumption of unreasonableness if the tenant declines the offer of new tenancy and landlord lists the unit within 30 days of the tenant vacating on better terms for another prospective tenant. A landlord would not have to offer a new tenancy if:

- The tenant provides notice that they are vacating 60 days before expiration of the term;
- The landlord has just cause not to offer a new tenancy; or
- The tenancy automatically converts into a month-to-month lease.

If the landlord has just cause not to offer a new tenancy, the landlord would be required to provide written notice to the tenant between 60 and 90 days before expiration, including the just cause and facts supporting it.

CB 120090 would provide a tenant a private right of action for violation of the right of first refusal requirements and could recover three times the amount of monthly rent under the expiring lease, as well as costs and attorney's fees.

The legislation would amend first-in-time requirements¹ to make clear that anything required under first-in-time applies after the landlord has complied with right of first refusal requirements. It would also amend just cause requirements in section 22.206.160.C.1 to state that a landlord may not evict a tenant if they failed to comply with right of first refusal requirements and the only reason for terminating the existing tenancy is because it expired at the end of the specified term.

Lastly, the legislation includes a provision allowing the tenant to rescind termination:

- With written notice if within ten business days of signing the agreement; or
- With written notice after ten days of signing only if the tenant was not represented by an attorney or other tenant advocate or signed outside of mediation.

If the tenant has a housing choice voucher and can only move to a new unit when an existing lease has been terminated via mutual termination agreement, the tenant may not rescind it.

¹ Regulations in SMC 14.08 that require a landlord to offer the first prospective tenant that meets stated criteria a tenancy.

Proposed Amendments

1. Conflict with federal law (sponsors – CMs Sawant & Morales)

This amendment would add language making clear that if City regulations conflict with federal law, federal law controls, and supersedes City law. The amendment would apply this language to all of section 7.24.030, which governs rental agreements, and to the rescission clauses in subsection 22.206.160.C.10.

2. Ensuring contiguous tenancy (sponsors – CMs Sawant & Morales)

This amendment would add language requiring that the new tenancy offered by the landlord begins the day after the previous tenancy ends. The change would ensure that there are no gaps between the time at which the tenancy for a specified time that is expiring ends and the new tenancy begins. As introduced, the legislation did not specify when the next tenancy would begin and could have resulted in the landlord offering a tenancy at some future time rather than right after the end of the previous tenancy.

3. Agreement on lease terms more than 90 days before lease expiration (sponsors - CMs Sawant & Morales)

This amendment would clarify that landlords and tenants do not need to go through the process laid out in this legislation if they agree on a new rental agreement for the same unit, with the tenancy starting the day after the expired tenancy, more than 90 days before the tenancy for a specified time expires.

4. Removing limitations on rescission for housing choice voucher holders (sponsor – CM Morales)

As introduced, the legislation was intended to protect a tenant from rescinding a mutual termination agreement when such agreement was the only mechanism by which the tenant could use the housing voucher to move into a new housing unit. However, this amendment accounts for the fact that a tenant with representation in signing a mutual termination agreement would be advised of such implications when signing the agreement, and tenants without representation would still be allowed to rescind their agreement if they chose to do so.

cc: Dan Eder, Interim Director
Aly Pennucci, Policy and Budget Manager