



Seattle City Council

Central Staff - Memorandum

Date: May 31, 2016
To: Members of the AHNF Committee; CM Sawant
From: Aly Pennucci, Council Central Staff
Subject: Council Bill (CB) 118678 – Tenant Protection Ordinance

Overview

On May 18, 2016, the Affordable Housing, Neighborhoods & Finance Committee (AHNF) Committee discussed CB 118678, which would:

1. Add a potential delay of a rent increase if a unit does not meet minimum housing code standards (see Attachment 1 – Process Flowchart)
2. Add enforcement authority in the Seattle Department of Construction and Inspections (SDCI) for required notice of rent increases
3. Transfer enforcement authority for prohibited acts to SDCI from the Seattle Police Department.
4. Increase the amount of potential liquidated damages for a tenant’s private right of action from \$1,000 to \$3,000
5. Add definitions and make some clean-up/technical corrections

This memo: (1) identifies some of the issues raised during the discussions and some technical corrections and (2) describes potential amendments for the Committee’s consideration. Amendment language is included in Appendix 2.

Discussion items and amendments for consideration:

1. Technical corrections and clarification

Central staff, in coordination with SDCI, identified several areas where language could be improved for clarity and where technical corrections are needed (see Attachment 1- Amendment 1 for specific language).

These amendments would:

- Modify the whereas clauses to add specificity in references to City and State housing code standards;
- Make some technical and referential corrections and clarify language;
- Specify that email is an acceptable method of providing notice;

2. Modify the timeframe under which the tenant must respond in writing to the landlord, following notice of a rent increase, to request a delay of the rent increase due to defective conditions.

In the proposed bill, to initiate the process to request a delay of the rent increase, the tenant, after receiving notice of a rent increase, must respond to the landlord in writing within ten days describing any defective conditions and requesting the delay. If the landlord remedies the defective

condition at any point before the rent increase is set to take effect the delay of the rent increase will be avoided. (See Attachment 1 – Process Flow Chart)

The current proposal prioritizes giving the landlord time to remedy any defective conditions between being notified by the tenant of the defective condition, and the date that the rent increase will go into effect. If Councilmembers want to prioritize, or shift the balance, to give tenants more time to understand what their rights are and take the steps to notify the landlord and have an inspection, extending that time period may be the best option. (See Attachment 2, Amendment 2 for specific language)

Option	Considerations
<p>A. Increase the time period in which the tenant must respond to the landlord in writing from 10 days to the effective date of the rent increase identified in the notice from the landlord.</p>	<p>This amendment would increase the time period in which the tenant must respond to the landlord in writing from 10 days to the effective date of the rent increase identified in the notice from the landlord. This option prioritizes giving tenants more time to notify the landlord of defective conditions and the potential application of a delay of the rent increase, and to request an inspection from SDCI.</p> <p>This may result in more instances of the increase being delayed because it is less likely that repairs will be completed in advance of the effective date of the rent increase. This may also increase the need for enforcement by SDCI in ensuring that the tenant receives a refund or rent credit if the tenant paid the increase before the defective condition was remedied.</p>
<p>B. Increase the time period in which the tenant must respond to the landlord in writing from 10 days to 15 days for a 30 day notice and from 10 days to 30 days when there is a 60 day notice.</p>	<p>This amendment would give the tenant slightly more time to respond (five additional days when there is a 30 day notice; 20 additional days when there is a 60 day notice) but still gives the landlord time to make repairs after receiving the tenant’s notice of a deficiency before the effective date of the rent increase and some time for SDCI to conduct an inspection.</p>
<p>C. No change</p>	<p>This prioritizes providing time for the landlord to remedy any deficiencies prior to the effective date of the rent increase.</p>

3. Require that the notice of a rent increase includes information about where the tenant can find information on their rights and responsibilities under Seattle and Washington State’s landlord/tenant regulations

The proposed bill could allow for a delay of a rent increase when there are defective conditions that are not corrected before the effective date of a rent increase. However, it is contingent on (1) the tenant being aware of their rights to pursue this option and (2) action by the tenant within 10 days of receiving the notice of the rent increase. Councilmembers may want to consider requiring some

notice to tenants of their rights and responsibilities (note that this time period could be extended if one of the options under amendment 2 is adopted) (see Attachment 2, Amendment 3 for specific language).

Option	Considerations
A. Require that the notice of a rent increase includes information about where the tenant can find information on their rights and responsibilities under Seattle’s landlord/tenant regulations.	Today, landlords are required to attach a summary to any rent agreement describing the respective rights, obligations and remedies of landlords and tenants; the summary is prepared by SDCI. Because many tenants may not have that summary easily at hand when their rent is increased, requiring a reminder in the rent increase notice is an opportunity to ensure that the tenant can easily access this information. (see Attachment 3 for an example of how this could be incorporated into a rent increase notice).
B. No change	Tenant’s would not be reminded or directed to information about their rights and responsibilities.

4. Addition of a severability clause

The proposed bill, as described on page 1 of this memo, amends several sections of Title 22. This amendment adds a severability clause that was omitted from the bill that was introduced. In the event that any section of the bill is invalidated, the other sections would not be affected. (See Attachment 2, Amendment 4 for specific language).

5. Clarify language about when the effective date of a housing cost increase can lawfully be delayed

The proposed bill only allows the effective date of a housing cost increase to be delayed after SDCI has inspected the unit and determined that a code violation exists. If the tenant or the landlord does not contact SDCI to conduct an inspection, or if SDCI is unable to complete the inspection before the effective date of the housing cost increase in the original notice, the tenant would pay the housing cost increase. If SDCI conducts an inspection after the effective date of the housing cost increase and SDCI determines that a code violation exists, SDCI will work with the tenant and the landlord to determine if a credit or refund is required. To clarify when delaying the effective date of the housing cost increase is lawful, Councilmembers may want to consider adding more explicit language to the ordinance. (See Attachment 2, Amendment 5 for specific language).

Option	Considerations
A. Add explicit language about when the effective date of a housing cost increase can lawfully be delayed.	This amendment does not change the effect of the proposed bill but adds clarity for landlords and tenants.
B. No change	As stated above, not making this amendment does not change the impact of this bill.

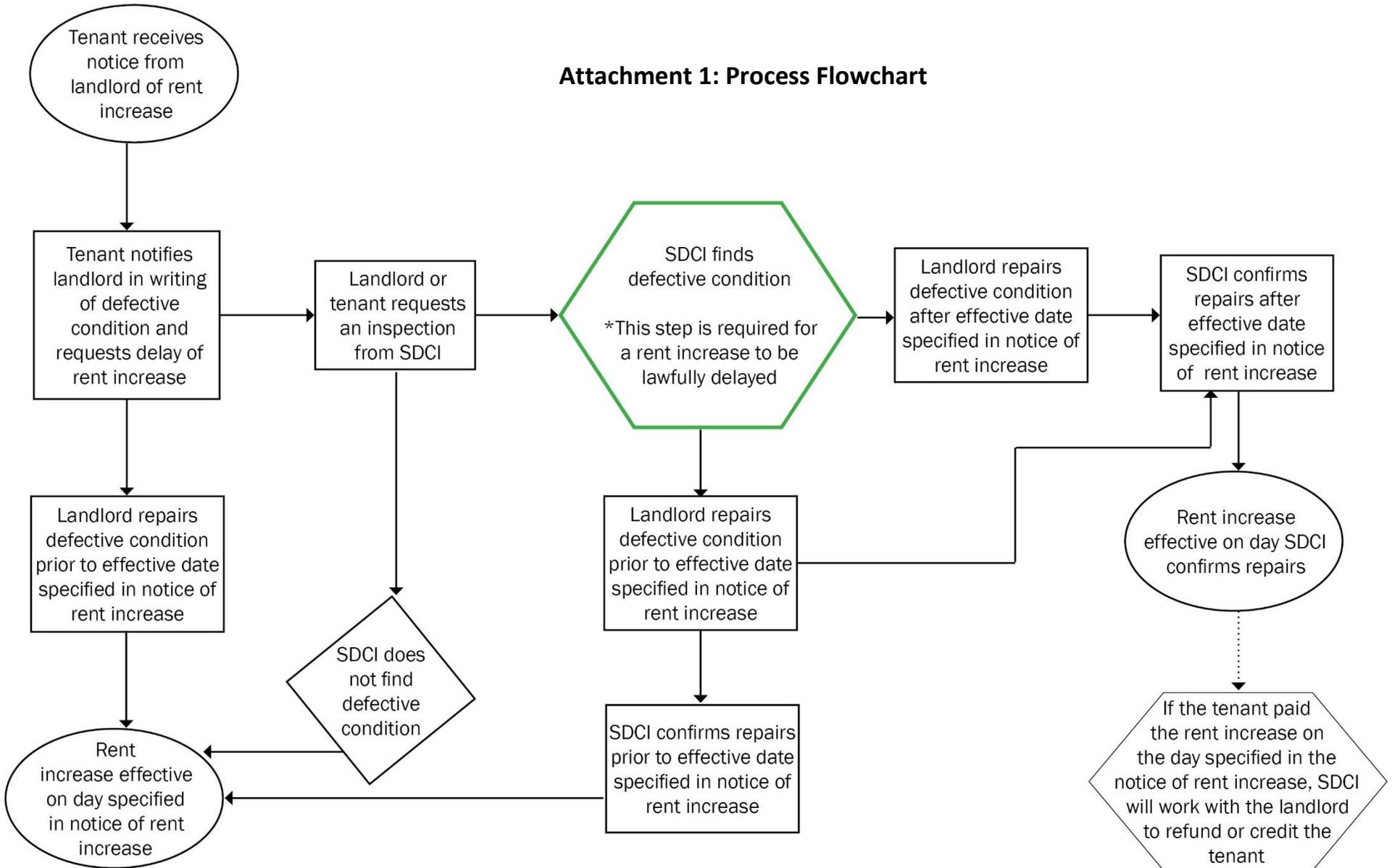
6. Add language to define how the City will work with tenants when SDCI is notified by tenants that a landlord has given them a 3 day pay or vacate when the rental increase has been lawfully delayed

During the committee discussion about the proposed bill, an issue was identified that a landlord may attempt to evict a tenant if the tenant delays payment of the housing cost increase. As described above under item #5, if SDCI has conducted an inspection and determines that a housing code violation exists, the effective date of the housing cost increase can lawfully be delayed. To ensure that tenants are aware of their rights under this rule, Councilmembers may want to define SDCI's role when they are notified by tenants that a landlord has given the tenant a 3 day pay or vacate notice when payment of the housing cost increase was lawfully delayed, and request that SDCI work with tenants' organizations to develop educational materials'. (See Attachment 2, Amendment 6 for specific language).

Option	Considerations
<p>A. Add a new section requesting that SDCI work with tenant's organizations to develop educational materials on this ordinance; amend the bill to define, through a Director's rule, SDCI's role in an eviction process and add an annual reporting requirement.</p>	<p>Eviction proceedings are a private matter between the landlord and the tenant. However, if called upon, the City could be engaged in the process by informing the landlord and/or the courts about the City's regulations and confirm if the City determined that the effective date of the housing cost increase was lawfully delayed. These amendments make clear Council's intent to have SDCI work on and monitor this issue.</p>
<p>B. No change</p>	<p>With this amendment the City could still work with tenants' organizations and be available if called upon to confirm the City's regulations and whether the effective date of the housing cost increase was lawfully delayed. However, these changes would give Council more certainty that this issue will be monitored.</p>



Attachment 1: Process Flowchart





Attachment 1 – Potential Amendments

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Amendment 1 – Technical corrections and clarifications.

CM Burgess

WHEREAS, the Rental Registration and Inspection Ordinance, Chapter 22.214 of the Seattle

Municipal Code, establishes a checklist of maintenance standards required for rental housing and requires that all housing units subject to Chapter 22.214 meet the standards established in Sections 22.214.050.L and 22.214.050.M; and

WHEREAS, RCW 59.18.060 states “the landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular: (1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulations governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition endangers or impairs the health or safety of the tenant”; and

Section 1. Subsection 22.202.010.A of the Seattle Municipal Code, which section was last amended by Ordinance 120302, is amended as follows:

22.202.010 Enforcement authority – Rules((=))

A. Enforcement. The Director is hereby designated the City Official to exercise the powers granted by this ((Code)) Title 22 ~~((, except that the Chief of Police is authorized to administer and enforce Sections 22.206.180 and 22.206.190 and shall have equal authority with the Director for enforcement of SMC Sections 22.206.140 and 22.206.160 B3. In enforcing SMC Sections 22.106.180 and 22.206.190, the Chief of Police shall encourage any owner(s) and tenant(s) involved to engage in mediation or binding arbitration pursuant to RCW 59.18.315 through RCW 59.18.350 of the State Residential Landlord Tenant Act to resolve outstanding disputes between them)).~~ The Chief of Police shall provide assistance to the Director in enforcing ((Sections 22.206.180 and 22.206.190)) Title 22 when requested by the Director.

* * *

Section 3. A new Section 22.202.080 is added to the Seattle Municipal Code as follows:

22.202.080 Documentation of notices

All written notices required by ((this)) Chapter ((22.202)) 22.200 through 22.208 to be provided to or served on tenants by property owners, or ((and by tenants)) on property owners by tenants, shall be documented in such a manner as to confirm the date on which the notice was received. The use of email is allowed for written notices required under Section 22.206.180.

Section 5. Section 22.206.180 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

22.206.180 Prohibited acts by owners ((=))

J. Increase the periodic or monthly housing costs to be charged a tenant by any amount if the Director has determined the housing unit does not comply with the ~~((requirements of))~~ checklist prescribed by subsection~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M.

1. When a tenant is notified of a ~~proposed ((pending))~~ increase in periodic or monthly housing costs, if the tenant believes the housing unit has defective conditions and does not ~~((meet the requirements of))~~ comply with the checklist prescribed by subsection~~((s))~~ 22.214.050.L and the requirements of ~~((and))~~ 22.214.050.M, the tenant may ~~((ask))~~ notify the owner ~~((to delay the housing costs increase))~~ of the potential application of this Section 22.206.180.J.

2. ~~((A request))~~ The notification from a tenant to an owner ~~((delay the housing costs increase))~~ must be in writing, ~~((must))~~ describe the defective conditions, and ~~((must))~~ be sent to the landlord within ten days of the date a tenant received notice of housing costs increase.

5. If the Director determines that the unit does not ~~((meet the requirements of))~~ comply with the checklist prescribed by subsection~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M, the housing costs increase shall not take effect until the Director determines that the housing unit complies with the ~~checklist and the ((those))~~ requirements of subsection 22.214.050.M.

6. If a tenant ~~((paid the))~~ pays the increased housing costs ~~((amount))~~ prior or subsequent to a determination by the Director ~~((under subsection 22.206.180.J.5))~~ that the housing unit ~~does ((was))~~ not comply ~~((in compliance))~~ with the ~~checklist and the~~ requirements of subsection~~((s 22.214.050.L and))~~ 22.214.050.M ~~((or prior to correction of the conditions that were out of compliance))~~, the owner shall refund to the tenant the amount by which the housing

costs paid exceeded the amount of housing costs otherwise due, or provide a credit in that amount against the tenant's housing costs for the next rental period. The refund or credit shall be prorated to reflect the period that the housing unit was determined to be out of compliance with the checklist and the requirements of ((s 22.214.050.L and)) 22.214.050.M. If the owner elects to provide a refund rather than provide a credit, the refund shall be paid to the tenant before the beginning of the next rental period. When calculating pro-rata amount to be credited or refunded, a 30-day month shall be used.

7. ((When calculating a pro-rata amount to be credited or refunded, a 30-day month shall be used.))

8. If a tenant discovers a new housing condition that the tenant believes fails to comply with the checklist prescribed by ((requirements of))subsection((s)) 22.214.050.L and the requirements of 22.214.050.M more than ten days after receiving notice of a housing costs increase, but before the effective date of the increase, the tenant may ((request a delay in the effective date of the increase by providing written notice of the defective condition to the owner within ten days of the discovery and by asking the Department of Construction and Inspections to inspect the housing unit)) follow the procedures prescribed in subsection 22.206.180.J.1 through 22.206.180.J.5. ((If the Director determines the housing unit is not in compliance with the requirements of subsections 22.214.050.L and 22.214.050.M, the effective date of the rent increase shall be delayed until compliance is achieved, as determined by the Director.)) If the tenant has paid excessive rent as described in subsections 22.206.180.J.6, ((F))the owner shall provide a pro-rata credit or refund to the tenant ((according to subsections)) as prescribed by subsection 22.206.180.J.6 ((and 22.206.180.J.7)).

((9))8. If a tenant denies access to the tenant's housing unit to conduct an inspection, the increase in housing costs shall take effect on the date access to the dwelling unit

was denied by the tenant, or on the effective date of the housing costs increase identified in the notice of the housing costs increase, whichever is later.

Section 7. Section 22.206.280 of the Seattle Municipal Code, last amended by Ordinance 122855, is amended as follows:

22.206.280 Civil enforcement proceedings and penalties ((-))

In addition to any other remedy that may be available at law or equity, the following are available:

A. ~~((Except for violations of Section 22.206.180, a))~~ Any person violating or failing to comply with any requirement of this ~~((Code))~~ ~~((Title 22))~~ Chapter 22.206 shall be subject to a cumulative civil penalty in an amount not to exceed:

Amendment 2: Timeframe tenant must notify the landlord

Amendment 2, OPTION A
CM Sawant

22.206.180 Prohibited acts by owners ((=))

J. Increase the periodic or monthly housing costs to be charged a tenant by any amount if the Director has determined the housing unit does not comply with the ~~((requirements of))~~ checklist prescribed by subsection ~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M.

1. When a tenant is notified of a ~~proposed ((pending))~~ increase in periodic or monthly housing costs, if the tenant believes the housing unit has defective conditions and does not ~~((meet the requirements of))~~ comply with the checklist prescribed by subsection ~~((s))~~ 22.214.050.L or the requirements of ~~((and))~~ 22.214.050.M, the tenant may ~~((ask))~~ notify the owner ~~((to delay the housing costs increase))~~ of the potential application of this Section 22.206.180.J.

2. ~~((A request))~~ Notification from a tenant to an owner ~~((delay the housing costs increase))~~ must be in writing, ~~((must))~~ describe the defective conditions, and ~~((must))~~ be sent to the landlord ~~((within ten days of the date))~~ prior to the effective date listed in the notice of housing costs increase the tenant received ~~((the notice of housing costs increase))~~ from the landlord.

8. ~~If a tenant discovers a new housing condition that the tenant believes fails to comply with the requirements of subsections 22.214.050.L and 22.214.050.M more than ten days after receiving notice of a housing costs increase, but before the effective date of the increase, the tenant may request a delay in the effective date of the increase by providing written notice of the~~

~~defective condition to the owner within ten days of the discovery and by asking the Department of Construction and Inspections to inspect the housing unit. If the Director determines the housing unit is not in compliance with the requirements of subsections 22.214.050.L and 22.214.050.M, the effective date of the rent increase shall be delayed until compliance is achieved, as determined by the Director. The owner shall provide a pro rata credit or refund to the tenant according to subsections 22.206.180.J.6 and 22.206.180.J.7.~~

9. If a tenant denies access to the tenant’s housing unit to conduct an inspection, the increase in housing costs shall take effect on the date access to the dwelling unit was denied by the tenant, or on the effective date of the housing costs increase identified in the notice of the housing costs increase, whichever is later.

Amendment 2, OPTION B

22.206.180 Prohibited acts by owners ((-))

J. Increase the periodic or monthly housing costs to be charged a tenant by any amount if the Director has determined the housing unit does not comply with the ~~((requirements of))~~ checklist prescribed by subsection ~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M.

1. When a tenant is notified of a ~~proposed ((pending))~~ increase in periodic or monthly housing costs, if the tenant believes the housing unit has defective conditions and does not ~~((meet the requirements of))~~ comply with the checklist prescribed by subsection ~~((s))~~ 22.214.050.L or the requirements of ~~((and))~~ 22.214.050.M, the tenant may ~~((ask))~~ notify the owner ~~((to delay the housing costs increase))~~ of the potential application of this Section 22.206.180.J.

2. ~~((A request)) Notification from a tenant to an owner ((delay the housing costs increase))~~-must be in writing, ~~((must))~~ describe the defective conditions, and ~~((must))~~ be sent to the landlord within ~~((ten)) 15 days of the date ((the)) a tenant receive((d))s a notice of housing costs increase or within 30 days of the date a tenant receives a 60-day notice of housing costs increase.~~

8. If a tenant discovers a new housing condition that the tenant believes fails to comply with the ~~checklist prescribed by ((requirements of))~~subsection~~((s))~~ 22.214.050.L and ~~the requirements of 22.214.050.M more than ((ten)) 15 days after receiving a 30-day notice of a housing costs increase or more than 30 days after receiving a 60-day notice of a housing costs increase,~~ but before the effective date of the increase, the tenant may ~~((request a delay in the effective date of the increase by providing written notice of the defective condition to the owner within ten days of the discovery and by asking the Department of Construction and Inspections to inspect the housing unit))~~ follow the procedures prescribed in subsection 22.206.180.J.1 through 22.206.180.J.5. ~~((If the Director determines the housing unit is not in compliance with the requirements of subsections 22.214.050.L and 22.214.050.M, the effective date of the rent increase shall be delayed until compliance is achieved, as determined by the Director.))~~ If the tenant has paid excessive rent as described in subsections 22.206.180.J.6, ~~((F))~~the owner shall provide a pro-rata credit or refund to the tenant ~~((according to subsections))~~ as prescribed by subsection 22.206.180.J.6 ~~((and 22.206.180.J.7)).~~

Amendment 3: Require that landlords notify tenants of their rights and responsibilities

CM Burgess

22.206.180 Prohibited acts by owners ((-))

H. Increase the periodic or monthly housing costs to be charged a tenant by 10 percent or more over the periodic or monthly housing costs charged the same tenant for the same housing unit and the same services for any period or month during the preceding 12-month period without giving the tenant at least 60 days prior written notice of the cost increase. [The notice shall describe how the tenant may obtain information about the rights and obligations of tenants and landlords under this Chapter 22.206](#); or

I. Increase the periodic or monthly housing costs to be charged a tenant by less than 10 percent over the periodic or monthly housing costs charged the same tenant for the same housing unit and the same services for any period or month during the preceding 12-month period without giving the tenant at least 30 days prior written notice of the cost increase. [The notice shall describe how the tenant may obtain information about the rights and obligations of tenants and landlords under this Chapter 22.206](#); or

Amendment 4: Addition of a severability clause.

CM Burgess

Section 10. The provisions of this ordinance are declared to be separate and severable.

The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Amendment 5: Clarify language about when the effective date of a housing cost increase can lawfully be delayed

CM Herbold

22.206.180 Prohibited acts by owners ((-))

J. Increase the periodic or monthly housing costs to be charged a tenant by any amount if the Director has determined the housing unit does not comply with the ~~((requirements of))~~ checklist prescribed by subsection ~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M.

5. If the Director determines that the unit does not ~~((meet the requirements of))~~ comply with the checklist prescribed by subsection ~~((s))~~ 22.214.050.L and the requirements of 22.214.050.M, the housing costs increase shall not take effect until the Director determines that the housing unit complies with the ~~checklist and the ~~((those))~~ requirements of subsection 22.214.050.M. This determination must occur before the tenant may lawfully refuse payment of the housing cost increase.~~

Amendment 6: Add language to define how the City will work with tenants when SDCI is notified by tenants that a landlord has given them a 3 day pay or vacate when the rental increase has been lawfully delayed

CM Herbold

J. Increase the periodic or monthly housing costs to be charged a tenant by any amount if the Director has determined the housing unit does not comply with the ((requirements of))checklist prescribed by subsection((s)) 22.214.050.L and the requirements of 22.214.050.M.

9. The Director shall describe, by rule, SDCI's role when a tenant notifies SDCI that a landlord has given the tenant notice pursuant to RCW 59.12.030 (3) (3 day pay rent or vacate notice) and when the housing cost increase has been lawfully prohibited pursuant to subsection 22.206.180.J.5.

Add new sections:

Section 8. To avoid instances of eviction proceedings resulting from nonpayment of a housing cost increase after SDCI has determined that the effective date of the housing cost increase can lawfully be delayed, the Council requests that SDCI work with tenants' organizations to produce educational materials to ensure that tenants' understand the process and how they can work with the City in the event of an eviction proceeding resulting from this process.

Section 9. The Director shall report annually to the Affordable Housing, Neighborhoods and Finance Committee, or its successor committee, on all activity related to Section 22.206.180.J. This report shall include the number of inquiries from tenants and landlords, the number of inspections related to this provision, the outcome of those inspections, the number of housing cost increases delayed based on a determination by the department or refunds or credits

required, and any interactions and information related to the Department's involvement in any eviction proceedings. To the extent feasible, the Director should obtain records on evictions in Seattle and review those records to determine if the Department conducted inspections at those locations related to Section 22.206.180.J and if the eviction resulted from application of this Section 22.206.180.J. The report shall be delivered to the Council by no later than January 31 of the following calendar year (beginning January 31, 2017).

Attachment 3: Example Notice of Rent Increase

(Tenant name and address)
(Unit number: X)

Date of Notice: X/X/2014

Dear Tenant.

As you are aware, your lease at the above reference property will expire on [Date of Lease Expiration]

This letter is to serve as thirty (30) day notice that the monthly rent for the above referenced premises will increase from the current monthly rent of \$____ to the new rent of \$____ per month effective on ____DATE____. The rent will continue to be payable in advance or due on the 1st day of each month.

Should you wish to sign a new agreement or continue your tenancy month-to-month, this new amount will be required. All other terms of the Lease Agreement will remain in full force and effect. If you do not wish to renew your lease, please provide your notice as soon as possible or no later than 20 days in advance of the end of the lease agreement.

Information about Washington State and City of Seattle landlord/tenant regulations can be obtained at: <http://www.seattle.gov/dpd/codesrules/commonquestions/rentalhousingproblems/> or by contacting the Seattle Department of Construction and Inspections, Code Compliance at:

Phone: (206) 615-0808

In person: 19th Floor, Seattle Municipal Tower (M-F 8am – 5pm)

Mailing Address: 700 Fifth Ave., Suite 2000, P.O. Box 34019, Seattle, WA 98124-4019

Sincerely,
Landlord