

May 11, 2021

MEMORANDUM

To: Sustainability and Renters Rights Committee
From: Asha Venkataraman, Analyst
Subject: Council Bills 120056 and 120057: Just Cause at the End of Fixed Term Leases

On May 12, 2021, the Sustainability and Renters Rights Committee will discuss [Council Bill \(CB\) 120057](#). The proposed legislation would convert a tenancy under a fixed term rental agreement to a month-to-month tenancy unless a landlord offers and a tenant accepts a new rental agreement for a fixed term or the landlord has just cause for refusing to renew or continue the tenancy.¹ The committee discussed [CB 120056](#) on April 27; that legislation also addresses the applicability of just cause to fixed term leases, but takes a slightly different approach. CB 120056 requires that a landlord offer a tenant the opportunity to enter a new rental agreement unless the landlord has just cause to decline to extend the offer. This memorandum:

- (1) provides background information on local and state regulations related to just cause eviction;
- (2) describes CB 120057 and its differences from CB 120056; and
- (3) describe potential impacts of the bills, and summarize potential amendments proposed by Councilmembers to date.

Defining Terms

This memo will discuss three main types of tenancies:

- **Month-to-month tenancies:** A periodic tenancy in which the tenant pays, and the landlord accepts, rent on a monthly basis.
- **Fixed term rental agreement:** A tenancy in which the landlord and tenant have agreed that the tenant will reside in the rental unit from a specific start date to a specific end date.

There are two different tenancy types related to a fixed term rental agreement:

1. An agreement that automatically converts to a month-to-month tenancy: Upon the end date, the rental agreement specifies that the tenancy will be month-to-month.
2. An agreement that does not convert to a month-to-month tenancy: Upon the end date, the rental agreement is silent or states that the tenancy expires on that date.

In addition, this memo uses the term “just cause,” which refers to a specific and limited set of reasons a landlord must prove to be able to evict a tenant.

¹ This memorandum uses the terms rental agreement and lease interchangeably. It also uses the term month-to-month to cover periodic tenancies.

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. A landlord must have just cause to evict a tenant during the term of a fixed term lease or during a month-to-month tenancy. Just cause is also required to evict a tenant under a fixed term lease, after that term expires, if the fixed term lease automatically converts to a month-to-month tenancy at the end of the term. The landlord must provide the tenant with notice of termination prior to the end of the month or period of the tenancy; the timing of the notice depends on the type of tenancy and the reason for termination.

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.

State Legislation: ESHB 1236

In the 2021 legislative session, the Washington State Legislature passed [Engrossed Substitute House Bill \(ESHB\) 1236](#), establishing just cause eviction protections statewide. ESHB 1236 includes different provisions for fixed term tenancies that automatically convert to month-to-month at the end of the term and fixed term tenancies that do not automatically convert.

Section 2(1)(b) of ESHB 1236 applies to a tenancy under a fixed term rental agreement that automatically converts to a month-to-month tenancy. Under that provision, a landlord must have just cause to end the tenancy except at the end of the initial rental term. ESHB 1236 allows a landlord to end this type of tenancy at the end of the initial term only if the initial rental term was between six and 12 months and the landlord gives the tenant written notice 60 days before the end of the term.

Section 2(1)(c) applies to a tenancy under a fixed term rental agreement that does not automatically convert into a month-to-month tenancy. The landlord must have just cause to evict unless:

- The initial agreement is for 12 months or more or the landlord and tenant have agreed to multiple, successive leases of at least six months since the beginning of the tenancy;
- The landlord provides written notice 60 days before the end of the term to the tenant; and
- The tenancy has never been month-to-month (except for if the landlord and tenant entered into a month-to-month rental agreement between the effective date of ESHB 1236 and three months after the end of the Governor's eviction moratorium).²

CB 120057

This legislation would amend the rental agreement regulations ([SMC 7.24](#)). The changes would convert any tenancy under a fixed term rental agreement that does not automatically convert to a month-to-month tenancy to a month-to-month tenancy at the end of the term unless a landlord offers and a tenant accepts a new rental agreement for a fixed term or the landlord has just cause not to continue the tenancy. It would also amend the just cause eviction section of the code (SMC 22.206.160.C.1) to require that a landlord have just cause to refuse to renew or continue a rental agreement.

CB 120057 would also allow a tenant to rescind termination agreements. Under this proposal, a tenant may rescind a termination agreement within ten days of having signed the agreement by delivering the landlord notice within those ten days. If it has been more than ten days since the tenant entered into the termination agreement, CB 120057 would allow the tenant to rescind the termination agreement if the tenant can establish they entered into it improvidently, which includes considerations such as unequal bargaining power, vulnerability of the tenant, legitimacy of the landlord's reason for seeking termination, or the tenant's ability to procure alternative housing.

CB 120056

For a tenancy under a fixed term rental agreement that does not automatically convert to a month-to-month tenancy by its terms, CB 120056 would require a landlord to offer a tenant the opportunity to enter into a new rental agreement or extend the existing rental agreement unless the landlord has just cause not to make the offer.

² Engrossed 2nd Substitute Senate Bill 5160 ends the Governor's eviction moratorium on June 30, 2021.

In addition, the bill includes the following provisions that do not have parallels in CB 120057:

- the landlord must make the offer between 60 and 90 days prior to the expiration of the existing rental term;
- the tenant has 30 days to decline or accept the proposed rental agreement, and if the tenant declines, the tenancy terminates according to the term of the rental agreement;
- the landlord complies with all appropriate notice requirements; and
- failure to comply with any of these requirements is a defense to eviction.

CB 120056 does not contain any provisions regarding rescission of a termination agreement.

Comparison of CB 120057 and CB 120056

The bills overlap in several ways. In both bills, the landlord must have just cause not to offer a new rental agreement for tenancy after the end of the fixed term. Both bills also continue a tenancy beyond the fixed term if a landlord proposes a new rental agreement or extension of the existing rental agreement and the tenant accepts the offer.

The primary difference between the two proposals is what happens when a landlord proposes a new rental agreement or extension of an existing rental agreement and the tenant declines the offer. Under CB 120056, the tenancy would terminate under the terms of the existing fixed term rental agreement. Under CB 120057, the tenancy would convert to a month-to-month tenancy. The bills also differ in their approaches to where the changes appear in the code and the language by which the changes are made.

Impacts on Tenant Relocation Assistance (TRAO)

Though ESHB 1236, CB 120057, and CB 120056 do not explicitly amend provisions regarding tenant relocation assistance, ESHB 1236 will impact TRAO eligibility, and CBs 120057 and 120056 would add to those impacts. [The tenant relocation assistance ordinance \(TRAO\)](#) requires that before an owner of a dwelling unit demolishes, changes use, substantially rehabilitates, or removes use restrictions from a property³ that would result in the displacement of a tenant, the owner must obtain a tenant relocation license. After the owner applies for a relocation license, Sections 22.206.160.C.1.h and i allow the owner just cause reasons to evict based on TRAO eligible changes.

Prior to the passage of ESHB 1236, if a tenant was required to leave during the term of a fixed term rental agreement (regardless of whether it automatically converts to a month-to-month agreement at the end of the term) or during a month-to-month tenancy, the TRAO-eligible changes would be the reason for displacement of the tenants, prompting the need for the tenant relocation license. However, for fixed term rental agreements that did not convert to month-to-month tenancies, the owner could wait until the expiration of the fixed term, when

³ This memo refers to the group of action covered under TRAO as “TRAO eligible changes.”

the tenant would have to vacate the unit, and then move forward with what would otherwise be TRAO-eligible changes; because it was not the TRAO eligible changes that displaced the tenant but rather the end of the lease term that displaced the tenant, the owner would not need to obtain a tenant relocation license (at least for this specific reason).

But passage of ESHB 1236 as well as potential passage of CBs 120057 and 120056 would reduce the number of instances under which a fixed term lease simply expires and thus increase the number of instances under which the owner would need to use just cause to evict the tenant. Because the reason for displacement of the tenant will change from expiration of the lease term to the TRAO-eligible changes, there will be more instances in which owners will be required to get a relocation license, or at least determine whether tenants are eligible for TRAO.

Impacts on SDCI

Passage of ESHB 1236 as well as potential passage of CB 120057 and CB 120056 will have impacts on workload for the Seattle Department of Construction and Inspections (SDCI) for several reasons. First, extending just cause protections to fixed term leaseholders will include many tenants not currently covered by just cause. This change is likely to increase SDCI's just cause caseload, which would include call volume from tenants and landlords inquiring about new protections, updates to notice and outreach materials, and investigation and enforcement of any violations of notice requirements. In addition, because of the potential increase in eligibility for TRAO licenses, SDCI will likely need to conduct more reviews to determine who is eligible for TRAO and administer more TRAO payments.

Though the level of increase is not entirely clear at this time, Councilmembers may want to consider the potential need to provide additional general fund support to the department for staffing and other costs to implement and administer the proposed changes. Councilmembers Morales and Sawant have requested SDCI's presence at the next Sustainability and Renters Rights committee on May 25th to answer questions.

Potential Amendments

While the committee will not consider or vote on amendments on May 12, Councilmembers may bring the amendments described below for the Committee's consideration at the next Sustainability and Renters Rights committee on May 25.

CB 120057

1. Notice requirement (Councilmember Morales)

This potential amendment would require that landlords give tenants a minimum of 60 days' notice if they do not plan to renew the lease, or longer if the just cause reason for non-renewal requires it. The notice must include the just cause for failing to renew the lease.

2. *Rescission (Councilmember Morales)*

This potential amendment would provide an exception for some classes of mutual termination agreements, specifically if the mutual termination agreement has implications to federally subsidized housing vouchers and if the tenant was appropriately represented when signing the agreement.

3. *Just cause for selling single units (Councilmember Morales)*

Currently, when an owner of a single-family home wants to sell their home and end a tenancy to do so, they can end the rental agreement using just cause in SMC 22.206.160.C.1.f. However, that subsection specifically references “single family dwelling units,” and the Seattle Municipal Code defines that term to exclude townhouse or condominium owners. This means that owners of such units do not have the ability to use just cause to end the rental agreement. To sell without a tenancy, they instead must wait for the lease to expire or see if the tenant will leave voluntarily. They can also try and sell the property with the tenancy intact. With the passage of ESHB 1236 and potentially CBs 120057 and 120056, the opportunity to let the lease expire to end the tenancy decreases.

This amendment would add a reference to a “single-unit property” to SMC 22.206.160.C.1.f. Condo and townhome owners would then be able to use just cause to end the rental agreement when the owner wants to sell, pursuant to the changes to just cause evictions passed by ESHB 1236 and if Council decides to pass CBs 120057 or 120056.

This amendment would require the introduction of new legislation to account for a title change.

Next Steps

CBs 120057 and 120056 will be discussed and potentially voted upon at the next Sustainability and Renters Rights committee on May 25. Before the potential vote, Central Staff will:

- Continue to review the interaction between CBs 120057 and 120056 with ESHB 1236 and share any additional information when it is available;
- Draft and analyze amendments proposed by Councilmembers, including preparing new legislation for introduction if any amendments require a title change; and
- Work with SDCI to further understand workload impacts.

Any amendments to either CB 120057 or CB 120056 will be considered at the May 25 meeting.

cc: Dan Eder, Interim Director
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