



Seattle Office of City Auditor

MEMORANDUM

Date: September 21, 2021

To: Seattle City Councilmembers

From: David G. Jones, City Auditor, and Jane Dunkel, Assistant City Auditor

RE: Evaluation of Compliance with Ordinance 125873: Notice of Intent to Sell (NOIS)

Summary

[Ordinance 125873](#) requests that the City Auditor, in collaboration with the Office of Housing, evaluate multifamily building owners' compliance with the ordinance's notice of intent to sell provisions two years after approval of this ordinance. The intent of the NOIS ordinance is to provide opportunities for affordable housing providers and tenants to purchase buildings before they are publicly listed for sale on the market. During the fall of 2020, we began work to identify data sources and methodologies for conducting this evaluation.

We found that there is insufficient evidence available to fully evaluate multifamily building owners' compliance with the notice provisions in Ordinance 125873. Other key findings include:

In the past five years, the City of Seattle (City) received 20 notices of intent to sell a multifamily rental housing building with two or more units¹ any of which rents for an amount affordable to households at or below 80 percent of area median income. It is unclear whether this is above, below, or equal to the number that should have been submitted. We found that identifying cases when building owners should be submitting notices of intent to sell but are not complying with the ordinance would require access to complete and reliable data, (which is not available, see Appendix B on data limitations), additional resources, and significant ongoing efforts by the City.

In the past five years, only one of the 20 buildings for which notifications were submitted was purchased for affordable housing. The building was purchased by an education and social service agency that provides housing support services to their clients. Ordinance 125873 also provides an opportunity for tenants to submit letters of interest in response to notifications. As of February 2021,

¹ The first Notice of Intent to Sell Ordinance, 124861, which went into effect in October 2015, required multifamily buildings with 5 or more units, any of which rents at an amount affordable to households at or below 80 percent of area median income (AMI), to submit notices of intent to sell. Ordinance 125873, which went into effect in September 2019, expanded the notice requirement to apply to owners of multifamily rental housing with two or more housing units, with at least one of the units renting at a rate affordable to a household at or below 80 percent of AMI. The 20 notices of intent to sell received through February 2021 include notices received under both ordinances.

there have been no letters of interest from tenants or tenant groups to purchase a property for which a notification was submitted. Currently, there are no public or community-based financial or technical resources available to help tenants purchase real estate under NOIS.

In this memo, we provide background information, identify three key NOIS program challenges, and offer five recommendations to address them. We also provide more detail on our findings. In appendix A we outline the changes made by Ordinance 125873 to the 2015 NOIS ordinance, and in appendix B, we describe the data limitations that affected our evaluation.

The City of Seattle's Office of Housing worked with our office on this memo. Additionally, officials from the Seattle Housing Authority and the Seattle Department of Construction and Inspections reviewed a preliminary draft of this memo. These City departments and the Seattle Housing Authority generally agreed with our recommendations. Additionally, staff in the City's Office of Planning and Community Development provided technical review of the preliminary draft memo in regard to limitations in data available for assessing compliance with the ordinance. We appreciated the chance to work with the Office of Housing on this evaluation. We are also grateful for the feedback and assistance provided by the Seattle Department of Construction and Inspections, the Office of Planning and Community Development, and the Seattle Housing Authority.

Background

Ordinance 125873, which went into effect on September 2, 2019, modifies the City's 2015 Notice of Intent to Sell Ordinance (124861). The intent of both ordinances is to identify low-cost market rate housing before it is publicly listed on the market in order to give affordable housing providers and tenants the opportunity to evaluate and, as appropriate, prepare and submit a letter of interest and eventually agree on a purchase and sale offer to purchase the property. The first ordinance, Ordinance 124861, did this by requiring owners of multifamily rental housing with five or more housing units that includes at least one unit that rents at a rate affordable to households at or below 80 percent of Area Median Income (AMI), to provide written notice to the City's Office of Housing (OH) and the Seattle Housing Authority (SHA) of the owner's intent to sell the property. The City then distributes this information to SHA and any other parties that have signed up to be on the NOIS distribution list available on OH's website.

The second ordinance, Ordinance 125873, modified the previous Notice of Intent to Sell Ordinance. Appendix A to this memo provides an overview of these changes. The most significant change is that it expands the notice requirement to apply to owners of multifamily rental housing with two or more housing units, with at least one of the units renting at a rate affordable to a household at or below 80 percent of AMI.

The second ordinance also asks the City Auditor, in collaboration with the Office of Housing, to evaluate the multifamily building owners' compliance with the notice provisions of this ordinance two years after approval of this ordinance or approximately September 2021. It requires the City Auditor to submit a report to the City Council by December 30, 2021, including the results of this evaluation and any recommended changes to the notice provisions of this ordinance. This memorandum serves as that report.

In the section below, we describe three key programmatic challenges and make recommendations to address them.

Program Challenges and Recommendations to Address Them

There are three main challenges to the Notice of Intent to Sell (NOIS) approach. The **first challenge** is that it provides little incentive for multi-family building owners to comply with the ordinance. According to City staff we spoke with, issuing a Notice of Intent to Sell could cost owners money because it can delay the sale of the building to a willing buyer. Given the relatively small penalty stated in the ordinance of \$2,000 for noncompliance, the risk of losing a sale due to delaying it may not be worth the risk of having to pay the penalty. Building owners who follow the City ordinance may take on additional financial risk by delaying putting their properties on the market that is not faced by those who violate the ordinance.

Additionally, since the ordinance states that a penalty should be issued to the owner for non-compliance, we have concluded that identifying violators would require additional enforcement staff and possibly the purchase of proprietary data. At the same time, building owners may decide that, given the potential lost revenue of delaying a sale by 30-90 days, violating the ordinance is worth the risk of a \$2,000 fine. This means that if the City chooses to continue to have a punitive approach to compliance, it will require both additional resources to develop an effective enforcement program, and an increase in the penalties for noncompliance. An alternative approach could be to focus on incentives whereby building owners would be encouraged to participate. If the City chooses to retain the NOIS program, we recommend that the Seattle Department of Construction and Inspections in collaboration with the Office of Housing explore alternative approaches to oversight and to incentivize building owner compliance.

Recommendation 1: The Seattle Department of Construction and Inspections and the Office of Housing should explore alternative approaches to oversight that would be cost efficient and would include ways to incentivize building owner compliance with the notice of intent to sell provisions of Ordinance 125873.

Office of Housing (OH) officials told us that, since the enactment of the 2019 ordinance, OH and SDCI have focused on enhanced outreach to stakeholders to provide clear information and increase compliance with the ordinance. Another way to get the word out to landlords about the ordinance, would be for SDCI to include information about landlords' responsibilities under the NOIS ordinance:

1. In the [*Renter's Handbook*](#) that landlords are required to provide when a lease is signed or renewed.
2. In communications with landlords who are applying for a Tenant Relocation license.

The Tenant Relocation Assistance ordinance (TRAO) was passed to assist renters being displaced by development. It requires property owners and developers to get a Tenant Relocation license if their rental housing is going to: a) be torn down or undergo substantial renovation, b) have its use changed (for example, from an apartment to a hotel), or c) have certain use restrictions removed (for example, a property is no longer required to be rented only to low-income renters under a federal program). The City will not issue a master use, construction, demolition, or change of use permit for

a property when renters will be required to move until the City has issued a Tenant Relocation license, thus ensuring a strong incentive for compliance with the TRAO. Providing information about notice of intent to sell requirements during the tenant relocation licensure and certification process would be an effective way to get the attention of at least some multifamily building owners who may be preparing to sell a building.

Recommendation 2: The Seattle Department of Construction and Inspections should include information about landlords' responsibilities under the Notice of Intent to Sell Ordinance in the *Renter's Handbook* that landlords are required to provide to tenants when a lease is signed or renewed.

Recommendation 3: The Seattle Department of Construction and Inspections should include information about Notice of Intent to Sell Ordinance in the information packet sent to landlords who apply for Tenant Relocation licenses.

The **second challenge** is understanding how suitable the current program is for facilitating tenant purchases. Matching buildings of appropriate quality, condition, and size with tenants' short- and long-term needs and goals is important. Additionally, tenants need support developing their individual and financial capacity to manage and operate the building long term (after purchase). Organizing a tenant's group to agree they want to purchase a building, securing the financing needed to make such a purchase possible, and executing a viable purchase and sale agreement within the current timeframes allowed by the NOIS ordinance is a huge undertaking, especially for those who may have no experience in real estate development or transactions. Both of these efforts—matching buildings with tenants and supporting their ability to operate the building after purchase—would be new programs for OH, as the current program does not provide tenants sufficient technical or financial assistance to make it feasible for them to purchase their buildings.

After the 2019 amendment was passed, OH gathered resources and feedback from the Tenants Union, Washington Can (WACAN), Puget Sound Sage and Homestead. OH was also working with Puget Sound Sage to host an engagement session with community groups on organizing strategies, and to explore the issue of the resources and technical assistance necessary for tenants to purchase their buildings. Unfortunately, when the COVID-19 outbreak began, the community engagement had to be postponed.

Despite this postponement, Puget Sound Sage engaged with South Communities Organizing for Racial & Regional Equity Coalition (SOUTHCORE), WACAN, and the Tenants Union on the amended ordinance soon after it passed. Through this engagement, the organizations expressed ongoing concerns with the ordinance including:

- Lack of resources for tenant organizing. These groups stated that it would require the work of one full-time organizer a minimum of one year to organize a functioning tenant committee in a mid-sized building of 10-20 units
- Lack of quick and easily accessible resources to comply with the ordinance timeline to include funds for technical assistance and acquisition
- Lack of technical assistance necessary for tenants to create a central entity to manage the operations of the building

- Lack of funding to support tenant education and advocacy

Recommendation 4: The Office of Housing (OH) should explore methods for assisting tenants to purchase their buildings. This would include identifying case studies of other cities that have developed programs, such as the Washington D.C. Tenant Opportunity to Purchase Act, to help tenants purchase buildings. These programs could be models for Seattle to consider. OH should review the programs to better understand their impact and any lessons that may be learned from them.

The **third challenge** is the alignment between the types of buildings that provide notice under NOIS and the types of buildings sought by affordable housing providers, who are likely the entities best equipped to take advantage of the NOIS ordinance. OH officials told us that, from their experience and initial feedback from housing providers, two barriers were identified: 1) the size and quality of the buildings typically complying with the ordinance, and 2) funding availability.

The first barrier is that not all buildings submitting notices into the program are ideal for acquisition and ownership by affordable housing providers. The median size of the buildings submitting notices from 2019-2021 is 3 units. Most affordable housing providers search for opportunities that leverage scale to support the financing of long-term operations. Upkeep and operations of small-scale, scattered properties has proven costly and no rehabilitation and operations funding for these kinds of properties currently exists in Seattle. The second barrier is access to acquisition and permanent financing. The ordinance provides no more than 15 days from the letter of interest to show proof of financial viability to purchase the property and provides no additional acquisition resources for securing those sites.

The City should engage affordable housing providers to learn what would make the opportunities shared through NOIS more feasible. This engagement would also create an opportunity for providers to share additional information about obstacles they face for using NOIS.

Recommendation 5: The Office of Housing should seek input from affordable housing providers to learn if the current Notice of Intent to Sell (NOIS) ordinance meets their needs for preservation opportunities or if there are specific gaps in the ordinance that prevent providers from using NOIS.

Additional Information on Findings

Property Owners' Compliance with NOIS Ordinance

We found that, as of February 2021, OH received 20 notices of intent to sell since the first ordinance, 124861, took effect in October 2015. As of February 2021, 616 individuals or individual organizations had signed up to the OH's NOIS listserv to receive information on submitted notices. This list is a mix of individuals, affordable housing providers, developers, and real estate brokers.

OH officials stated that, to the best of their knowledge, only one of the properties for which notices of intent to sell were submitted was sold to an affordable housing provider and none have been sold to a tenant or tenant group. However, the ordinance does not require the City to confirm to whom the property was sold. To verify that only one of the noticed properties had been sold to an

affordable housing provider, we searched the King County Assessor's Office website for sales records for these properties. We found that, as of May 25, 2021, of the 20 properties that submitted notices of intent to sell, 10 sold to developers or investment companies (LLCs), 5 sold to private individuals, 1 sold to a family member, 3 had not sold and 1 was sold to an affordable housing provider.

We attempted to identify the population of properties for which notices should have been submitted but, due to data limitations, we were unable to do so. Although we obtained a list of all multifamily properties with two or more units that sold within the City of Seattle from August 2019 through October 2020, sufficiently specific and complete data on the rental rates paid by tenants ("contract rates") is not available at the property level. As a result, we could not determine if these buildings had any units renting at rates affordable to persons making 80 percent or less of the area median income (AMI) and therefore should have submitted a notice of intent to sell. See Appendix B for more information on data limitations.

Office of Housing Required Outreach Efforts

Ordinance 125873 requires the City's Office of Housing (OH) to facilitate workshops for tenant groups, non-profit housing developers, community organizations, housing financing entities, realtors and commercial brokers, and owners of rental housing to discuss how to facilitate the timely sale of buildings to interested parties. The ordinance states that this work should include providing technical assistance to tenant groups, non-profit housing developers, and other organizations so that they are prepared to submit offers to purchase multifamily buildings that are listed for sale.

We found that, to provide the public, including tenants, property owners and affordable housing providers, with information about the Notice of Intent to Sell Ordinance, OH:

1. Created a webpage with information on the Ordinance (see <https://www.seattle.gov/housing/intent-to-sell>)².
2. Worked with the Seattle Department of Construction and Inspections (SDCI) to send notices to all the landlords included in the [Rental Registration Inspection Ordinance](#) (RRIO) database (according to one SDCI official this included about 19,000 landlords) to notify them of the updated requirements contained in the 2019 ordinance.
3. Conducted an online webinar on April 27, 2020, that was open to anyone who wanted to register. According to OH records, 230 people registered for this webinar.
4. Conducted an online webinar on January 29, 2021, that was also open to the public. (see <https://www.seattle.gov/housing/intent-to-sell>, upper right corner). According to OH records, 81 people registered for this webinar.

Additionally, as required by the NOIS ordinance, OH engaged with stakeholders, and housing providers on how the program works and how to access technical assistance. OH presented on the 2019 amendment to the NOIS ordinance to the [Housing Development Consortium](#) as well as discussed it with [Puget Sound Sage](#) after the approval of the 2019 amendment to the Notice of Intent to Sell Ordinance. Puget Sound Sage in turn engaged in extensive discussions with [SouthCore](#)

² This webpage includes a description of the ordinance, a list of maximum rents for various size units for persons making 80 percent or less of the Area Median Income, and links to resources for landlords and tenants.

about the program and provided feedback to OH. OH also contacted the [Washington Tenant's Union](#) and [Homestead Community Land Trust](#) to discuss resources available for tenants. OH officials told us that the COVID-19 pandemic prevented them from conducting more extensive outreach efforts in 2020.

Conclusion and Recommendations

Based on the number and the outcomes (i.e., only one property sold to an affordable housing provider and none to tenants) of the notices of intent to sell received under both Ordinance 124861 and Ordinance 125873, we concluded that: 1) the NOIS program may work more effectively if it were based on incentives rather than penalties, 2) OH should research how to best support tenants who may want to purchase their building, and 3) OH should understand if the current ordinance meets the needs of affordable housing providers or if there are areas for improvement to encourage more participation.

We make five recommendations to address these issues. See pages 3, 4, and 5 of this memo.

Appendix A: Changes made by Ordinance 125873 to the 2015 NOIS policy

1. Expands the notice requirement to apply to owners of multifamily rental housing with two or more housing units, with at least one of the units renting at a rate affordable to a household at or below 80 percent of AMI.
2. Increases the notice period from 60 days to 90 days before a building is formally listed for sale.
3. Requires an owner to submit a signed declaration, under penalty of perjury, affirming that the owner has complied with the required notices. This declaration would be submitted to the Office of Housing at the same time the required written notice is submitted.
4. Requires an owner to prominently post a notice in the building notifying tenants of the owner's intent to sell the building so that tenants are informed of this impending action. The notice must be posted no later than 90 days before the building is listed or advertised for sale. The notice must include information on the availability of homeownership assistance from the Office of Housing for low-income tenants and the City's website for renters.
5. Requires an owner, who had not actively marketed their property for sale but receives a written offer to purchase a building that the owner intends to accept, to issue the required notices within two days of receiving the offer.
6. Prohibits an owner from executing a purchase and sale agreement for the building until 90 days after the required notice has been issued or posted.
7. Increases the penalty from \$500 to \$2,000 for failing to comply with the notice requirements.

Exhibit 1. Amendment 1 Tiered Notice Requirement

Statement of Interest in Purchasing Building by Tenant (or Tenant Group), Non-Profit Housing Developer, Seattle Housing Authority (SHA)*	Multifamily Building Size 2-4 units	Multifamily Building Size 5+ units
Statement of Interest due*	Due 15 days after owner issues NOIS	Due 30 days after owner issues NOIS
Submittal of documentation by tenant (or tenant group) of financial ability to purchase building**	Due 15 days after Statement of Interest Submitted	Due 15 days after Statement of Interest Submitted
Submittal of offer to purchase building by tenant (or tenant group), non-profit housing developer, SHA***	30 days after Statement of Interest is submitted	90 days after Statement of Interest is submitted
*If no statement of interest is submitted, owner is free to list/sell building **If documentation is not submitted, building owner is free to list/sell building ***If offer is not submitted, or offer is submitted but not accepted, owner is free to list/sell building		

Source: Presentation to Seattle City Council, Housing, Health, Energy and Workers' Rights Committee, July 11, 2019, Traci Ratzliff, Council Central Staff

Appendix B: Data Limitations

To assess compliance with the NOIS ordinance, we would need to compare the number of notices that were received with the number that should have been received. While we have data on the number of notices received, we were unable to identify the number of notices that should have been received. To obtain this information, the minimum data required would include:

1. The number of multifamily properties sold within the City of Seattle in a given period, and
2. The rental rate for each unit in these properties (to determine if the properties fit the ordinance criteria of affordable).

We were unable to find a source of property-level data on rental rates for multifamily properties in Seattle that would be complete and reliable enough to meet property-level data requirements in number 2 above. City of Seattle officials from the Office of Housing and the Office of Planning and Community Development confirmed that rental rate data may be very difficult or impossible to obtain, or at the least, potentially costly.

While there are companies that provide proprietary data products on rental rates, none of those identified would satisfy the specific data needs associated with this ordinance. Many of these companies cover only large properties or otherwise include only a portion of properties, may only have asking rental rates (not contract rates), may provide aggregate rent statistics for a general area (rather than for individual properties), or could be prohibitively expensive. In cases when a company does provide property-level data, it may use statistical modelling based on assumptions it makes to estimate rents for the properties and/or units for which it was unable to directly collect rent data. (This is, for example, the case for CoStar, a company that relies primarily listings of units for rent to collect rent data on multifamily properties.)

A Council Central Staff memo dated May 28, 2019, confirmed these challenges. According to this memo:

Compliance and enforcement with the NOIS policy is, and will likely continue to be, a challenge. Currently, OH has staff capacity to accept and share notices, consistent with the existing policy, but does not have staffing levels adequate to proactively enforce this policy. In addition, even if additional staff resources were provided, it would be challenging and time intensive to proactively research all sales occurring in the market, particularly the work it would take to understand and confirm the rent levels charged in the buildings being listed for sale, that would trigger the NOIS requirements.

Finally, the Seattle City Council recognized this critical data gap during the 2021 budget deliberations, when it passed a Statement of Legislative Intent (SLI): *Report by the Office of Planning and Community Development (OPCD), the Office of Housing (OH) and the Seattle Department of Construction and Inspections (SDCI) on displacement monitoring gaps*. The SLI asks these three departments to report to the Council on, among other things, options for addressing the displacement monitoring data-collection gap for naturally occurring affordable housing. This research may have a dual purpose in addressing displacement monitoring gaps as well as support the NOIS program in overcoming some of the data challenges it currently faces.