

**From:** [Daniel Raff](#)  
**To:** -- City Clerk; [Landlord Tenant Protections](#); [McDonnell, Kevin](#); [Cader-Thompson, Janice](#); [Shribbs, John](#); [Barnacle, Brian](#); [Healy, Mike](#); [Karen Nau](#); [Pocekay, Dennis](#)  
**Cc:** [Margaret DeMatteo](#)  
**Subject:** Joint letter regarding eviction ordinance  
**Date:** Sunday, March 5, 2023 5:59:48 PM  
**Attachments:** [Raff DeMatteo Joint Letter to City Council re Eviction Ordinance.pdf](#)

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Please see attached for a joint letter from me and Margaret DeMatteo from Sonoma County Legal Aid regarding Petaluma's eviction ordinance.

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March 5, 2023

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RE: Perspectives on Petaluma Municipal Code, Chapter 6.60 Entitled, “Residential Tenancy Protections” (“Ordinance”)

Dear City Council and Staff:

We are writing to offer our perspectives on Petaluma’s eviction ordinance as attorneys with experience in landlord/tenant law. Daniel Raff is a real estate attorney practicing locally here in Petaluma. He has been advising and representing property owners for over ten years, including defending them in lawsuits brought by tenants and pursuing tenants for lease violations, damage to property, and evictions. Margaret DeMatteo, is a tenant attorney who specializes in housing policy in Sonoma County, working at Legal Aid of Sonoma County. She has represented hundreds of tenants facing eviction in San Francisco, litigated affirmative lawsuits against landlords for tenant harassment, wrongful eviction, discrimination, and poor conditions within the rental unit. Legal Aid of Sonoma County provides free legal representation to the majority of tenants facing eviction in the County, and representation for other legal issues such as tenant harassment and lack of habitable conditions.

Some City Councilmembers approached Daniel and asked for his perspective on Petaluma’s eviction ordinance. He offered to speak in front of the whole City Council and suggested that he and Margaret both appear so the Council could get both the landlord and the tenant perspective. Ultimately it was determined that this format would not work; however, by that point Daniel and Margaret already had multiple conversations over the past couple weeks to see if we could provide some common guidance to the Council. While we are not going to speak in front of the City Council together, we thought it might be helpful for the City Council to hear some of our thoughts on the eviction ordinance.

First, we wanted to provide the following set of factual statements surrounding landlord-tenant relationships in California that we both agree on so that it may provide some context for the City Council in evaluating the ordinance:

1. California's eviction laws are some of most favorable in the country towards tenants; however, tenants often are not aware of rights that they have and sometimes don't have access to the same resources that landlords do. Tenants enjoy an advantage in the law here, but landlords enjoy an advantage of resources and information asymmetry.
2. Renting out property is choosing to go into business, and the risk assessment in making that decision still happens with or without tenant protections.
3. Building more multi-family housing is important to addressing the housing crisis, but developing multi-family housing is a long and difficult process. Even if tomorrow we start building all the housing we need, lower income residents will face serious issues finding housing until that housing is completed.
4. There are exceptions to the TPA that are particularly relevant to Petaluma that allow certain housing providers to avoid TPA regulations, such as single-family residences ("SFRs") not owned by corporations.
5. There was strong disagreement between Daniel and Margaret about how burdensome this ordinance is, but we do agree that this ordinance increases costs and places regulatory burdens on landlords, either directly or by forcing them to hire professionals to help them navigate it. However, these burdens should be considered in light of the following:
  - Landlords are prohibited from self-help in California and tenants have due process rights to a jury trial to present affirmative defenses before they can be evicted, so landlords will likely have to hire an attorney to pursue an eviction even without this ordinance and even if the Tenant Protection Act ("TPA") doesn't apply.
  - The city has provided the forms a landlord needs to comply with the noticing requirements of the Ordinance, which relieves landlords of the need to hire an attorney to comply with the noticing requirements of the Ordinance.
  - This ordinance only restricts evictions, it does not prevent them. According to Legal Aid data, since it was enacted, there have been at least 34 court eviction filings in Petaluma, per the Sonoma County Superior Court.
6. Eviction control ordinances reduce displacement among existing residents, though we disagree about the problems these policies can create, as discussed below.

This last item of agreement hints at the fundamental reason for the disagreements we have about the ordinance and about housing policy more generally. Margaret believes that tenants need the protections afforded by this ordinance and that these protections are crucial to reduce displacement and homelessness. Daniel, on the other hand, believes that the ordinance will have

long-term deleterious effects on the housing market by discouraging rentals and consequently reducing the housing supply. As a result, Margaret believes that the ordinance needs to be expanded to provide additional protections for tenants, while Daniel believes that the ordinance should be allowed to expire in its entirety. Our respective positions and our justifications for them are outlined in letters that we have separately submitted to the City Council for their review.

The City Council will ultimately have to decide what will happen with the ordinance, but rather than just stating our disagreement on that issue and ending this letter there, we wanted to offer some specific items we both agree the council should consider regarding Petaluma's eviction ordinance.

### 1. Simplify the Language

We agree that the language of the ordinance is cumbersome, and it would benefit everyone if it were simplified. The city's decision to provide landlords with ordinance-compliant notices helps landlords meet the noticing requirements of the ordinance, but interpreting the language of the ordinance is a challenge for both property owners and tenants. We urge the city to simplify the language throughout the ordinance as a first step, so the City Council can fully understand its implications before making any decision about it.

### 2. Keep the Terminology Consistent with the TPA

An easy way to simplify this ordinance and reduce confusion would be to keep the terminology between the ordinance consistent with the TPA. The ordinance's use of the term "just cause" is inconsistent with how the term is used under the TPA. To avoid confusion, the ordinance should be modified so the terms are used in the same way. The TPA uses the term "just cause" to refer to any eviction that is allowed under its regulatory scheme. It then divides "just cause" evictions into "at-fault" evictions where the tenant did something or failed to do something that provides the basis for the eviction, and "no-fault" evictions where the landlord is allowed to pursue an eviction even though it is not based on something the tenant did or did not do. The ordinance uses the term "just cause" only to refer to evictions that would be considered "at-fault" under the TPA, even though both at-fault and no-fault evictions would be considered "just cause" under the TPA. This should be changed to use the terms in the same way they are used under the TPA.

Similarly, the ordinance specifies several bases for just cause/at-fault evictions, but it would make more sense to change the ordinance to simply state that at-fault, just cause is defined the same way as the term is used in Civil Code section 1946.2. Making this change simplifies the ordinance and reduces the confusion that can be caused by using different terms and definitions from the TPA. Making this change to simplify the ordinance would also address several of the issues we discuss below since the definitions of at-fault would mirror the TPA.

### 3. Consider Adding Waste as a Just Cause

The ordinance as currently written does not include waste as "at fault" or "just causes" for eviction, even though it is included in the TPA. Despite the lack of inclusion here, a landlord likely will be able to evict tenants under these circumstances because they would both probably

be considered breaches of the lease, which is justification for eviction in the ordinance. This is a confusing setup and it would be better to avoid the ambiguity and confusion this creates by specifically listing these as at-fault, just causes under the ordinance.

#### 4. Tenancy at Sufferance: Clarification

The term “tenant at sufferance” just means that the tenant's lease expired and the lease renewed on a periodic basis, usually month-to-month. Including “tenancy at sufferance” as an at-fault just cause basis for eviction as some people have suggested would allow at-fault evictions for any tenant that whose lease continued after the expiration of a fixed term lease. Expiration of the lease would not typically be a ground for eviction in a jurisdiction with just cause protections because it would create a huge exception allowing for evictions at the landlord’s discretion in the majority of leases.

#### 5. Keep the Just Cause of Criminal Activity Consistent with the TPA

The TPA defines criminal activity as “by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat, as defined in subdivision (a) of Section 422 of the Penal Code, on or off the residential real property, that is directed at any owner or agent of the owner of the residential real property.” Requiring a conviction to evict for criminal activity will prohibit evictions for criminal activities in some cases. To begin with, a landlord evicting someone for criminal activity already needs to prove in court at the eviction trial that criminal activity took place to get the eviction order. And, criminal convictions can take months or even years, assuming the tenant doesn’t avoid the conviction entirely by pleading out on diversion or a similar program. The ordinance should be changed allow evictions for criminal activity consistent with the TPA.

#### 6. Remove Threat of Violent Crime as a Just Cause

Assuming the City Council addresses the preceding item, including “threat of violent crime” as an at-fault just cause basis for eviction is probably not necessary and can cause confusion. This basis for eviction is not included in the TPA and is probably unnecessary. The way that “threat of violent crime” is defined in the ordinance would probably also qualify as a criminal threat or a nuisance, so a landlord would already have the right to evict based on that activity. Additionally, if this provision was intended to allow for at-fault evictions based on threats that fall short of criminal threats as defined in the Penal Code, that would probably violate the TPA which limits the bases for at-fault evictions. It’s best to avoid all this confusion by removing this provision.

#### 7. Correct Issues Around State Law Preemption and Ambiguity

Lastly, we also agree that some aspects of the ordinance are either preempted by state law or put it at risk for ambiguity. The following are examples that we believe violate the Ellis Act and need to be changed:

##### A. School-aged children and educator protections likely violate the Ellis Act

The Ellis act is a state law that provides landlords the unfettered right to leave the residential rental business. It expressly allows a local jurisdiction to implement regulations around the withdrawal of property from the rental market, and these regulations are set forth in the state law itself. Any local legislation that attempts to restrict a landlord's ability to leave of the rental business beyond what is allowed by the state law, is rendered void by preemption. This ordinance provides special protections for educators and school aged children where a unit is being withdrawn, which does not comply with the Ellis Act and would probably not be upheld by the court. The ordinance needs to be changed to better conform to the Ellis Act on this issue.

B. Sale of property can be a ground for withdrawal

The Ellis Act allows a landlord to withdraw their units from the rental market for any reason, and it does not provide municipalities with the power to exclude from that protection specific reasons for withdrawing from the market. The Ellis Act does allow local jurisdictions to establish legal prerequisites for withdrawing a property from the rental market, but as currently written the ordinance states that selling property cannot be a ground for withdrawing from the rental market. Worded this way could be read to attempt to prohibit an Ellis Act eviction commenced alongside a sale, but such a prohibition would violate the Ellis Act by restricting the reasons that a unit is being withdrawn from the market. This should be clarified accordingly. It should also be noted that there are several typos of this section of the ordinance (6.60.050(D)(1)).

We hope that this letter will help the Petaluma City Council in its deliberations over the Petaluma eviction ordinance. We will both be attending the City Council meeting on March 6 will be happy to answer any questions the Council has, whether at that meeting or outside of the meeting.

Sincerely,



Margaret DeMatteo, Esq.

Sincerely,



Daniel Raff, Esq.