

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: Letter Regarding Eviction Ordinance
Date: Sunday, March 5, 2023 7:45:00 PM
Attachments: [Raff Letter to City Council re Eviction Ordinance.pdf](#)

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Please see attached for a letter from me regarding the Petaluma Eviction Ordinance. The other letter I sent was from me and Margaret DeMatteo, but this one is just from me.

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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:

You should have received a letter from Margaret DeMatteo and me providing some of our thoughts on Petaluma's eviction ordinance. We worked hard to provide a joint perspective for the City Council to consider, but given our different backgrounds it's not surprising that we have different opinions about the merits of the Ordinance. Since my concerns about the Ordinance were not included in the letter we submitted together, and since Margaret had already sent in a letter with her coalition partners discussing the ordinance, I wanted to provide this separate letter explaining my concerns to the City Council.

The Ordinance Is Counter-Productive and Will Lead to More Housing Problems in the Long-Term

While I understand why tenant groups advocate for rent control and eviction ordinances, the problem is that they can discourage housing and exacerbate the housing crisis rather than help it. Demand for housing is not likely to decrease anytime soon, and California's housing crisis has been brought on by years of underproduction not enabling supply to keep up with demand. Price controls, and other forms of regulations increase costs and discourage development, further impeding the supply of housing. To address the housing crisis, we need to be working to eliminate barriers to new housing, but this Ordinance creates significant barriers. I can understand someone arguing that using rent control to stabilize rent for tenants is beneficial even if it leads to higher average rent, and that may be a reasonable goal for Petaluma if that's what's decided; however, any council drafting ordinances like this needs to keep in mind that there is always a tradeoff. The more onerous its provisions the more it will discourage housing development.

Along similar lines, small municipalities should seriously reconsider passing complex tenant protection ordinances like this. Having a patchwork of different ordinances increases costs for housing provider and makes it much harder on smaller landlords, who are more likely to be

members of the community and who are more likely to work with renters experiencing financial hardships. If the council thinks that there are aspects of this ordinance that are beneficial, it would be better to lobby the state legislature to make changes to the statewide Tenant Protection Act (“TPA”) rather than having a separate ordinance for Petaluma.

The Three Biggest Problems with the Ordinance

Turning to specific provisions of the ordinance, the most problematic parts of the ordinance are:

1. its failure to exempt properties that have received their certificate of occupancy within the last 15 years;
2. the 10 year right of first refusal for no fault evictions, and
3. not allowing evictions for students and teachers except for a few months of the year.

These provisions are huge disincentives against developing more multi-family housing, and they may do serious damage to our housing market. We have a pretty liberal state legislature, but even they still exempted properties with recent occupancy permits because they wanted to help alleviate the damaging effects that rent control can have on development. Similarly, the right of first refusal and the prohibition against evictions during the school year for teachers and students are enormously burdensome on landlords and will discourage housing. I would guess that it also makes it harder for teacher to find affordable housing since landlords will be strongly disincentivized from renting to them.

While Any Regulation Discourages Housing, Provisions That Line Up More Closely with TPA Regulations Are Less Burdensome

With that said, if the city council is intent on keeping some of the provisions, the ones that make the most sense are the ones that augment the existing regulatory structure in the TPA, rather than add additional burdensome regulations that housing providers must follow. I understand that with the housing market as it is, it can be hard for tenants to find new housing when they are evicted, so I can understand why renter advocates want to increase the rent subsidies for no-fault evictions. Similarly, the single-family residence (“SFR”) exception to the TPA is a big exception that I would guess is used frequently in Petaluma considering how many SFRs we have, so I can understand why they would want to close that loophole. Like the rest of the ordinance, these provisions will likely discourage housing and encourage landlords to increase rents to cover their costs, but these changes will be easier for landlords who are already likely to need to deal with the TPA, and for that reason they are the least problematic parts of this very problematic ordinance. Providing the city with the right to enforce provisions of the TPA is also not burdensome on landlord acting in good faith, though I don’t know if this provision makes sense when you consider that the city is going to need to pay for this and it may not be necessary since there is already a civil right of action for most landlord issues.

Comments on Other Provisions

I also wanted to offer the following comments on other portions of the Ordinance.

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- Applying the provisions of the ordinance at six months instead of one year will encourage landlords to do short-term housing (I would recommend traveling nurses to them) rather than long-term housing, which is what we should be trying to encourage.
- Applying the ordinance to the housing types that are exempted by the TPA will discourage that type of housing. We don't want to be discouraging affordable housing, and we want to encourage people to rent out their accessory dwelling units ("ADUs") rather than keeping them off the market.
- Requiring a landlord to provide different housing to a tenant, or requiring a family member to move into a different property if one is available in the city that the landlord owns, will both discourage landlords from providing more than one unit of housing in the city.
- Not allowing evictions based on government or court orders would put the landlord in a very difficult position of deciding between the two, and this ordinance likely isn't enforceable in those circumstances anyway.
- Authorizing attorney's fees is a nice incentive for attorneys to come in and try to squeeze as much money as possible from landlords so that the landlords can avoid having to fight a far more costly eviction. It will encourage bad faith tenants to use the threat of attorney's fees to extract undue concessions from landlords to remove a troublesome tenant. I have seen this happen firsthand in cases where attorney's fees were available, and I can speak more about my experiences on that if you would like. Part of the problem is that landlords usually do not have any practical remedies against bad faith tenants because those tenants don't have any assets, so getting a judgment against them is worthless even if deserved, while landlords always have at least some assets in the form of the property being rented.

I hope these comments help the City Council as they consider what to do with the Ordinance. I will be attending the March 6 meeting and will be happy to answer any questions the City Council has.

Sincerely,

Daniel S. Raff, Esq.