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Sent via email to: cityclerk@cityofpetaluma.org; landlordtenantprotections@cityofpetaluma.org; kmcdonnell@cityofpetaluma.org; jcaderthompson@cityofpetaluma.org; jshribbs@cityofpetaluma.org; bbarnacle@cityofpetaluma.org; mhealy@cityofpetaluma.org; knau@cityofpetaluma.org; dpocekay@cityofpetaluma.org

Re: Perspectives on Proposed Revisions to the Petaluma Municipal Code, Chapter 6.60 Entitled, "Residential Tenancy Protections" ("Ordinance")

Dear City Council and Staff:

I'm writing this letter to provide my perspective as a real estate attorney on the latest eviction control ordinance the City Council is considering (the "ordinance"). First, I want to recognize that the City Council has listened to some of the concerns raised about the ordinance, and with the very big exception I will address below, the Council has addressed the biggest substantive problems with the old ordinance.

However, that said, this new version has major structural problems that will hurt Petaluma's housing market and likely lead to unnecessary parasitic lawsuits. If the City Council wants an eviction control ordinance, this needs substantial revisions before it is enacted. I know that the City Council wants to put this issue behind it, but it is again rushing through the process without reaching out to the community for feedback on this new version. I strongly urge the City Council to adopt my earlier suggestion of creating an *ad hoc* committee to work out the finer points of this ordinance before it is enacted.

If the City Council really does not want to take that approach, then at a minimum they need to make the following changes to the ordinance before passing it:

1. *Simplify the ordinance* by following the recommendations that Margaret DeMatteo and I both gave you about how to make this ordinance easier to work with.

2. *Simplify the ordinance* by reducing the number of times that a landlord has to provide the same notice to a tenant over and over again.

3. *Simplify the ordinance* by requiring landlords to advise tenants of their right to get a copy of a notice in Spanish, rather than requiring *every* notice to be translated into Spanish regardless of whether a tenant speaks Spanish.

4. Make the attorney's fees clause in Section 6.60.100(A) reciprocal.

5. Completely rework Section 6.60.100(B) to protect landlords from parasitic lawsuits.

6. Follow the example set by the state legislature and exempt housing that has been issued a certificate of occupancy within the previous 15 years.

I discuss each of these in turn below.

1. *Simplify the ordinance* by following the recommendations that Margaret DeMatteo and I both gave you about how to make this ordinance easier to work with.

Margaret and I spent several hours working on our joint letter to the City Council, and a big part of that letter was recommending that the City Council simplify the ordinance. This is something that everyone agrees on, and I do appreciate that some effort was made in this regard, such as mirroring the Tenant Protection Act's ("TPA") use of the term "at-fault" for what had just been "just cause" evictions under the old ordinance. However, I was surprised to see that this new ordinance was still lengthy, complicated, and difficult to follow. I was especially surprised that the City Council did not take our recommendation to define at-fault evictions as:
"All circumstances that are considered at-fault, just causes for evictions under the Tenant Protection Act (Civil Code § 1946.2) or successor state statutes will qualify as at-fault just causes for termination of the tenancy as permitted by this chapter." Then, just leave it at that and do not add a bunch of other stuff to it to make your ordinance more complicated.

This change significantly reduces the text of the ordinance, eliminates the possibly of confusion between the ordinance and the statute, and for what it's worth avoids the possibility of typos as seen in Section 6.60.050(B)(2) of the ordinance. It also has the bonus of automatically keeping up with any state law changes that may be enacted after the ordinance. If, for example, the TPA becomes more restrictive in what constitutes at-fault evictions (which is more likely than the opposite given California's political environment), if the City Council neglected to update the ordinance, a landlord could look at the ordinance and think they can evict for a reason that they actually couldn't under state law, and a tenant could look at the ordinance and think an eviction is justified when they actually have rights they don't realize. This will help everyone and should be adopted.

2. *Simplify the ordinance*, by reducing the number of times that a landlord has to provide the notices to a tenant over and over again.

For what it's worth, I think that requiring landlords to advise tenants of their rights is not a bad idea in theory. One of the facts that I agreed with Margaret on in our joint letter was that tenants often are not aware of rights that they have. Providing notices to tenants are a decent way to help alleviate that problem.

However, the noticing requirements of this ordinance are intense, to say the least. I suspect that the City Council wanted the tenants notified *at least once* of their rights under the ordinance, triggered by one of several events, but as written the ordinance requires these notices *each* time a triggering event happens. And nowhere in the ordinance does it state that the landlord does not need to keep giving the same notice to tenants once they have already done it or that the same notice can satisfy multiple triggering events. So based on how it's written, let's count how many times a landlord might be required to provide the *same exact* notice to a tenant of their rights:

A landlord enters into a lease 15 days after the ordinance is passed. This is a new six-month lease (for a property that is not a primary residence), requiring notice under Section 6.60.040(A)(2). Notice #1. Within 30 days after the ordinance is passed the landlord needs to give another notice under Section 6.60.040(A)(1). Notice #2. Let's say that the City notified this landlord of the ordinance 5 days after it was passed, that would mean that no later than day 35 the landlord would need to provide another notice under Section 6.60.040(A)(5). Notice #3. The landlord decides to raise rent to be effective at the end of the six-month term, requiring another notice under Section 6.60.040(A)(4). Notice #4. The landlord and tenant negotiate a new at the end of the first lease term and renew for anther 6 months, requiring another notice under Section 6.60.040(A)(3). Notice #5. The landlord decides that they are going to sell the property and lists it for sale, requiring another notice under Section 6.60.040(A)(6). Notice #6. The new owner comes acquires title to the property, requiring another notice under Section 6.60.040(A)(5). Notice #7.

That's seven notices of the exact same language all within a one-year period. That doesn't even count other, completely different notices that would have to be sent if the property was being taken off the rental market for the sale. Section 6.60.050 requires the notice of termination, Section 6.60.070(A) requires a notice of intent to withdraw, Section 6.60.070(D) requires a notice regarding rental assistance, Section 6.60.090 requires a notice of re-rental rights, and Section 6.60.060(D) might require another notice depending on the timing of all of this.

Even if the City Council is not worried about the amount of extra work this will generate for landlords, as an environmentalist I would hope that they would care about the paper this is going to use up and the environmental impact of having all of these notices delivered by the post office.

3. *Simplify the ordinance*, by requiring landlords to advise tenants of their right to get a copy of a notice in Spanish, rather than requiring *every* notice to be translated into Spanish regardless of whether a tenant speaks Spanish.

Every notice under this ordinance needs to be in English and Spanish. I understand what the City Council is trying to accomplish here, but it's unnecessary and is going to be much more difficult than the City Council is anticipating. For the City Council's review, I've attached an example of a notice to perform covenants that I recently prepared for one of my cases. A lot of the information is redacted, but you can still see what these types of notices can look like. They can be complicated, dense, and sometimes need to be highly customized to fit the situation. Under

this ordinance, the entire notice, complete with the necessary legalese, would have be translated into Spanish.

And this is unnecessary. A landlord is already required to give notices in Spanish if the lease is in Spanish, and the lease must be in Spanish if the terms of the lease were negotiated in Spanish. (*See* Civil Code section 1632.) So Spanish speaking tenants already have a right to translated copies anyway. If the City Council is concerned that this protection is not good enough, that can easily be solved by requiring landlords to include the following language on their notices: "Tiene derecho a una copia de este adviso en español si no habla inglés. La Ciudad de Petaluma tiene más información sobre sus derechos que puede encontrar…" and then provide website or other resource available for them to find.
This translates to "You have the right to a copy of this notice in Spanish if you don't speak English. The City of Petaluma has more information about your rights that you can find…"

This little advisement on notices is much, much easier to deal with than translating every notice, including complicated ones, into Spanish.

4. Make the attorney's fees clause in Section 6.60.100(A) reciprocal

At the last meeting on this issue, I explained that reciprocal attorney's fees provisions in leases can be unfair to landlords because they aren't really reciprocal. A tenant who wins a lawsuit against a landlord can always collect on that judgment because the landlord at least owns real property that can be liened and sold. A tenant who loses a lawsuit to a landlord usually doesn't have any assets that the landlord can recover. That's not always the case, but it often is, and as a result landlords usually just end up walking away from money they are entitled to because it isn't worth the cost to attempt to collect it. The idiom "you can't draw blood from a stone" describes the situation perfectly.

Rather than attempt to address this issue, the City Council has made this situation *worse* by only allowing tenants to recover attorney's fees if they win, not making that provision reciprocal. Keep in mind that these are landlords who have won their case, so in Councilmember Barnacle's words "have done nothing" wrong, and yet this City Council is going to punish these landlords anyway. And make no mistake, this is a punishment. In practice this is going to be a cudgel that tenant attorneys will use to extract huge concessions from landlords, even when the landlord did nothing wrong and the tenant is purposefully operating in bad faith to try to squeeze money or free rent out of their landlord. Good landlords will be punished by this provision.

Any ordinance that awards attorneys fees will inherently be unfair to landlords, but at a minimum this provision should be reciprocal, so that landlords have something to protect themselves during settlement negotiations.

5. Completely rework Section 6.60.100(B) to protect landlords from parasitic lawsuits

I've said from the beginning that simpler is better. An ordinance that just tweaks the TPA is a lot easier for a small landlord to work with than an entirely new byzantine structure that they have to comply with in addition to the TPA. This ordinance is not simple, and it will lead to confusion and problems, especially when it's first implemented. Hopefully at this point you are beginning to understand how these problems may come up, but I can't claim that I can give you an exhaustive list. Because of the complicated nature of this ordinance there are probably going to be issues that no one will be able to anticipate until they actually come up, which is why simpler is better.

If the City Council is committed to having a complicated ordinance like this, then they absolutely need to fix Section 6.60.100(B). This is going to be a monster that will encourage tenants to sue landlords just to drive up costs and make money. This provision allows a tenant to sue whenever there is any violation of the ordinance. If a landlord didn't understand the ordnance and only sent six of the seven or twelve or who knows how many notices they were supposed to provide- sue them, ask for injunctive relief, and demand attorneys fees. If the landlord later provides that one missing notice the tenant will still be the prevailing party, and the attorney representing them will get a nice $10,000 plus check for attorneys fees.

And this is going to affect small landlords as well. They often are not aware of regulations like this, so some still might not know about the ordinance in the first place. Others may have heard that it doesn't apply to them because they have less than two units in Petaluma, not realizing that if they have to provide notice of their exemption under Section 6.60.030(B)(2) in order to qualify for it. So they go about their business, thinking that they are doing everything the way they are supposed to, only to get hit with a lawsuit because of their failure to strictly comply with the ordinance.

Frankly, I cannot understand why there is any provision in this ordinance calling for civil liability in the first place. The whole point of the ordinance is to restrict evictions, and allowing tenants to raise non-compliance as an affirmative defense in unlawful detainer cases addresses that issue. Providing a civil right of action only creates additional, unnecessary litigation intended to hold the landlord hostage.

6. Follow the example set by the state legislature and exempt housing that has been issued a certificate of occupancy within the previous 15 years.

The best way- possibly, the only way- to address the housing crisis is to build more housing units. Since I've gotten involved with this issue, I've talked to several councilmembers who have all expressed some degree of frustration with how little they can do to encourage new housing. And they're right. They can't control developers, they can't do anything about CEQA reform in the state legislature, and most local funding comes from other sources. I understand that. But for those of you who went to Mike McGuire's rally on Thursday, you heard his response why I asked him about the state's failure to meet housing goals: the problem, as he put it, is local control.

Petaluma has had a well-deserved reputation for being a difficult place to build for a long time. To the city's credit, many of these issues have gotten better in recent years, and that reputation has started to get better, but the city's failure to exempt new construction from the ordinance is a huge step in the wrong direction. We need more multi-unit housing development, and this is a form of "local control" which discourages that development.

The City Council is making a huge mistake by discouraging new developments that will cause problems for the city for years to come.

I hope the City Council considers the issues I raised in this letter and revises the ordinance accordingly. Unfortunately, I tested positive for COVID today so I will not be able to attend the meeting in person, but I will attend it virtually if you have any questions.

Sincerely,

Daniel S. Raff, Esq.

3-DAY NOTICE TO PERFORM COVENANTS
[ADDRESS REDACTED]

To: **[NAME REDACTED]**, Resident(s) AND ALL OTHERS IN POSSESSION

PLEASE TAKE NOTICE that you are in breach of the Lease Agreement regarding the property located at: **[ADDRESS REDACTED]** ("Premises"), specifically the Lease Agreement between [NAME REDACTED] (the “Lessor”) and [NAME REDACTED] (the "Lessee") executed on [REDACTED].

The following constitute breaches of the Lease Agreement:

1. FAILURE TO GARDEN/LANDSCAPE in violation of [REDACTED] of the Lease Agreement titled [REDACTED], subsection titled [REDACTED], which specifically states: [QUOTATION FROM LEASE REDACTED]
a. Your violation of Section [REDACTED] includes not properly keeping the front and back garden areas clean and green with healthy plants.

2. FAILURE TO PAY LATE FEES in violation of [REDACTED] of the Lease Agreement titled, [REDACTED] which specifically states: [QUOTATION FROM LEASE REDACTED]
a. Your violation of Section [REDACTED] includes [REDACTED], which is [REDACTED] days after the deadline in Section [REDACTED] of the Lease Agreement.

3. FAILURE TO OBTAIN THE OWNER'S WRITTEN CONSENT TO PREMISES ALTERATION in violation of Section [REDACTED] of the Lease Agreement titled [REDACTED], which specifically states: [QUOTATION FROM LEASE REDACTED]
a. Your violation of Section [REDACTED] includes your installation of a bathroom wall cabinet without obtaining owner’s prior written consent.
b. Your violation of Section [REDACTED] includes you installation of an unpermitted fence, that was installed without the written consent of the Lessor. Lessor has previously been ordered by city officials not to install a fence at that location or else Lessor will incur fines from the city.

4. FAILURE TO REPAIR DAMAGE TO THE PROPERTY in violation of Section [REDACTED] of the Lease Agreement titled [REDACTED], which specifically states: [QUOTATION FROM LEASE REDACTED]
a. Your violation of Section [REDACTED] includes your installation of a bathroom wall cabinet which caused damage to the wall.
b. Your violation of Section [REDACTED] includes your installation of the unpermitted fence which caused damage to the property by installing bolts into the concrete. Lessor has previously been ordered by city officials not to install a fence at that location or else Lessor will incur fines from the city.

5. FAILURE TO OBTAIN RENTERS INSURANCE in violation of Section [REDACTED] of the Lease Agreement titled [REDACTED], which specifically states: [QUOTATION FROM LEASE REDACTED]

a. Your violation of Section [REDACTED] includes not obtaining renters insurance.

YOU ARE FURTHER NOTIFIED that within three (3) days after service of this Notice on you, you must perform the covenants required under the lease as outlined in this notice, or else you be served with a 3-Day Notice to Quit to terminate your tenancy of the premises. You must restore the premises to the original conditions that existed prior to the alterations and damages you made. This includes the following:

1. Proper upkeep of the front and back garden areas by keeping them clean and green with healthy plants;
2. Paying the appropriate late fees, in the amount of [REDACTED] to [REDACTED];
3. Removing the bathroom wall cabinet;
4. Removing the fence;
5. Repairing any wall damage after removing the bathroom wall cabinet;
6. Repairing any damage after removing the fence; and
7. Obtaining renters insurance or provide proof of pre-existing renters insurance with the Landlord on the policy.

If you fail to cure all breaches of the Lease Agreement, a 3-Day Notice to Quit to terminate your tenancy will be served and, if necessary, legal proceedings for an unlawful detainer will be filed against you thereafter, to recover possession of said premises to declare said Lease Agreement forfeited and to recover damages as allowed by law.

Agent for Lessor,
[REDACTED]

Date: [REDACTED]

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