



*Legal Aid's mission is to promote social justice and
advance basic human rights for vulnerable people in our community.*

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April 16, 2014

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RE: Comment on Agenda Item #10-Proposed Residential Tenancy Protections
("Ordinance")

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To the Honorable Petaluma City Council and Staff,

Legal Aid of Sonoma County (LASC) provides this comment and analysis of Petaluma's revised Ordinance up for adoption on April 17th. LASC represents vulnerable residents and unhoused folks in Petaluma and the surrounding County with numerous legal issues including eviction and access to housing/benefits. We are hopeful that Petaluma renters will soon have the type of permanent protections in place in so many California cities and counties. LASC encourages City Council to push this over the finish line, and adopt the Just Cause Ordinance after considering and implementing the recommendations below.

First, thank you for your work on this Ordinance. While this proposal does not include everything LASC and tenants have advocated for, it will help Petaluma's renters in a significant way. It is not radical; it is not novel. It does not limit a Landlord's ability to raise rents. Just Cause eviction protections are in place in at least 30 other jurisdictions around the state. Nearly all provide protection at day one of a tenancy, and we commend Petaluma for recognizing the importance of that. We commend you for ensuring that these protections apply more uniformly, with narrow exceptions that leave truly small property owners free from their modest constraints. We commend you for being the first in Sonoma County to address the plight of renters in a meaningful way. Thank you!

When considering these recommendations, we ask that you pay close attention to the housing crisis statewide, which Petaluma is not immune from. This is the reason Petaluma committed to tenant protections in Program 29 of their Housing Element! A February 2023 Census Household Pulse Survey found that more than one in three California renters who are behind on rent (36%) think it's at least somewhat likely that they will have to leave their home in the next two months due to an eviction. Evictions increase California's homeless population and catalyze emigration away from the state. Petaluma continues to see negative population growth. The latest point in time count report released by Sonoma County saw a jump in the number of unsheltered homeless persons in Petaluma between 2020 and 2022.

Results of Petaluma Point in Time Count 2022¹

<u>UNSHELTERED</u>	<u>SHELTERED</u>
2019-2020-2022	2019-2020-2022
138 133 214	127 163 79

The number of unsheltered in Petaluma is up 46.7%, whereas Countywide the unsheltered increased only 23%. The cost of eviction to a community is significant and wide-ranging, including the well documented cost of homelessness. Here are some potential costs associated with evictions:

Economic costs: When households are evicted, they frequently experience loss of income, increased expenses for relocation, and difficulty finding new housing, which leads to financial strain. In turn, this impacts the local economy, as evicted households have less disposable income to spend on goods and services, which affects local businesses.

Social costs: Displaced households may experience increased stress, trauma, and instability, which affects their mental and physical health. Families with children face disruptions in their education and social networks, which has long-term impacts. Evictions strain community relationships and social cohesion, as residents lose their sense of stability and belonging.

Public costs: Evictions result in costs to public agencies and services. For example, local governments bear the cost of providing emergency shelter, temporary housing assistance, or other forms of social services to displaced households. Evictions also strain the capacity of local courts and law enforcement agencies, leading to increased administrative and operational costs.

Housing costs: Evictions can lead to increased demand for affordable housing, which is already limited in most communities. This drives up rental prices, making it more difficult for other households to find and afford stable housing. Additionally, vacant properties resulting from evictions may deteriorate or become blighted, impacting the overall quality of housing stock in the community.

Long-term costs: Displaced households face challenges in rebuilding their lives, such as finding new employment, repairing credit, and regaining stable housing. This results in ongoing dependence on social services and other forms of assistance, which strain community resources in the long term.

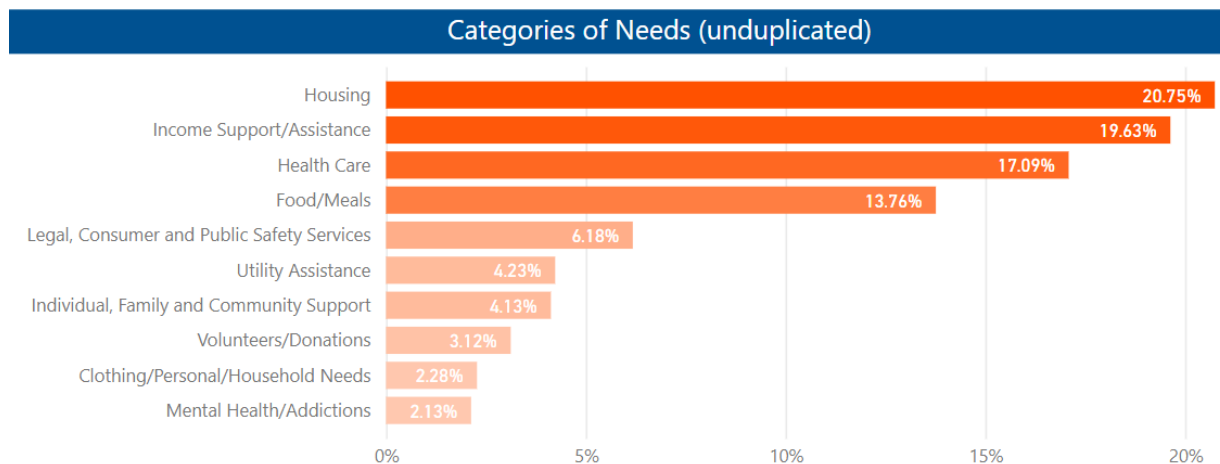
Another thing to note is that while evictions decreased in years 2020-2022 (during several eviction moratoriums), sheriff lock outs were scheduled at an alarming rate when compared with the number of court evictions.

¹<https://sonomacounty.ca.gov/Main%20County%20Site/Development%20Services/CDC/Homeless%20Services/Homeless%20Data/Cou%20of%20Sonoma%202022%20Point-in-Time%20Count%20Results.pdf>

Zip Code Areas	Calendar 2017	Calendar 2018	Calendar 2019	Calendar 2020	Calendar 2021	Calendar 2022
Petaluma UD's	128	116	105	42	42	83
94952	53	38	51	22	21	37
94954	75	78	54	20	21	46
Sheriff lock outs-total	63	36	54	12	23	31
Legal Aid Client Intake #s	No data	No data	46	51	55	85
Percentage of UD's resulting in lock outs	49%	31%	51.40%	28.60%	54.80%	37.35%

A word of caution about looking at numbers alone. Numbers are human beings. They are seniors, and families. One unlawful detainer or lockout could be a multi-generational family of seven. Sheriff data reflects a large percentage of lockouts in evictions, larger than is customary in evictions. Lockouts indicate a high likelihood of homelessness as it means there is an eviction on one's record for life.

Finally, United Way's log of Petaluma calls to 211 show that housing is the top concern among callers. We urge you to explore their interactive call log to see what the community needs are. See [Microsoft Power BI](#)



Please do not let the call for data, which tends to be a vehicle for inaction and a way to maintain the status quo, get in the way of progress in Petaluma. This community needs these protections. All communities do.

Recommendations

1. Breach of Rental Agreement

At the March 6th meeting, the City Council asked that the just causes for eviction more closely mirror the Tenant Protection Act of 2019 (“TPA”). The [TPA's](#) just cause for breach states:

“(B) A breach of a *material term of the lease*, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.” [emphasis added in italics].

The term “material,” is critical as it ensures that a tenant cannot be evicted for minor lease violations. However, the Petaluma Ordinance lacks that specificity:

“Breach of rental agreement. The tenant has committed a breach of the lease, as described in paragraph (3) of Section 11611 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

It is unknown why the Petaluma Ordinance is more broad regarding this ground for eviction when it should track or narrow what the TPA provides. We strongly urge the City Council to use the term “material” breach of the lease, to prevent a common abuse for trivial breach.

Additionally, this provision should not allow eviction for breach of terms unilaterally imposed after the initial lease terms were agreed to. An example of model language regarding breach of later added terms:

“A tenant may not be evicted for violation of material terms that were added to the rental agreement after the initial creation of the tenancy (“additional terms”), unless the landlord first notified the tenant in writing that tenant has a right to reject the additional terms, and the tenant agreed to those additional terms thereafter in writing.” This is upheld by caselaw. See *Foster v. Britton*.

Finally, please make sure families cannot be evicted for breach because of the addition of a family member, as this amounts to unlawful discrimination based on family status. An example of model language:

“Protections for Families: Landlord must not recover possession of a unit as a result of the addition to the unit of a tenant’s child, parent, grandchild, grandparent, brother or sister, or spouse or domestic partner of such relatives, or as a result of the addition of the spouse or domestic partner of a tenant, so long as the number of occupants does not need exceed the maximum number allowed under the CA Health & Safety Code.”

2. Prohibited Assignment, Subletting.

The new Ordinance adds as a just cause for eviction: “Assignment or subletting the premises in violation of the tenant’s lease, as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.” We will support this addition as long as necessary protections are included to prevent unfair abuse of this just cause.

Our proposed safety nets create stability in an expensive housing market where some tenants must sublease in order to afford rent. Additionally, as discussed above, it protects families from being discriminated against based on their family status, including the size of their families. Finally, our proposals still give the landlord a say in who a tenant subleases to.

We propose the following language, which would exclude eviction for subleasing only when ALL of the following factors are met:

- 1) Tenant continues to live in the unit as tenant’s primary residence;
- 2) The number of tenants and subtenants actually occupying the unit does not exceed the number of occupants originally allowed by the rental agreement OR under CA Health and Safety Code, whichever is greater; AND
- 3) Landlord has unreasonably withheld the right to sublease following written request by the tenant. If landlord fails to respond to tenant in writing within 14 days of receiving tenant’s request, the tenant’s request is considered to be approved by the landlord.
 - a) A landlord’s reasonable refusal of the tenant’s request may not be based on the proposed additional occupant’s lack of creditworthiness if that person will not be obligated to pay rent to the landlord. A landlord’s reasonable refusal may be based on, but is not limited to, the ground that the total number of occupants in a rental unit exceed the maximum number of occupants as determined under CA Health & Safety Code.

b) Before trying to recover possession based on subletting or limits on the number of occupants in the unit, landlord must serve the tenant a written notice of violation that provides the tenant with a minimum of 14 days opportunity to address the violation. The tenant may address the violation by making a written request to add occupants or using other reasonable means, including removal of any additional or unapproved occupant.”

c) Protections for Families: Landlord must not recover possession of a unit as a result of the addition to the unit of a tenant’s child, parent, grandchild, grandparent, brother or sister, or spouse or domestic partner of such relatives, or as a result of the addition of the spouse or domestic partner of a tenant, so long as the number of occupants does not need exceed the maximum number allowed under the CA Health & Safety Code.

3. **Ellis Act**

We are disappointed that the Council has dismantled the Ellis Act regulations in place in so many Cities and Counties in CA. These regulations are delineated by the legislature in [Gov. Code 7060](#), et.seq. The Ellis Act loophole might be the largest that exists in the TPA. Please read [Ellis Act Loophole Puts CA’s Eviction Protections at Risk - Beyond Chron.](#)

While we recognize the Council’s attempt to retain some level of protection, it is critical to add more teeth to this just cause to discourage fraudulent Ellis Act evictions. Aside from returning the original language, we recommend at least that the Council increase the amount of time a tenant has the right to re-rent. After all, it is supposed to be a permanent withdrawal from the rental market and six months does not reflect that.

We also recommend the Council increase the notice given to tenants to 120 days, and one year if the tenant asserts their senior or disabled status and has lived there for at least one year. This is consistent with the Gov. Code 7060.4:

However, if the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations or unit within the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a), then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the public entity, provided that the tenant or lessee gives written notice of their entitlement to an extension to the owner within 60 days of the date of delivery to the public entity of the notice of intent to withdraw.

4. **Owner Move In**

This just cause needs several additional layers to prevent abuse.² Below are some provisions from other jurisdictions that implement such protections:

- No eviction may take place for an "owner move-in" if the same Landlord or relative already occupies a unit on the property, or if a vacancy already exists on the property. At all times a Landlord may request a reasonable accommodation if the Landlord or enumerated relative is Disabled and another unit in Richmond is necessary to accommodate the person's disability. [City of Richmond](#)

² [Investigative Unit Reporting Spurs Government Hearing on Fraudulent Evictions – NBC Bay Area](#); [Despite Numerous Potentially Wrongful “Owner Move-In” Evictions, San Francisco Fails to Prosecute a Single Landlord Over Past Decade – NBC Bay Area](#)

- Once a landlord has recovered possession of a unit under owner/relative move-in just cause, no other current landlords or relatives may recover possession of any other unit in the building under an owner/relative move-in just cause reason. Any future evictions in the same building under an owner move-in eviction must be of that same unit. (Examples: [See Oakland just cause ordinance](#); [San Francisco](#))
- Landlord must offer any non-comparable unit they own to the tenant if it becomes available before they recover possession – at a rate based on the rent the tenant is paying with an adjustment based on condition/size/other amenities of the replacement unit. (See [Berkeley Ordinance](#))
- Where a landlord has recovered possession of a unit under the owner move-in just cause reason, tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy, at least within the first three years. (See [Berkeley Ordinance](#); [San Francisco Ordinance](#))
- Landlord may not evict tenant for owner move-in if tenant (1) has lived in the unit for at least 5 years and is either at least 62 years old or disabled; or (2) is certified as being terminally ill. However, landlord may evict a tenant who qualifies for this exemption if landlord or relative who will occupy the unit also meets the criteria for this exemption and no other units are available. ([San Francisco Ordinance](#))

Please fully consider the impact of stabilizing the housing of educators and school-aged children during the school year, and do not allow owner/relative move-ins during that time. The lasting impact of evictions on children is well documented. Though some schools may extend through the summer, the majority of Petaluma schools recognize a unified schedule with the final day being June 9th this year. Berkeley and San Francisco (among others) have had no problem implementing this protection for many years, surviving judicial scrutiny. The language of the ordinance can be worded in a way that still allows a landlord to recover possession as long as the tenancy is NOT terminated during the regular school year. For instance, the City can say: “If the tenant provides notice to the landlord that the household includes an educator or school aged child, the notice of termination of tenancy cannot expire during the school year, as published by Petaluma City Schools for the Traditional School Year, which ends on June 9th this year. See [Petaluma City Schools / Calendar](#).

The City could also add a disclaimer, that as long as the landlord makes a diligent effort to commence unlawful detainer recovery within the summer break by commencing the action by the third week of June, the Ordinance will not provide a defense to an educator/school-aged child household. These are just some suggestions...other jurisdictions have no problem implementing protections like these. See Berkeley language.³ See also [San Francisco OMI/RMI protections](#).

6. **Substantial Rehabilitation for Health and Safety**

This just cause, which has been whittled down to what the most basic provisions of the TPA provide, has resulted in the unjust displacement of tenants across the state, commonly referred to now as “reno-viction.”⁴ Please make it clear that eviction for substantial renovation will not displace the occupant permanently, and that they will be returned to their home when renovations are complete. Do not let Petaluma become like Santa Barbara where corporate out of state landlord are attempting mass eviction of 100’s of tenants for “substantial” remodels.⁵ Please close the “reno-viction” loophole!

³ A landlord may not recover possession of a unit from a tenant under subsection [13.76.130A.9](#) if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

⁴ [Landlords using 'reno-viction' loophole in AB 1482 to force tenants out \(foxla.com\)](#); [Leucadia tenants speak out against controversial 'renoviction' practice \(thecoastnews.com\)](#);

⁵ [Santa Barbara County to Hold Special Meeting Thursday on Tenant Protections - The Santa Barbara Independent](#)

7. Response to Commonly Raised Complaints/Concerns Regarding the Ordinance

Throughout the Council's stakeholder outreach on this ordinance, landlords have routinely raised the same concerns and complaints, characterizing the ordinance as punitive. Specifically, landlords allege that is punitive to require that landlords in fact remove a property from the rental market when they declare in a sworn statement that they intend to do so and use that to evict a tenant in good standing. We strongly disagree. Under the same argument, it is punitive to be held accountable for perjury anytime a litigant makes a knowing false statement in court.

Landlords have also routinely alleged that the ordinance makes it unduly difficult to evict and thus discourages landlords from participating in Petaluma's rental market. However, as is the case with the existing ordinance as well as the proposed amendment, Landlords **may evict tenants for breach of the lease, as well as all the other reasons a landlord would need to evict a tenant for cause**. Additionally, landlords may evict a tenant for no fault reasons, including removal from the rental market and owner move in, so long as certain conditions are complied with to prevent abuse. In essence, the only thing prohibited is eviction for **no cause**.

Furthermore, a large majority of the landlords we have heard from have two or less rental units. Under the proposed amendments, they will be largely exempt from these regulations.

The small property exemption allows for ADU's, as well as the rental of a single family home with an ADU to be rented out separately without coming within the modest confines of these regulations. If Council is concerned about stifling ADU production, even though it does not appear to be stimulated by the passage of SB 9,⁶ they can exempt ADU's altogether.

Regarding Ellis Act concerns, if a landlord has good faith intent to remove a rental property from the rental market, then State law, as well as the Ordinance, governs the period of time the property has to remain out of residential rental use. **One either intends to stop being a landlord, or intends to continue.**

Final, just cause eviction protections do not limit the amount a landlord can charge for rent. Arguments that it will force exit from the rental market and prohibit development simply are not borne out by the facts in places that have passed such protections.

Conclusion

Legal Aid thanks the City Council and Staff and urges the loophole closures and improvements in this Ordinance, specifically 1) day 1 protection; 2) Subsidized housing included; 3) Narrow exception for small property owners; 4) Language Justice codified; 5) Violence against women act protections acknowledged; 6) Relocation increased to 250% of rent or \$11k whichever is less, paid up front not as last month's rent credit; 7) Failure to comply with ordinance is an affirmative defense to UD; 8) Tenant who prevails in a wrongful eviction due to LL non-compliance is entitled to attorney's fees and costs; 9) Civil liability for retaliation with damages, costs and attorney's fees; 10) City has a right to enforce and 11) Deletion of the sunset! Thank you.

Sincerely,



Margaret DeMatteo, Housing Policy Attorney

⁶ [California duplex law not yet working as expected; The End of Single-Family Home Limits Hasn't Led to New Housing | by Alex Lash | The Frisc](#)

From: [Margaret DeMatteo](#)
To: [-- City Clerk](#)
Subject: April 17, 2023 City Council Agenda Item #10: "Strengthen Just Cause"
Date: Monday, April 17, 2023 4:08:08 PM
Attachments: [Outlook-cid_f27831.png](#)

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

Dear City Council and Staff:

I am writing in response to some alleged data provided in a letter of opposition by North Bay Association of Realtors. I urge you to question the source of these figures as well as how they were calculated/defined.

I would like to correct it with my comments in italics, specifically, as follows:

"Data"

A sustainable housing economy requires a healthy rental market. Our Santa Rosa analysis found that, in 2020, at least 44+ tenant-occupied units + 28 non-owner-occupied LLCs were sold to owner-occupiers (lost rental units). *This assertion only shows that even where NO protections are in place, property owners will sell when the housing market is hot and they can make more money by kicking out tenants to sell a unit vacant.*

§ In mid-2022, completed evictions (*They have no way to know this or how it should be defined*) in Petaluma were at an all-time low (59 since January 2020) (*false*) – and since early 2020, only the most egregious offenses and lease violations were legally actionable.

o 2020: 24 evictions (*not accurate, see Legal Aid letter*)

o 2021: 23 evictions = 5% of the countywide total (*not accurate, see Legal Aid letter*)

o 2022 (through July): 7 residential evictions = 4.7% of the countywide total (*Completely false see Legal Aid letter*)

§ The landscape of local rental housing data is limited; preliminary data and reporting point to the loss of rental units amid escalating demand and an uncertain rental housing economy.

o Over 75% of Petaluma's units are 1-unit dwellings; 82% are in structures with <4 units (*Which illustrates the need for a very narrow small property owner exemption, but no data source provided*)

o The majority of local housing providers are mom and pops, carrying a mortgage. (*no data source provided generally*)

§ 72% of owner-occupiers carry a mortgage (Petaluma)

§ 56% of homeowners have monthly costs of over \$2500 (Petaluma)

§ 34% of homeowners' monthly costs exceed 30% of their income (Petaluma)

Engagement & Decision-Making

§ Following the Council goal setting session, very little engagement was completed with the housing provider or homeowner community – language was drafted with no notice or involvement by directly impacted stakeholders – those that own, manage, and provide rental housing. And now the Council considers extending these provisions – extending punitive mandates on housing providers. (*This is not borne out by the evidence on participation, in fact it is highly likely some opposing the ordinance took the community outreach survey more than once and not always as property owners*).

§ Does data tell the City that this is needed? What complaints have occurred? What units or housing providers have presented such an issue that a full extension is warranted?

o The City surveyed over 900 community members in February 2023 and found that 73% of respondents are opposed to expanding the tenant protections beyond what is provided in California's Tenant Protection Act. (*The results of this survey are completely unreliable do to lack of verification as to how many times and identity verification as to who was taking it*).

When Legal Aid provides data, it is the result of extensive public records requests of the Sonoma County Superior Court and Sheriff's Department. One cannot assess evictions fully, even with this data as around half of all eviction notices result in the tenant moving out in response to an eviction notice...no court action becoming necessary.

Zip Code Areas	Calendar 2017	Calendar 2018	Calendar 2019	Calendar 2020	Calendar 2021	Calendar 2022
Petaluma UD's	128	116	105	42	42	83
94952	53	38	51	22	21	37
94954	75	78	54	20	21	46

Sheriff lock outs-total	63	36	54	12	23	31
Legal Aid Client Intake #s	No data	No data	46	51	55	85
Percentage of UD's resulting in lock outs	49%	31%	51.40%	28.60%	54.80%	37.35%

Even with the court and sheriff data, we need to keep in mind that these numbers are households, not just individuals. So when we say there were 83 evictions in Petaluma in 2022 during a year that had two different eviction moratoriums in place for part of the year, we should multiply that number to the average renter family size, which is estimated at 2.5 in Petaluma (figure 37 [Sonoma County California Housing market data real estate research Napa County and Marin County \(towncharts.com\)](#)) So 83=207.5 humans evicted through the court process.

Landlords stated that many no-fault evictions are not initiated by the landlord. Tenant move outs are voluntary and are by legal definition NOT an eviction. Who else would initiate an eviction then? Evictions are the termination of tenancy by oral or written notice or self-help by a LL.

I would also point out that of the 47 letters/emails sent in opposition at of 2 pm, 34 (72%) are a script provided by the real estate lobby, one of the most powerful lobbies in the state.

1 [is a realtor for Prosper](#), does not appear to have any rentals in Petaluma (just a 1.2 mil house for sale).

2 qualify for small property exemptions.

I urge you to question self-serving numbers in lieu of source identified data points.

Thank you,
Margaret

Margaret DeMatteo (she/her/hers)
Housing Policy Attorney



<!--[if !vml]-->OF SONOMA COUNTY<!--[endif]-->

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