

Background on State Law (The Ellis Act and the Tenant Protection Act)

Ellis Act

The Ellis Act, codified in Government Code Sections 7060 et seq., was enacted in 1985, one year after the California Supreme Court's decision in *Nash v. City of Santa Monica* (1984) 37 Cal. 3d 97. In *Nash* the California Supreme Court held that local agencies could enact ordinances that required landlords to continue providing rental housing. The Ellis Act was enacted in 1985 in response to *Nash* to preserve landlords' right to evict their tenants if the landlord decides to remove their dwelling units from the rental housing market. However, there has been concern amongst tenant advocacy groups and others that landlords have used the Ellis Act to evict tenants protected by rent control laws as a means for temporarily withdrawing from the rental housing market before re-letting the rental units for increased rents.

Ellis Act evictions are a "no-fault" justification for an eviction under the Tenant Protection Act, discussed further below. For an Ellis Act eviction, written notice of the eviction must be served 120 days before the tenant is evicted, or one year prior to the eviction if the tenant is disabled or elderly and has lived in the residence for over a year. Additionally, for an Ellis Act eviction, the landlord must remove all of the units in the building from the rental market, meaning that the landlord cannot single out one unit to evict under the Ellis Act and leave the remaining tenancies in place.

The Ellis Act also has been found to preempt inconsistent local regulations as a matter of statewide concern. (See, *Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7; *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.1215; and *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4th 88) However, the Ellis Act also authorizes cities to adopt ordinances that:

1. Require landlords to give tenants notice of their rights to relocation assistance.
2. Require landlords to notify tenants that a property is being re-let and that the tenant has a first right to accept the re-let unit up to ten years after the unit is withdrawn from the rental market. (Government Code Section 7060.2).
3. Require landlords to re-let the withdrawn units at the same rate as at the time of eviction for five years after the eviction. (Government Code Section 7060.2).
4. If the unit is re-let within the first two years of withdrawal the landlord is required to pay damages to the tenant. (Government Code Section 7060.2).
5. Require landlords who want to withdraw from the rental market to file a notice that provides specific information under threat of perjury about the names of the tenants and rent applicable to the tenants and have the notice be recorded against the property (Government Code Section 7060.4).

Tenant Protection Act

The Tenant Protection Act of 2019 (TPA), codified as Civil Code Sections 1945.2, 1947.12-.13, was enacted on October 8, 2019, took effect on January 1, 2020, and is currently set to sunset on

January 1, 2030. The TPA includes both “just cause eviction” protections and “rent cap” protections.

“Just Cause Eviction Protections”

Before the TPA, a landlord was permitted to terminate a tenancy without providing a reason. The TPA protects tenants who have continuously and lawfully occupied a residential property for 12 months from being evicted without “just cause.” (Government Code Section 1946.2) The enumerated “just cause” bases includes both tenant “at-fault” and “no-fault” bases for termination of residential tenancies.

The tenant “at-fault” justifications for eviction permitted under the TPA include the following:

- Default in the payment of rent.
- A breach of a material term of the lease, after being issued a written notice to correct the violation.
- Maintaining, committing, or permitting the maintenance or commission of a nuisance.
- Committing waste.
- After a written request or demand from the landlord, tenant refusal to execute a written extension or renewal of an expired lease for an additional term of similar duration with similar provisions.
- Criminal activity by the tenant on the residential real property.
- Assigning or subletting the premises in violation of the tenant’s lease.
- The tenant’s refusal to allow the owner to enter the residential real property as authorized by law.
- Using the premises for an unlawful purpose.
- Failure of an employee, agent, or licensee of the landlord to vacate the premises after their termination as an employee, agent, or a licensee.
- Tenant failure to deliver possession of the residential real property after providing the owner written notice of the tenant’s intention to terminate the lease.

The “No-fault” reasons for eviction permitted under the TPA include the following:

- Intent to occupy residential property by the property owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents pursuant to a clause in the rental agreement authorizing such owner occupation.
- Withdrawal of the residential property from the rental market.
- The owner complying with any of the following:
 - An order issued by a government agency or court relating to habitability that necessitates vacating the residential property.
 - An order issued by a government agency or court to vacate the residential property.
 - A local ordinance that necessitates vacating the residential real property.
- Intent to demolish or to “substantially remodel” the residential property.

For no-fault terminations of residential tenancies, tenants are entitled to receive relocation assistance from the landlord equal to one month of rent within 15 days of receiving service of notice to terminate or to waive the last month of rent. (Civil Code Section 1946.2(d)).

Exempt properties from the Just Cause protections in the TPA Certain housing units are exempt from the “Just Cause Eviction” provisions in the TPA, meaning tenants in these units can be evicted for any reason. These properties include:

- Units constructed in the last 15 years (on a rolling basis).
- Units restricted by a deed limiting the affordability to low or moderate-income households.
- Dormitories owned and operated by schools.
- Single family, owner-occupied residences where the owner rents two or fewer units, including ADUs and JADUs.
- Housing units in which the owner shares a bathroom or kitchen with the tenant and the unit the owner’s primary residence.
- Duplexes in which the owner has resided as their principal residence since the beginning of the tenancy, so long as the owner continues to occupy the duplex.
- Single family homes and condominiums:
 - If the property is not owned by a real estate trust, corporation or an LLC with at least one corporate member, and
 - The tenant was provided written notice that the property is not subject to the TPA.
- Housing provided by a nonprofit hospital, church, extended care facility, licensed extended care facility for the elderly, or an adult residential facility.
- Transient and tourist hotel occupancies.

Rent Control Provisions under the TPA

Under the TPA, an annual rent increases are limited to 5% plus a cost-of-living adjustment or 10%, whichever is less. Pursuant to Civil Code Section 1947.12(d), the TPA exempts the following properties from its rent control protections:

- Housing that has been issued a certificate of occupancy within the past 15 years (this is a rolling date);
- Owner-occupied duplexes;
- Student occupants of higher education dormitories;
- Residential real property that is alienable separately from the title to any other dwelling unit (i.e., single family homes and townhomes), with certain ownership restrictions (i.e., not owned by a corporation or investment trust);
- Affordable housing; and
- Assisted housing developments.

The TPA does not preempt local rent control rules. Local rent control regulations are still permissible if they are consistent with the Costa-Hawkins Rental Housing Act (Civil Code

Sections 1954.50-1954.535) and have more restrictive annual increases than the TPA. However, a local ordinance with a more restrictive annual rent increase provision than the TPA must have a procedure by which an applicant can seek an additional increase on the basis that the local ordinance's annual increase is insufficient to provide a just and reasonable return. The City of Petaluma does not currently have a rent control regulations and an oversight body authorized to review and rule on landlord claims that a rent increase is needed for the landlord to realize a just and reasonable return on their rental property.

The TPA provides that local rental protection ordinance are not preempted by the TPA if the local regulations are more protective than the TPA. (Civil Code Section 1946.2(g)(1)). Accordingly, to have valid ordinance the City's ordinance must offer additional protections that the TPA.