



DATE: January 9, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Eric Danly, City Attorney
Dylan Brady, Assistant City Attorney
Karen Shimizu, Housing Manager
Ingrid Alverde, Director of Economic Development & Open Government

SUBJECT: Introduction (First Reading) of an Ordinance Amending the Sunset Date of Ordinance No. 2823 N.C.S. (Adding Chapter 6.60 to the Petaluma Municipal Code, Titled “Residential Tenancy Protections”) Until a Successor Amendment Takes Effect and Finding This Item is Exempt From CEQA Pursuant to CEQA Guidelines Section 15387(b)(5)

RECOMMENDATION

It is recommended that the City Council adopt the attached Ordinance amending the sunset date of Ordinance No. 2823 N.C.S. (Adding Chapter 6.60 to the Petaluma Municipal Code, Titled “Residential Tenancy Protections”) until a successor amendment takes effect and Finding This is not a “Project” Pursuant to CEQA Guidelines Section 15378(b)(5).

BACKGROUND

On September 12, 2022, City Council adopted Ordinance No. 2823 N.C.S., adding Chapter 6.60 to the Petaluma Municipal Code, Titled “Residential Tenancy Protections.” Ordinance No. 2823 N.C.S. was adopted with a sunset or expiration date of March 1, 2023, meaning that on that date, Ordinance No. 2823 N.C.S. will expire and cease to be in effect. During the adoption of Ordinance No 2823 N.C.S. City Council expressed the desire that staff gather public input from stakeholders and data regarding the effects of the Ordinance. Generally, ordinances require two readings and take effect 30 days after the second reading. Approximately 60 days are generally required from the introduction of an ordinance for it to become effective. As a result of Ordinance No. 2823 N.C.S.’s March 1, 2023, sunset, amendments to Chapter 6.60 would need to be introduced at this January 9, 2023, meeting to be effective before Ordinance No. 2823 N.C.S. expires.

This proposed ordinance would extend the expiration date of Ordinance No. 2823 N.C.S. until the effective date of a subsequent amendment to Chapter 6.60 of the Petaluma Municipal Code entitled “Residency Tenancy Protections.” The extension would avoid tenants losing the protections

provided under Chapter 6.60. The extension of the sunset date of Ordinance 2823 N.C.S. would allow staff to continue to gather input from stakeholders in two stakeholder meetings as well as a workshop with City Council. Staff have tentatively scheduled the following dates and times for the stakeholder outreach and City Council workshop:

- **January 25** - Stakeholder meeting with Petaluma People Services Center
- **January 26** – Separate stakeholder meetings with various tenant advocate organizations and property management and real estate organizations
- **January 23**—Second Reading of proposed ordinance extension
- **February 1 & 4** – Community Workshops – One virtual and one in-person presentations on Chapter 6.60 protections and Council options for amendments with survey as follow up.
- **February 1**– survey out to community to answer questions and request feedback on the existing Chapter 6.60 protections and options for amendments
- **March 6** - Public workshop meeting with City Council, to present the results of the survey, receive additional public input and Council to provide staff direction regarding potential amendments to Chapter 6.60.
- **March 20**—Potential first reading of Chapter 6.60 amendments.
- **April 3**- Chapter 6.60 amendments second reading
- **May 3**—Amendments effective date

Stakeholders and other interested parties can provide information and recommendations to the City at the following email address tenantprotections@cityofpetaluma.org.

If the proposed Ordinance amending the expiration date of Ordinance No. 2823 N.C.S. is not approved tenants would lose the greater protections established in Chapter 6.60 of the Petaluma Municipal Code and would default to the State’s Tenant Protection Act. Below is a discussion from the September 12, 2022 staff report for Ordinance No. 2823 N.C.S. that describes California State Law, the Tenant Protection Act and how Ordinance No 2823 N.C.S. compares with the Act.

DISCUSSION

On May 2, 2022, City Council adopted a top ten list of goals and priorities which included “Ellis Act/Just Cause” protections. “Just Cause” policies are a form of tenant protections designed to prevent arbitrary, retaliatory, or discriminatory evictions by regulating “just causes” based on which a tenant can be evicted, while maintaining the rights of landlords to enforce the terms of lawful rental agreements and to terminate them due to tenant non-compliance. Common examples of “just cause” for evictions include tenants failing to pay rent, illegal use of a rental unit, tenant breach of a material lease term, and tenant nuisance activity. “Just Cause” policies can prevent displacement and promote tenant stability, especially in neighborhoods where rents are rising. The City’s ability to enact tenant protections is both limited and authorized by the Ellis Act and Tenant Protections 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 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.

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. 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 waiver 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 rent control regulations are not preempted by the TPA if the local regulations are more protective than the TPA. (Civil Code Section 1946.2(g)(1)). On August 1, 2022, City Council introduced Ordinance 2823 N.C.S. with a sunset of March 1, 2023 with a vote of 4 in favor, 2 opposed, and 1 recusal. Because the introduction was not unanimous, the second reading was agendized as a matter for consideration on the September 12, 2023 City Council agenda and the required legal synopsis was published in the Argus Courier in compliance with

Section 45 of the Petaluma City Charter. On September 12, 2022, the City Council adopted Ordinance 2823 N.C.S. The Ordinance took effect 30 days later on October 12, 2022.

The following describes how Ordinance 2823 N.C.S., is more protective than the TPA.

Current Ordinance

The italicized text below describes how the current Ordinance is more protective than the TPA's "just cause" provisions:

- The TPA exempts the properties an extensive list of properties, summarized above, from its "Just Cause" protections. *The Ordinance only exempts units owned or operated by a government agency or subsidized by a government agency, affordable housing units, a dwelling unit occupied by a tenant employed by the landlord for the purpose of managing the property, and a unit which the owner occupies as the owner's primary residence and that shares a bathroom or kitchen with the tenant. (PMC Section 6.60.030(C)).*
- The TPA only applies once tenants have lawfully resided in the unit for 12 months. *Under the Ordinance, tenants receive the protections enumerated in the ordinance after they have lawfully resided in the unit for 6 months, except where the owner resides on the same lot as the tenant as their primary residence, in which case the ordinance's protections apply once the tenant has lawfully resided in the unit for 12 months. (PMC Section 6.60.030(A)-(B)).*
- The TPA does not state language requirements for notices. *Under the Ordinance all notices must be provided in English and Spanish and if the lease is in another language, all notices must also be in the language of the lease. (PMC Section 6.60.040(C) & 6.60.060(B)).*
- Default of rent is a "just-cause" to evict under the TPA. *It is a defense against failure to pay under the Ordinance if the landlord refuses to accept money from a third party on behalf of the tenant or the landlord refuses to provide tenants necessary documentation to receive rental assistance. (PMC Section 6.60.050(C)(1)(a)).*
- *It is a defense against no-fault evictions under the Ordinance if the notice of termination falls within the school year and the tenant or tenant's household has a child in kindergarten through 12th grade or a tenant is employed as an educator⁴ in a school in Petaluma. (PMC Section 6.60.050(E)).*
- Breach of a material term of the lease is "just-cause" for eviction. *Under the Ordinance, the alleged material breach needs to be in writing, and lawful. (PMC Section 6.60.050(C)(2)(a)).*
- Creating a nuisance or committing or maintaining criminal activity is just cause for an eviction. *Under the Ordinance, it is a defense against eviction if the nuisance or criminal activity that are the "just cause" for eviction, is the result of domestic violence, sexual assault, or stalking against a tenant or a member in the tenant's household. Landlords are*

required to keep information regarding domestic violence, sexual assault and stalking confidential. (PMC Section 6.60.050(C)(7)). A tenant can also cure the nuisance or illegal activity by removing the offending tenant. (PMC Section 6.60.050(C)(3)).

- *The Ordinance establishes a defense against eviction if the tenant can demonstrate that the eviction was in retaliation of the tenant exercising the tenant's rights under the proposed ordinance. (PMC Section 6.60.110).*
- *Under the Ordinance, before a landlord can evict a tenant to perform substantial rehabilitation of the rental unit the landlord must first obtain the necessary permits. After the repairs are complete the displaced tenant has the right to reoccupy the property. (PMC Section 6.60.050(D)(3)).*
- *The Ordinance requires landlords to provide tenants a form that notifies them of their rights under the ordinance when entering or renewing the lease and for every rent increase. (PMC Section 6.60.040).*
- *Under the Ordinance, before a landlord can evict a tenant, the landlord must have provided the tenant with a form noticing tenant of their rights under the ordinance and the City's notification of termination form (PMC Section 6.60.050).*

Ellis Act Provisions under the Current Ordinance

The current Ordinance mirrors the permissible local regulations that cities can enact as permitted in Government Code Sections 7060-7060.7 (the Ellis Act). The below table describes the requirements and timelines that an owner must satisfy if they withdraw their property from the rental market.

Activity or Event	Timeline	Ordinance Citation
Notice of intent to withdraw ("withdrawal notice") is provided to tenants.		PMC Section 6.60.070(A)(1)
A copy of the withdrawal notice is delivered to the Housing Manager.	Within 10 days of tenants delivery of notice to Housing Manager	PMC Section 6.60.070(A)(2)
Owner must record summary memorandum encumbering the property for 10 years.		PMC Section 6.60.070(A)(3)
Owner must deliver a conformed copy of the recorded summary memorandum to city.		PMC Section 6.60.070(A)(3)
Earliest effective date of withdrawal of a building from the residential rental market ("withdrawal");	120 days from delivery of notice to the city or one year from delivery of notice if the tenant household has a tenant 62 years or older or who is disabled. Additionally, if the tenant	PMC Section 6.60.070(A)(1) & 6.60.050(E)

	household has a child under 18 or an educator the withdrawal can't occur during the school year.	
Owner must pay tenant relocation assistance of 100% of a month's rent and an additional 50% if the tenant is a "Low Income," ⁵ tenant, is disabled, elderly, has a child, or been under lease since 2010.	Within 14 days of withdrawal	PMC Section 6.60.080
Owner must notify city and former tenants of intent to return unit to residential rental market; and Tenant displaced by withdrawal has right of first refusal to return to the unit under the original lease terms. The displaced tenant and the City can sue for exemplary damages.	Within 2 years of withdrawal	PMC Section 6.60.090(A)(B)
If the rental units are returned to the rental market within 5 years of the withdrawal date, then the rent for those units cannot exceed the lawful rent at the time it was withdrawn subject to allowable adjustments under the Tenant Protection Ordinance.	Within 5 years of withdrawal	PMC Section 6.60.090(A)
Owner must notify city of intent to return unit to residential rental market; and Tenant displaced by withdrawal of unit has right to return to the unit.	Within 10 years of withdrawal	PMC Section 6.60.090(A) & (C)

These provisions are intended to mitigate the impacts on tenants who are evicted due to the owner withdrawing their property from the rental market as the displaced tenants will receive greater relocation benefits than under the Ellis Act, notice about the tenants rights to relocation and right of first refusal if the unit is re-let, the right to return to the property if the dwelling unit is offered for rent again, the ability to seek damages from the property owner if the unit is rented again within two years, the proposed ordinance will apply to landlord successors, and a longer notice period applies if a tenant is a school-age child or an educator.

Additional provisions of the proposed Ordinance.

- Besides defenses for evictions, the proposed ordinance creates a civil cause of action for tenants to sue landlords for violations of the ordinance. (PMC Section 6.60.100(B))
- Creates a cause of action for the City for injunctive relief for violations of the proposed ordinance, and any of the other remedies listed in PMC Chapters 1.10-1.16, which include civil and criminal citations. (PMC Section 6.60.100(C))

- Authorizes tenants to bring civil actions to determine the applicability of the proposed ordinance to the tenancy (PMC Section 6.60.100(D))
- Tenants who prevail in wrongful evictions shall recover their costs and attorney's fees. (PMC Section 6.60.100(A))
- Authorizes the City Manager to establish fees chargeable to landlords who withdraw their property from the market pursuant to the Ellis Act to cover the City's resulting administrative costs. (PMC Section 6.60.130)
- Requires notice of rights of tenants to tenants before and after sale of rental units.

Accordingly, Ordinance No. 2823 N.C.S. provides greater protections than the Ellis Act and the TPA as permitted by state law and will promote greater stability in the city's residential rental market and mitigate the harms caused by tenant evictions under the Ellis Act while preserving the rights of landlords to enforce the terms of their rental agreements and to terminate tenancies due to tenant violations of rental agreements or applicable law.

PUBLIC OUTREACH

Staff have tentatively scheduled public outreach for the following dates and times: Stakeholder outreach continues in January through March, when the Chapter 6.60 protections come to Council. Additionally, the City is hosting workshops on February 1, 2023 (virtual meeting); and on February 4, 2023 (In-person meeting); and a community survey will be open for most of the month of February to educate and solicit feedback. A City Council workshop on March 6, 2023, with an introduction of the draft ordinance to City Council on March 20, 2023. Stakeholders and other interested parties can provide information and recommendations at the following email address tenantprotections@cityofpetaluma.org. Additionally, this item appeared on the December 19, 2023 tentative agenda which was a publicly-noticed meeting.

COUNCIL GOAL ALIGNMENT

On May 2, 2022, City Council adopted a top ten list of goals and priorities which included "Ellis Act/Just Cause" protections. The proposed ordinance directly addresses this priority.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

The proposed Ordinance will provide greater protections to tenants which will result in fewer evictions and stability in the rental market. This will result in fewer displacements and may help reduce homelessness in the City and its impacts on community members and the environment.

ENVIRONMENTAL REVIEW

This ordinance is not a "project" within the meaning of Section 15378 of the California Environmental Quality Act Guidelines, because it is an administrative activity has no potential for resulting in physical change in the environment, in that this ordinance applies residential tenant protection measures to existing residential units in Petaluma, which is solely an administrative process resulting in no physical changes to the environment, and this ordinance contains no provisions modifying the physical design, development, or construction of residences or

nonresidential structures. Additionally, this ordinance is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency.

FINANCIAL IMPACTS

There are no direct costs of approving the proposed ordinance in addition to the necessary staff time to administer the ordinance. However, the proposed ordinance authorizes creation of a fee to defray some of the City's administrative costs resulting from Ellis Act evictions.

ALTERNATIVES

If the proposed Ordinance extending the expiration date of Ordinance No. 2823 N.C.S. is not adopted than there will likely be a gap between the March 1, 2023, expiration date and a subsequent amendment to Chapter 6.60 of the Petaluma Municipal Code.

ATTACHMENTS

1. Draft Ordinance Extending Expiration of Ordinance No. 2823
2. Ordinance No. 2823 N.C.S.