



DATE: April 17, 2023

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

FROM: Eric Danly, City Attorney
Dylan Brady, Assistant City Attorney

SUBJECT: Introduction (First Reading) of Ordinance Amending Chapter 6.60 Entitled
“Residential Tenancy Protections” of the Petaluma Municipal Code and Finding
This Item is Exempt from CEQA pursuant to CEQA Guidelines Section
15387(b)(5)

RECOMMENDATION

It is recommended that the City Council introduce the attached ordinance amending Chapter 6.60 entitled “Residential Tenancy Protections” of the Petaluma Municipal Code in response to the City Council’s direction at its March 6, 2023, workshop on potential amendments.

BACKGROUND

On May 2, 2022, City Council adopted a top ten list of goals and priorities which included just cause protections for residential tenancies in the city. “Just Cause” policies are a form of tenant protections designed to prevent arbitrary, retaliatory, or discriminatory termination of rental agreements by regulating “just causes” for termination of rental agreements, while preserving 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 termination of rental agreements 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 tenant displacement and promote housing stability, especially in neighborhoods where rents are rising. The City’s ability to enact tenant protections is authorized by state law under the Tenant Protections Act, and Civil Code sections 1945.2 and 1947.12-1947.13.)

The Tenant Protection Act of 2019 (TPA) was enacted by the state 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” and “rent cap” provisions that regulate termination of rental agreements and rents that may be charged tenants of tenancies subject to the TPA. The TPA permits local residential tenancy regulations to apply in lieu of the TPA, as long as the local regulations are more protective than

the TPA. (Civil Code Section 1946.2(g).) (For a detailed discussion of the TPA please see Attachment 2 to this staff report.).

On September 12, 2022, the City Council adopted Ordinance No. 2823 N.C.S. adding Chapter 6.60 entitled “Residential Tenancy Protections” to the Petaluma Municipal Code. Ordinance 2823 N.C.S. establishes “just cause” protections for Petaluma renters in addition to those contained in the TPA, but does not establish local rent control. Ordinance 2823 N.C.S. relies on the TPA’s rent control provisions to limit rents that can be charged Petaluma tenants to which the TPA’s rent control applies.

Ordinance 2823 N.C.S. was adopted with a sunset date of March 1, 2023, meaning that on that date, the Ordinance would cease to be in effect. During the adoption of Ordinance 2823 N.C.S. the City Council directed that staff gather input from stakeholders and the public, as well as data regarding the effects of the Ordinance. Generally, ordinances require two readings and take effect 30 days after the second reading. As a result of the March 1, 2023, sunset date of Ordinance 2823 N.C.S., amendments to Chapter 6.60 would have had to be introduced at the January 9, 2023, City Council meeting – the first meeting of the newly-seated City Council – to be effective before the Ordinance’s expiration. To allow time for staff to conduct public outreach and gather public input on the Ordinance and potential amendments, and to avoid an interruption in local tenant protections, on January 23, 2023, the City Council extended the sunset date of Ordinance 2823 N.C.S. to July 1, 2023.

Following the Council action to extend Ordinance 2823 N.C.S., staff held the following meetings to receive stakeholder input in preparation for a March 6, 2023, 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 and property owners
- February 1 & 4 - Community Workshops; one virtual and one in-person with presentations on Chapter 6.60 protections and potential Council options for amendments
- February 4 - Survey released to the community to answer questions and request feedback on the existing Chapter 6.60 protections and options for amendments.

Each of the February 1st and 4th workshops were attended by over 100 participants. The survey was circulated from February 4 - 24, 2023 and received over 900 responses. (See Attachment 4 to this staff report for a full summary of the community outreach efforts, community participation, survey results, and the feedback received).

On March 6, 2023, City Council conducted a workshop regarding the City’s residential tenancy regulations in Chapter 6.60 of the Petaluma Municipal Code, and received public input, as well as information on how the City’s regulations compare with the regulations of other local jurisdictions (See Attachment 5). After deliberation, the City Council gave direction to staff regarding several proposed amendments to the City’s residential tenancy regulations, and directed staff to return with ordinance amendments in April 2023. The City Council also identified some potential regulations about which the Council required more information. (Link to the March 6, 2023 staff report: <https://cityofpetaluma.primegov.com/meeting/document/566.pdf?name=Staff%20Report>)

DISCUSSION

The City Council provided staff direction at the March 6, 2023, workshop to prepare proposed amendments to the City's residential rental regulations as follows:

1. Small Property Owner Exemption - **Exempting property owners who own two or fewer residential units in Petaluma.** Note that this new local exemption also includes a requirement to notify tenants that the unit is exempt from TPA and local just cause protections, and from TPA rent control, like the TPA does.
2. Temporary Tenancies - **Exempting temporary tenancies in the property owner's primary residence, such as sabbatical or active-duty deployment rentals.**
3. Day 1 Protections - **Ensuring tenant protections are effective from the beginning of tenancies** (starting on day 1 of the lease). Note that due to this amendment the ordinance requires the addition of a **new exemption for transient tenancies, such as hotels, motels, and short-term vacation rentals**, which were never intended to be subject to just cause protections (see Item 8).
4. Just Cause Alignment with TPA - **Aligning with the just causes** for termination of residential tenancies with the just causes **in the TPA.**
5. Ellis Act Removal / 6 Month Right of Return - **Eliminating Ellis Act provisions, and providing a 6-month right of return for tenants displaced by a no-fault just cause termination** where a property is returned to the rental market within six months of removal, despite the owner having given notice of permanent removal.
6. Relocation Assistance for No Fault Terminations - Mandating **relocation assistance for no-fault just cause terminations, set at the lesser of 2.5 times the monthly rent or \$11,000**, annually adjustments based on the Consumer Price Index.
7. Property Sale a Just Cause – **Making sale of a rental unit a no-fault just cause for termination** of a rental agreement, subject to relocation assistance and a 6 month right of return.

Table 1 – Comparison of Proposed Changes to Petaluma Ordinance

Item #	Provision	TPA	Petaluma Interim	Petaluma Proposed
1	Small Property Owner Exemption	TPA exempts Single Family Homes not owned by a corporation	Did not exempt Single Family Homes or small property ownership units	Exempts small property owner units regardless of unit type, but limited to 2 units owned by non-corporate owners
2	Temporary Tenancies	No exception, (but tenant only receives protections after 1 year, and Single-Family homes exempt)	No exception	Exception
3	Effectiveness Timeline	After 1 year	After 6 months (except 1 year for owner occupied units that share bathroom or kitchen)	Day 1
4	Just Cause Alignment with TPA	Yes	No, (see just cause chart, Table 2)	Yes, with one exemption for victims of domestic violence
5	Ellis Act Removal / 6 Month Right of Return	No	Yes	No
6	Relocation for No Fault Terminations (based on 1 month rent)	100%	100% or 150% for qualified tenant	Lesser of 250% Or \$11,000, annual CPI adjustment)
7	Sale of Property a Just Cause	Yes	No	Yes
8	Transient Tenancies Excluded	Yes	No	Yes

Table 2 - State TPA just causes compared to Petaluma ordinance				
Item #	Description	TPA	Petaluma Interim	Petaluma Proposed
1	Failure to pay rent	Yes	Yes	Yes
2	Breach of lease	Yes	Yes (only some terms)	Yes
3	Causing a nuisance	Yes	Yes (not if related to domestic violence sexual assault or elder abuse)	Yes
4	Criminal activity	Yes	Yes (not if related to domestic violence sexual assault or elder abuse, requires connection)	Yes
5	Using unit for illegal purpose	Yes	Yes	Yes
6	Committing waste	Yes	No	Yes
7	Subletting against lease	Yes	No	Yes
8	Refusal to allow owner to enter	Yes	Yes	Yes
9	Tenant fails to vacate after intent to leave	Yes	No	Yes
10	Employee fails to vacate after termination	Yes	No	Yes

The proposed ordinance (Attachment 1) incorporates the direction given by Council, and includes corresponding edits in ordinance, including in the recitals, and other, non-substantive edits that simplify the ordinance wording, and where possible, conform the terms in the ordinance with those contained in the TPA.

The City Council also directed staff to return with additional information regarding the four topics discussed¹:

1. Exempting non-profit or government subsidized units

The City's interim ordinance does not exempt non-profits owners of residential rental property but it does exempt housing that is owned by a public entity or where the rent is subsidized by a public agency, and properties where half or more of the units are deed restricted as affordable. The TPA has three similar exemptions:

- Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.
- Housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or an adult residential facility, as defined in Chapter 6 of Division 6 of Title 22 of the Manual of Policies and Procedures published by the State Department of Social Services.
- Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

Staff contacted Burbank Housing Development Corporation, who did not believe that protecting tenants in non-profit housing, such as Burbank's housing, would discourage them from building future affordable multi-unit properties in Petaluma. The only government-owned property that staff believes would be covered by the ordinance is a four-bedroom house on Rocca Drive, leased and operated by America's Finest (formerly Vietnam Veterans of America) serving veterans who are otherwise unsheltered and are enrolled in the Agency's Employment and Training Program. City staff do not recall ever having a need to evict anyone from the program and would not remove anyone from the program without just cause. Accordingly, **there doesn't appear to be a need for the City to exempt itself or other non-profit rental housing owners from the ordinance.** Staff are also not aware of any dormitories in Petaluma that are housing students.

The proposed ordinance substitutes for the exemptions in the interim ordinance for affordable and government-subsidized units the three exemptions in the TPA. This is consistent with the Council's direction to mirror the TPA provisions.

¹ See Table below to see how these four topics are addressed in other jurisdictions.

2. Exempting units that have received a certificate of occupancy in the past 15 years.

Staff have reviewed the legislative history for the Tenant Protection Act regarding the rationale for exempting units that have received their certificate of occupancy within the past 15 years from both the TPA's "just cause" protections and rent control. The legislative history includes, "*A common argument against limiting rent increases is that developers and property owners will be less willing to spend on constructing or upgrading housing if their potential return on investment is diminished. There is some variation, but most studies of the effects of rent control seem to bear this theory out. Some stakeholders have raised this point in opposition to this bill.*"² **The concern regarding construction of new residential units was only identified regarding opposition to the rent control provisions of AB 1482, and not explicitly mentioned as a concern regarding the "just cause" provisions of AB 1482.**

In 2019 Oregon enacted SB 608, which like the California TPA enacted statewide rent control protections and just cause requirements for terminating a lease of over 12 months. Oregon exempts units that have received their certificate of occupancy within 15 years from its rent control protections but not its just cause termination requirements. This is like the interim regulations in Petaluma. As the City's interim ordinance does not address rent control, the TPA is the default rent control in Petaluma. Units that have received their certificate of occupancy within the previous 15 years are exempt from both TPA just cause regulations and rent control. New construction in Oregon and in Petaluma under the interim regulations is exempt from state rent control but subject to just cause protections. This is similar to the City of Berkeley's regulations, which exempt new construction from rent control protections but not just cause protections. Washington state enacted HB 1236 in 2021, which includes just cause protections and does not exempt newly constructed units. Staff have reviewed the just cause ordinances of other California jurisdictions and have not identified any local regulations that exempt newly constructed units.

The proposed ordinance does not include this exemption for new construction which mirrors the just cause ordinances in California.

3. Limiting withdrawal from the rental market of tenant households of Petaluma educators and students to summer months

The Petaluma interim ordinance requires tenant households that include K-12 Petaluma students or educators to receive a notice of termination during their summer break for no-fault just causes. The goal of this provision is to lessen the impacts that termination of tenancies has on students, educators, and schools. The Tenant Protection Act does not provide such protection.

According to the Judicial Branch of California, "The eviction process can take 30-45 days, or longer. The time starts from when you have eviction court forms delivered to your tenant to the time they must move out."³ Several other websites state that the process can take up to 60 days

² 9/09/19 Senate Floor Analysis

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1482#

³

<https://selfhelp.courts.ca.gov/evictionlandlord#:~:text=The%20eviction%20process%20can%20take,step%2Dby%2Dstep%20instructions.>

from issuing the notice of termination. Schools have about a 65-to-70-day summer break. Accordingly, unless a notice of termination was issued during the first few weeks of summer vacation, it is likely that an eviction process, if it were required, would occur during the beginning of the school year.

Staff also received concerns from property managers that limits on no-fault termination of tenancies of households with Petaluma teachers and K-12 students may exacerbate the very busy rental market conditions during the summer months, which may actually make relocations more difficult.

Other jurisdictions that include K-12 student and educator limitations on no-fault just causes include **Berkeley**, San Francisco and Fairfax. **The draft ordinance eliminates the student and educator limitations because strong support for the protections was not voiced during the public outreach meetings and the provisions present implementation challenges. Elimination of the provisions significantly simplifies implementation of the ordinance.**

4. Permitting relatives to join tenant household.

The proposed amendment would prevent landlords from terminating tenancies if a relative as defined in the ordinance (parent, child, grandparent, grandchild, sister, brother, spouse, or domestic partner) joins the tenant household and the additional occupant does not exceed the maximum occupancy allowed under the California Health and Safety Code.

The Health and Safety Code provides that each dwelling must have at least one room measuring at least 120 square feet; and all other habitable rooms excluding kitchens must be at least 70 square feet. The minimum dwelling size determines the maximum occupancy rate. Two people can occupy a minimum-sized dwelling. For each additional occupant, the minimum must be increased by 50 square feet. Typically, the rule of thumb is that residential occupancy is two people plus one are permitted.

Neither the City's interim ordinance nor the TPA include these protections. It is possible that protections for relatives joining the tenant household are unnecessary, because precluding family members from joining a tenant household consistent with Health and Safety Code limitations could violate the federal Fair Housing Act. Ordinances that have similar provisions include Richmond, Berkeley, Fairfax, Oakland, and San Francisco.

The proposed ordinance excludes these provisions.

Following is a table comparing treatment of the topics discussed above in the City's interim ordinance, the TPA, and those of other jurisdictions.

	Non-profit Units Exempt	Govt. Owned/ Subsidized Units Exempt	New Construction Exempt	Educator/ Student Summer Protection Included	Relative Permitted to Join Household
Interim Ordinance	No	Yes	No	Yes	No
TPA	Yes, for religious and hospital facilities	Only if deed restricted as affordable or for school dormitories	Yes, for 15 years on a rolling basis	No	No
Marin County	No	Yes	No	No	No
Richmond	Yes, for religious and hospital facilities	Yes	No	No	Yes
Fairfax	Yes, for religious and hospital facilities	Yes	No	Yes	Yes
San Rafael	No	Yes	No	No	No
Berkeley	Yes, for medical and religious facilities or for nonprofit cooperatives	Yes	No	No Yes, but only for owner move in	Yes
Emeryville	Yes, for medical and religious facilities or for nonprofit cooperatives	Yes	No	No	No
East Palo Alto	Yes, for care facilities	No	No	No	Yes

PUBLIC OUTREACH

Staff have conducted public outreach as follows: 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 and property owners. The City hosted workshops on February 1, 2023 (virtual meeting); and on February 4, 2023 (in-person meeting); and a community survey was open for most of the month of February to solicit feedback. The March 6, 2023, City Council workshop received over 90 public comments. Stakeholders and other interested parties can continue to provide information and recommendations at the following email address: landlordtenantprotections@cityofpetaluma.org. Additionally, this item appeared on the March 20, 2023, tentative agenda.

COUNCIL GOAL ALIGNMENT

On May 2, 2022, City Council adopted a top ten goals and priorities which included just cause tenant protections. Adopting a rental protection ordinance has also been a policy supported in the City's Housing Element. The proposed ordinance directly addresses this priority.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

The proposed Ordinance will provide greater protections to tenants which may result in fewer terminations of tenancies and greater stability in the rental housing market. This in turn may help reduce homelessness in the city and its impacts on community members and the environment.

ENVIRONMENTAL REVIEW

Introducing an ordinance amending Chapter 6.60 of the Petaluma Municipal Code regarding Residential Tenancy Protections is exempt from the California Environmental Quality Act (CEQA) Guidelines under CEQA Guidelines Section 15378(b)(5), because the action constitutes administrative activity that has no potential for resulting in physical change in the environment, in that the city's tenant protection measures apply to existing and future residential units in Petaluma. This solely administrative activity will result in no physical changes to the environment, and the regulatory amendments would contain no provisions modifying the physical design, development, or construction of residential structures. Additionally, amendments to the City's residential tenancy protections are exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency, in view of the City's declared Shelter Crisis.

FINANCIAL IMPACTS

There are no direct costs of considering potential amendments to the City's residential tenancy protection regulations in addition to the necessary staff time to prepare staff reports and regulatory options and to administer the regulations.

ALTERNATIVES

The City Council may direct staff to return with revised amendments to Chapter 6.60 of the Petaluma Municipal Code, entitled “Residential Tenancy Protections,” extend or eliminate the July 1, 2023, sunset, or take no action and permit the current ordinance to expire on July 1, 2023.

ATTACHMENTS

1. Proposed Amendments to Petaluma Municipal Code Chapter 6.60
2. Background on State Laws (TPA and Ellis Act)
3. Public Comments and Documents Received
4. Survey Results
5. Draft Housing Element Needs Assessment (Appendix A of Housing Element)
6. Workshop PowerPoint and Comparison with other Local Jurisdictions