

MORE THAN A NUISANCE:

The Outsized Consequences of New York's
Nuisance Ordinances

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ABOUT THE NYCLU AND ACLU

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, the NYCLU is a not-for-profit, nonpartisan organization with eight chapters and regional offices and more than 180,000 members across the state. The NYCLU's mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers. For more information, please visit www.nyclu.org.

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women's Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, has been a leader in legal battles to ensure women's full equality in American society. Through litigation, advocacy, grassroots mobilization, and public education, the Women's Rights Project pushes for change and systemic reform in those institutions that perpetuate discrimination based on gender, including against survivors of domestic violence. For more information, visit www.aclu.org/notanuisance.

INTRODUCTION

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Local laws across the state of New York make the eviction of tenants a consequence of police responses to their homes. These laws, known as nuisance ordinances, are often intended to promote public safety and hold landlords accountable. In practice, these laws punish tenants who require police assistance in their homes and attach disproportionately grave consequences to minor transgressions. As this report demonstrates, nuisance ordinances harm New York communities. In particular, because these laws are often enforced based on police response to properties, they tend to compound the harms associated with police interactions.

Data obtained by the New York Civil Liberties Union (NYCLU) and the American Civil Liberties Union (ACLU) suggest that these laws are predominantly enforced in neighborhoods where more people of color and poor people live. They often threaten harsh punishments, including the loss of one's home, for minor violations that otherwise would result in a relatively modest fine. They also harm domestic violence survivors and individuals in need of emergency medical assistance. Municipalities in New York should repeal or amend nuisance ordinances to avoid these adverse effects.

HOW NUISANCE ORDINANCES WORK

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Nuisance ordinances are local laws that allow a city to label a property a nuisance when it is the site of a certain number of police responses or alleged nuisance conduct, a category that can include assault, harassment, stalking, disorderly conduct, city code violations, and much more. While traditionally a public nuisance was defined as “an unreasonable interference with a right common to the general public,” and was used to address noxious odors and similar hazards that interfered with property rights of the community, more recently cities have adopted nuisance ordinances that penalize landlords or tenants based on contact with the police.¹ These local laws are part of a phenomenon called “third-party policing,” through which cities coerce private actors – here property owners – to address criminal or otherwise undesirable behaviors.² This report focuses on these types of nuisance ordinances, which are also sometimes labeled “crime-free ordinances,” “nuisance property ordinances,” or “criminal activity nuisance ordinances.”³ In addition to creating penalties for criminal behavior at a property, these ordinances create another way to punish minor city code violations – often involving noise or property maintenance – that would usually not rise to the level of a traditional public nuisance. These non-criminal city code violations are also sometimes enforced by the police through a city’s nuisance ordinance.

Nuisance ordinances usually apply even when a resident was the victim, and not the source, of the nuisance activity. Because closure of an entire building from which a call originates is often a way that these laws are enforced, all residents of a building may be punished for the nuisance activity of one or a few individuals. If a property is labeled a nuisance, the city typically instructs the owner to “abate the nuisance” or face steep penalties.⁴ Many landlords respond by initiating eviction of the tenant, refusing to renew their lease, or instructing them to no longer call 911. This can lead tenants, including survivors of domestic violence and others in need of police assistance, to be punished or evicted for calling the police.⁵

A city can structure a nuisance ordinance in several ways. Most commonly in New York, a property is labeled a nuisance once it accumulates a certain number of nuisance points. These points are assigned based on police responding to a property and observing a violation from a long list of city or state laws. Each violation can garner between 2 and 12 points. For example, in Niagara Falls, a noise violation can result in two points, “[g]eneral disturbances at a particular location” can result in four points, marijuana possession can result in six points, prostitution offenses can result in 10 points, and assault can result in 12 points. Once a property reaches a certain threshold of nuisance points – often 12 points within six months, or 18 points within one year – the city designates the property a nuisance. Some ordinances, instead of utilizing a point scheme based on police observations of violations, will deem a property a nuisance if it is the site of a certain number of arrests or the source of a certain number of complaints.⁶

HOW NUISANCE ORDINANCES HURT

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Once a property is labeled a nuisance, these ordinances permit a range of enforcement actions – from warning letters, to fines, to closure of the building. Many nuisance ordinances require that before a city closes a building or issues a fine, it must provide notice and an opportunity for a hearing to the owner and sometimes to tenants. At hearings the city usually has to prove that the underlying violation occurred only by a preponderance of the evidence. In contrast, criminal offenses must be proven beyond a reasonable doubt. While an opportunity for a hearing must be made available, in most cases a hearing is not required, and even if a hearing occurs, few procedures for such hearings are detailed in the laws. As a result, residents may lose their housing due to criminal activity despite never being convicted or even arrested – and without a robust opportunity to contest the underlying alleged violations.

Nuisance ordinances raise serious legal concerns. They may violate the First Amendment right to petition the government for redress of grievances because they deter tenants from seeking police assistance.⁷ They may violate the Fourteenth Amendment’s Due Process Clause if they permit the displacement of tenants without providing adequate procedural protections, like a fair opportunity for tenants to contest the purported nuisance activity.⁸ These laws may also violate the Eighth Amendment’s prohibition against excessive fines because they impose harsh punishments – such as steep fines or loss of housing – for minor violations.⁹ Nuisance ordinances that punish domestic violence survivors, who are predominantly women, may unlawfully discriminate on the basis of sex, and those that are enforced in a racially disparate manner or enacted based on racial animus may discriminate on the basis of race, both of which violate the Equal Protection Clause and the Fair Housing Act.¹⁰

NUISANCE ORDINANCES IN NEW YORK

NUISANCE ORDINANCES IN NEW YORK

Cities, towns, and villages across the state have nuisance ordinances in their municipal codes. While a comprehensive list of these laws does not exist, the NYCLU conducted a survey of 40 of the most populous municipalities in New York outside of New York City, revealing that 25 have an ordinance of the type described above.¹¹

To better understand the impact of nuisance ordinances in New York, the NYCLU, the ACLU Women's Rights Project, the Empire Justice Center, and the New York State Coalition Against Domestic Violence, sent Freedom of Information Law requests to a sample of 15 municipalities across the state.¹² These cities were chosen because they have laws that, based on their text alone, appear to have constitutional defects and to have the potential to harm tenants. As of the publication of this report, we had received responses from 14.¹³

The data we uncovered provides a glimpse into the way municipalities in New York enforce nuisance ordinances and how these ordinances harm New Yorkers.¹⁴ In particular, these ordinances, which all permit nuisance enforcement stemming from police responses to a property, amplify the harms of the criminal justice system and exacerbate socioeconomic and racial inequalities by making housing instability a consequence of law enforcement.

A Threat to New Yorkers of Color

Surveys of nuisance ordinance enforcement from across the country suggest that many municipalities may be enforcing their ordinances in a racially disparate manner. For example, a lawsuit filed in August 2017 by a fair housing organization in Peoria, Illinois revealed that properties in predominantly black neighborhoods were more than twice as likely to be cited under the city's nuisance ordinance as white neighborhoods.¹⁵ A 2013 study conducted in Milwaukee, Wisconsin similarly demonstrated that properties in white neighborhoods had a 1 in 41 likelihood of receiving a nuisance citation, while properties in black neighborhoods had a 1 in 16 likelihood of citation.¹⁶

In New York, data provided by Rochester and Troy show that nuisance points are assigned in those cities more often in neighborhoods with higher percentages of people of color (POC). Though racial impact analyses were not possible in many of the New York municipalities we contacted due to the limited enforcement data received, what we uncovered from Rochester and Troy should prompt cities to examine their nuisance ordinance enforcement patterns. It is clear from the data that the harms of nuisance ordinances – including eviction and dissuading people from calling the police – are more likely to fall on people of color.¹⁷

Offenses that can trigger nuisance point assignment are often disproportionately enforced against people of color. For example, though black and white Americans reported using marijuana at roughly the same rates in 2010, black Americans were 3.73 times more likely to be arrested for possession.¹⁸ In New York, the ratio was even larger, with black New Yorkers 4.52 times more likely to be arrested for marijuana possession than white New Yorkers.¹⁹ All but one of the 15 municipalities from which the NYCLU and ACLU requested nuisance enforcement records include marijuana possession as a triggering offense in their nuisance ordinances – in some, it was one of the most commonly used. For example, in Rochester between November 2012 and January 2018, marijuana offenses were the second most common violation to trigger nuisance points, and in Troy, over roughly the same period, marijuana offenses were the sixth most commonly enforced violation under the nuisance ordinance.²⁰

Rochester and Troy’s laws permit nuisance points to be assigned to a property whenever one of a long list of violations occurs at that property. Rochester’s law assigned between three and six nuisance points for anything from controlled substances offenses, to city code violations, to “[s] offering or permitting the premises to become disorderly,” and a property may be designated a nuisance under the law if it accumulates 12 points within six months or 18 points within 12 months.²¹ Troy assigns between three and eight points for anything from gambling offenses to violation of the city’s recycling ordinance and a property may be designated a nuisance under the law if it accumulates 12 points within 12 months or 18 points within 24 months.²²

Both Rochester and Troy provided the NYCLU and ACLU with information about each time they assigned nuisance points to a property between 2012 and 2018. Throughout this report, we use the term “nuisance point assignment” to refer to each instance where a city assessed points (ranging from three to 10 points at a time) against a property. Because cities often tell property owners to take action to abate a nuisance each time points are assigned, even a single assignment of points insufficient to trigger formal enforcement under the law can increase the risk of adverse housing consequences²³

By mapping these point assignments onto the cities’ census tracts, we were able to better identify which communities are most affected by nuisance ordinance enforcement.²⁴ As the below figures demonstrate, the demographic profiles for the census tracts with the least enforcement have stark differences from those where the most enforcement occurred.

Rochester

The city of Rochester assigned nuisance points 3,392 times between November 1, 2012 and January 23, 2018. The city has a population of 210,291 and contains 83 census tracts. The average census tract in Rochester is 35.3 percent white and 64.7 percent POC (39.5 percent black, 18.3 percent Hispanic/Latino, and 6.9 percent other).²⁵ Each census tract was the site of between zero and 186 nuisance point assignments over this period, with an average of 41 nuisance point assignments per census tract.

Rochester's enforcement data presents a clear trend: From 2012 to 2018, neighborhoods that were non-white and poor bore the brunt of the city's nuisance ordinance enforcement.

Figure 1: Rochester Census Tracts with Least and Most Nuisance Ordinance Enforcement

LEAST ENFORCEMENT

Rochester, Census Tract 35
0 Nuisance Point Assignments

Race

White	85.4%
Black	8.7%
Hispanic	2.1%
Other	3.8%

Poverty

Median Household Income	\$65,819
Below Poverty Line	18.0%
Receiving Food Stamps	3.1%

MOST ENFORCEMENT

Rochester, Census Tract 7
186 Nuisance Point Assignments

Race

White	4.5%
Black	49.2%
Hispanic	42.8%
Other	3.5%

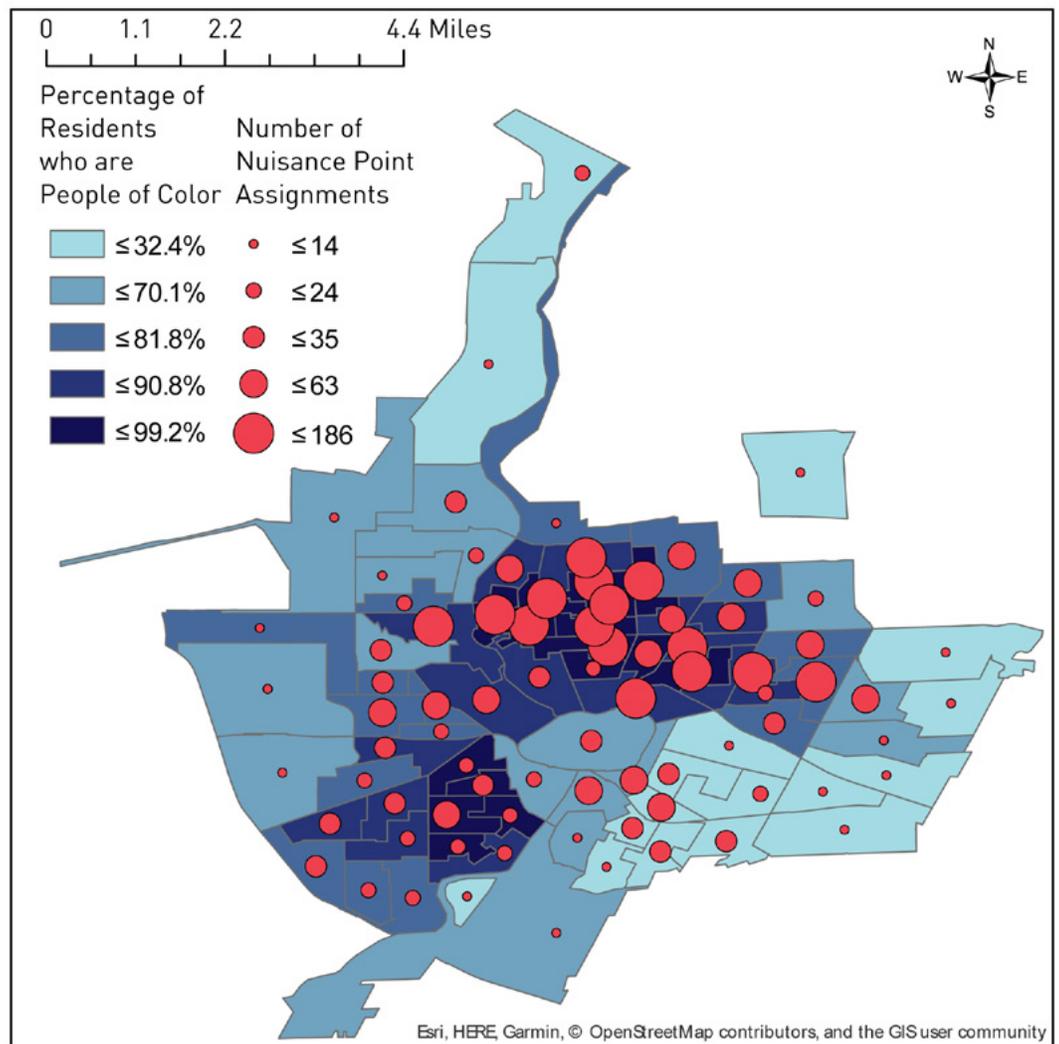
Poverty

Median Household Income	\$18,438
Below Poverty Line	37.6%
Receiving Food Stamps	58.6%

As Figure 2 illustrates, neighborhoods in Rochester with a higher proportion of residents of color had more nuisance point assignments than those with more white residents. The 21 census tracts with the lowest proportion of residents of color (35 percent or less, or the bottom quarter of census tracts in the city as ranked by proportion of residents of color) had, on average, 16 nuisance point assignments between November 2012 and January 2018. In contrast, the 21 census tracts that make up the quarter of census tracts with the highest proportion of residents of color, where the population is 89 percent or more POC, had nearly five times as many point assignments, with each census tract receiving, on average, 74 nuisance point assignments over the same period.

Figure 2: Nuisance Point Enforcement by Census Tract (Rochester)

This map shows census tracts by proportion of POC, with lighter shading representing higher proportions of white residents and darker shading representing higher percentages of residents of color. Circles represent relative numbers of nuisance ordinance enforcement.



Similarly, as illustrated in Figure 3, the 21 census tracts that made up the quarter of tracts with the least enforcement had, on average, 60.3 percent white residents, while the quarter of tracts with the most enforcement had, on average, only 12.5 percent white residents.

Figure 3.1: Average Racial Demographics of 21 Census Tracts with the Least Nuisance Ordinance Enforcement (Rochester)

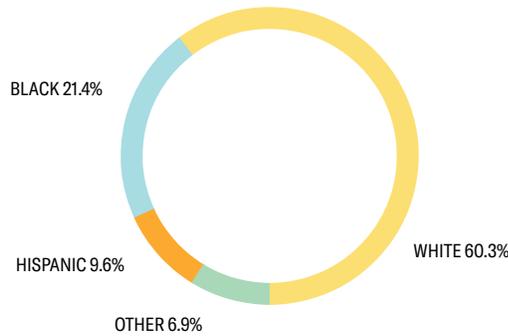
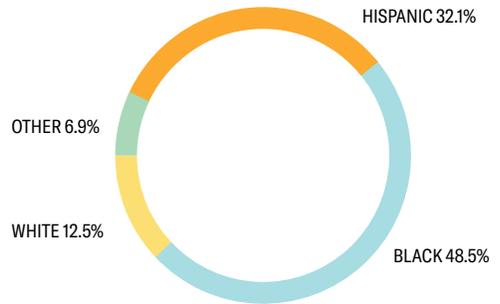


Figure 3.2: Average Racial Demographics of 21 Census Tracts with the Most Nuisance Ordinance Enforcement (Rochester)



Troy

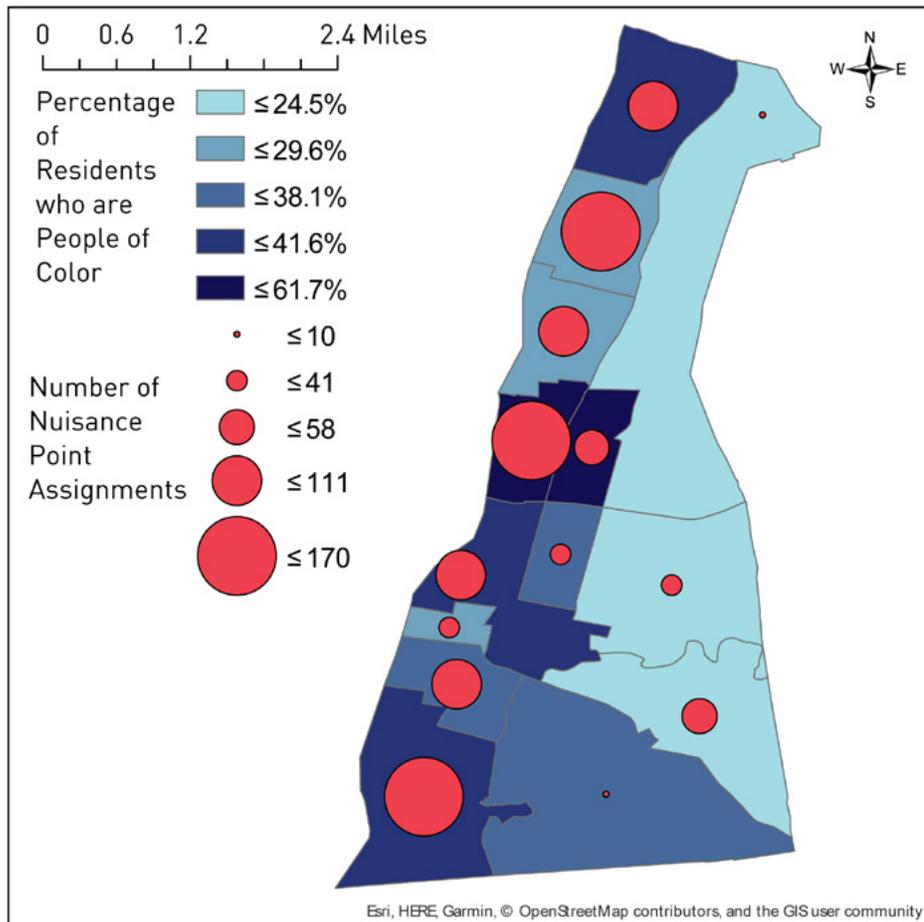
The city of Troy assigned nuisance points to properties 1,065 times between November 1, 2012 and February 1, 2018. Troy has a population of 49,881 and contains 14 census tracts. The average census tract in Troy is 65.1 percent white and 34.9 percent people of color (15.5 percent black, 9.5 percent Hispanic/Latino, and 9.9 percent other). Each census tract in Troy was the site of between six and 170 nuisance point assignments, with an average of 76 assignments per census tract.

While Troy’s nuisance enforcement was not as starkly racialized as that of Rochester, in part because the city is much smaller and has a much higher percentage of white residents across all census tracts, it demonstrated similarly concerning patterns: Neighborhoods where more nuisance ordinance enforcement took place tended to have higher shares of black and Hispanic residents. For example, in the census tract with the most enforcement, the percentage of black residents was almost four times higher and the percentage of Hispanic residents was over twice as high as in the census tract with the least enforcement.

In Troy, as Figure 4 illustrates, neighborhoods with larger percentages of residents of color tended to have more nuisance ordinance enforcement. In the four census tracts with the smallest percentages of residents of color (tracts with 29 percent or less, or the bottom quarter of census tracts in the city as ranked by proportion of residents of color), the average number of nuisance point assignments was 64 between November 2012 and February 2018. In contrast, in the four census tracts that make up the quarter of tracts with the highest proportion of residents of color (census tracts with 40 percent or more people of color), the average number of nuisance point assignments over the same period was 97 – more than 50 percent more. And the census tract with the highest percentage of residents of color was the site of 127 nuisance point assignments, 130 percent more than the tract with the lowest percentage of POC, which had 55 assignments.

Figure 4: Nuisance Point Enforcement by Census Tract (Troy)

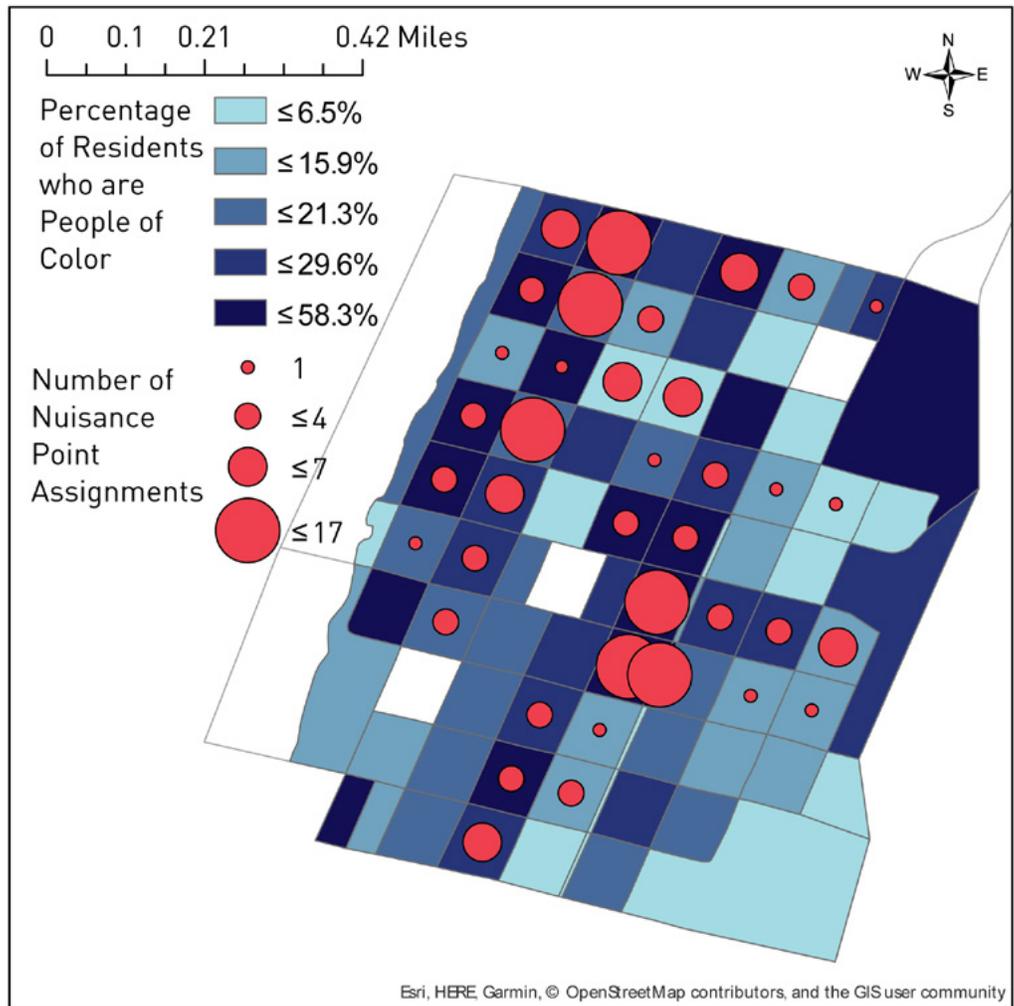
This map shows census tracts, with lighter shading representing higher proportions of white residents and darker shading representing higher percentages of residents of color. Circles represent relative numbers of nuisance ordinance enforcement.



While the census tract with the most enforcement in Troy has a slightly below average share of residents of color (29.31 percent), analysis of enforcement within that tract shows that census blocks with higher shares of people of color also had higher rates of nuisance enforcement. The quarter of census blocks within that tract with the highest percentage of people of color had, on average, over four times as much nuisance enforcement as the quarter of blocks with the lowest percentages.²⁶

Figure 5: Nuisance Point Enforcement by Census Block in the Census Tract with the Most Enforcement (Troy)

This map shows census blocks within the census tract with the most enforcement in Troy by proportion of residents of color, with lighter shading representing higher percentages of white residents. Circles represent relative numbers of nuisance ordinance enforcement.



Similarly, as Figure 6 illustrates, the census tracts with the least enforcement have a significantly lower share of people of color than those with the most enforcement: The four tracts that make up the quarter of census tracts with the least enforcement had, on average, 27.3 percent people of color while the four census tracts with the most enforcement had, on average, 42.3 percent people of color.

Figure 6.1: Average Racial Demographics of Four Census Tracts with the Least Nuisance Ordinance Enforcement (Troy)

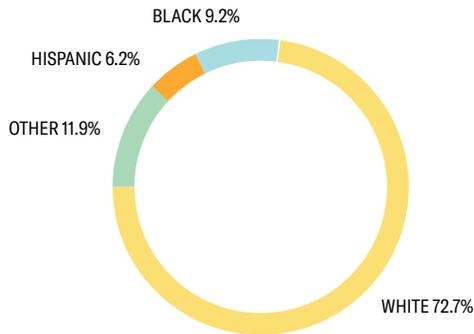
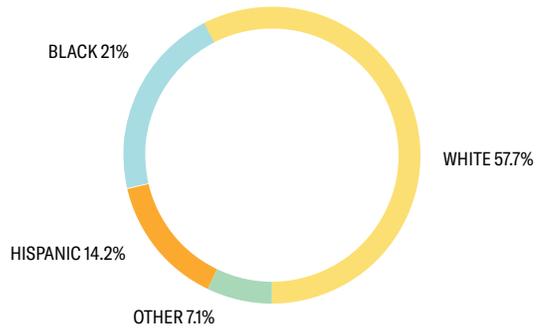


Figure 6.2: Average Racial Demographics of Four Census Tracts with the Most Nuisance Ordinance Enforcement (Troy)



A Danger to Poor Communities

The data we collected from Rochester and Troy also demonstrate that nuisance ordinances are enforced more in neighborhoods with higher rates of poverty. This is particularly troubling because nuisance ordinances can compound the housing instability that low-income residents already face.

In Rochester, the average percentage of persons living below the poverty line per census tract is 34.3 percent. Neighborhoods with larger shares of residents below the poverty line had more nuisance point assignments than those with smaller shares. As Figure 7 illustrates, the 21 census tracts that make up the quarter of tracts with the most enforcement had over double the percentage of residents below the poverty line as the quarter of tracts with the least enforcement.

Figure 7.1: Average Proportion of Residents Living Below the Poverty Line in 21 Census Tracts with the Least Nuisance Ordinance Enforcement (Rochester)

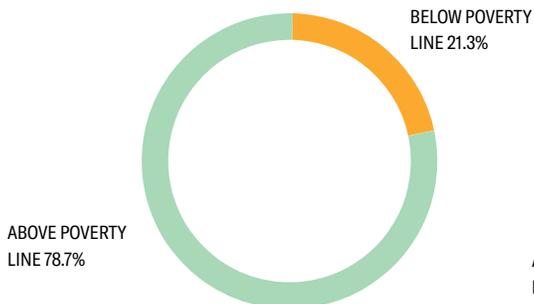


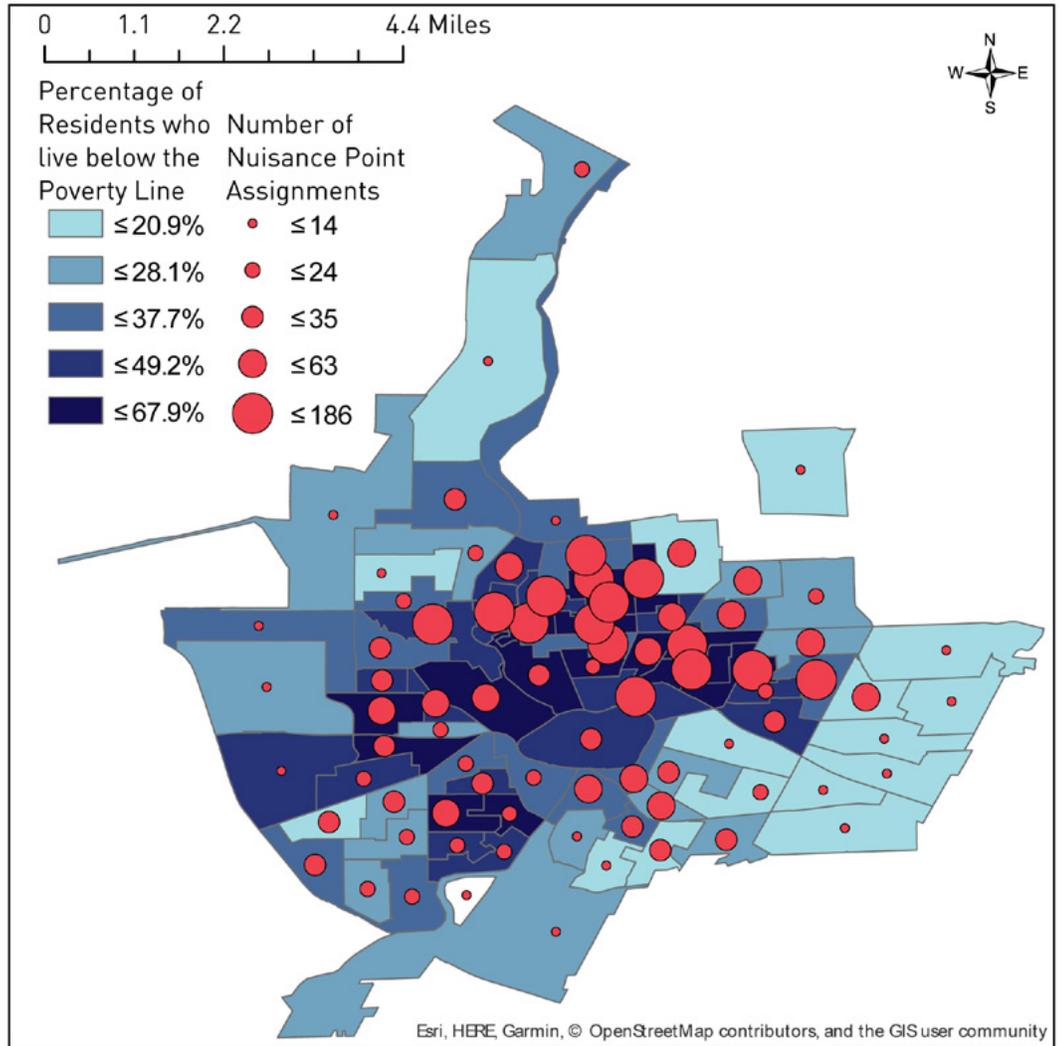
Figure 7.2: Average Proportion of Residents Living Below the Poverty Line in 21 Census Tracts with the Most Nuisance Ordinance Enforcement (Rochester)



Similarly, the 21 census tracts in Rochester with the largest percentages of residents living below the poverty line – or the top quarter of census tracts in the city as ranked by proportion of residents living below the poverty line – had, on average, 70 nuisance point assignments, four times more than the 21 census tracts that make up the quarter of tracts with the smallest percentages of residents below the poverty line, which had on average 17 assignments.

Figure 8: Nuisance Point Enforcement by Census Tract (Rochester)

This map shows census tracts, with darker shading representing higher percentages of residents living below the poverty line. Circles represent relative numbers of nuisance ordinance enforcement.



In Troy, the average percentage of persons living below the poverty line is 26.5 percent per census tract. Neighborhoods with larger shares of residents below the poverty line also had more nuisance point assignments than those with smaller shares. As figure 9 illustrates, the four census tracts that make up the quarter of tracts with the most enforcement had over 1.5 times the percentage of residents below the poverty line as the quarter of tracts with the least enforcement.

Figure 9.1: Average Proportion of Residents Living Below the Poverty Line in 4 Census Tracts with the Least Nuisance Ordinance Enforcement (Troy)

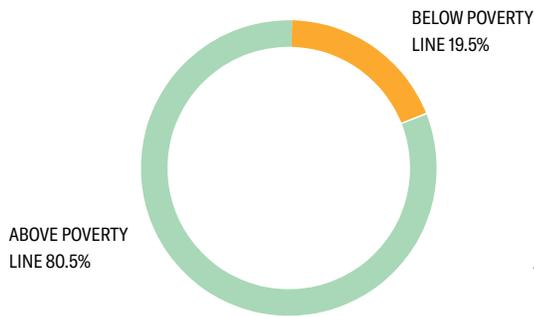
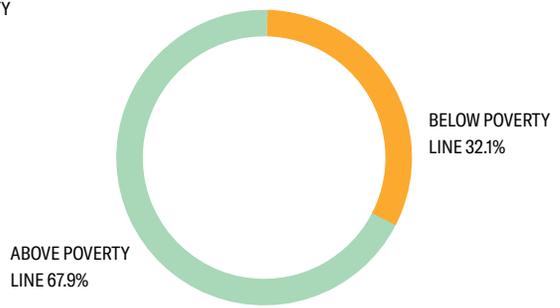


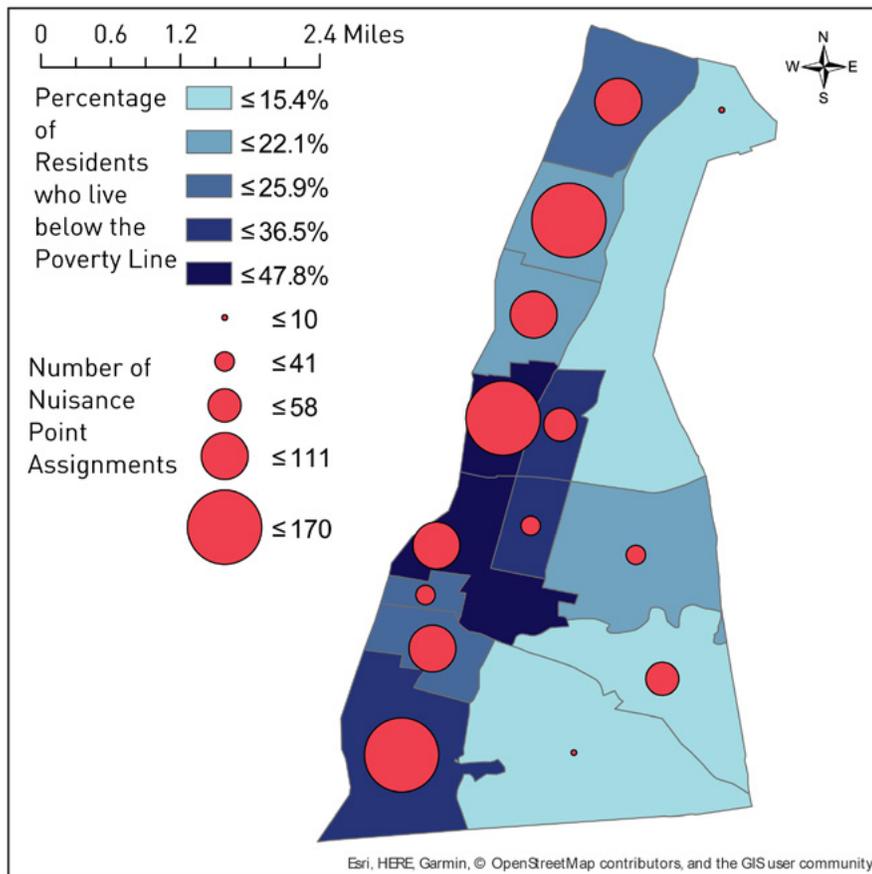
Figure 9.2: Average Proportion of Residents Living Below the Poverty Line in 4 Census Tracts with the Most Nuisance Ordinance Enforcement (Troy)



Similarly, the four census tracts with the largest percentages of residents below the poverty line – or the top quarter of census tracts in the city as ranked by proportion of residents living below the poverty line – had on average 103 nuisance point assignments, 2.6 times that of the four census tracts with the smallest percentages of residents below the poverty line, which had on average 40 assignments.

Figure 10: Nuisance Point Enforcement by Census Tract (Troy)

This map shows census tracts, with darker shading representing higher percentages of residents living below the poverty line. Circles represent relative numbers of nuisance ordinance enforcement.

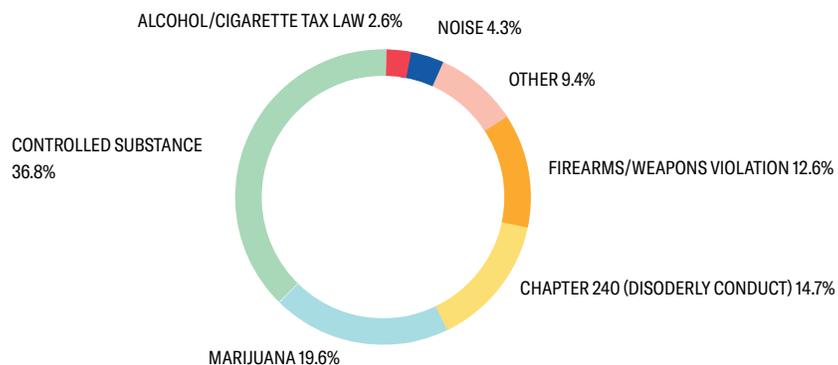


Minor Violations, Harsh Consequences

A nuisance designation can result in the eviction of tenants, the closure of a building, or steep fines. Enforcement data uncovered by the NYCLU and ACLU show that these ordinances are often triggered by low-level violations that would not result in criminal penalties or other consequences nearly so severe.

In Rochester, as Figure 11 illustrates, 19.6 percent of nuisance point assignments between November 2012 and January 2018 were for marijuana offenses. In 2017, a state trial court in Monroe County found Rochester’s enforcement of its nuisance ordinance against one property unconstitutional because it targeted marijuana-related offenses that occurred on or around the property, but that were not committed by tenants themselves.²⁷ The court explained that closing this building due to a nuisance designation was “wholly disproportionate to the evil sought to be eradicated.”²⁸ The court pointed out that under the law, a building could be closed based merely on two minor marijuana offenses occurring on a property within a six-month period, but that if individuals were convicted under the same statute, the penalty could be a fine of only \$100.²⁹

Figure 11: Most Common Offenses Triggering Nuisance Point Assignments in Rochester

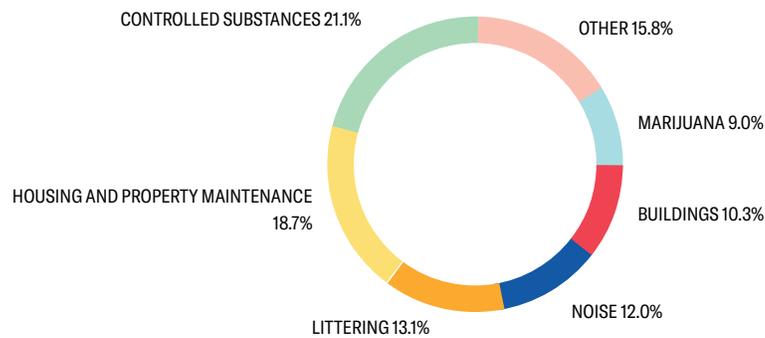


Though Rochester recently removed some of the marijuana offenses from the list of violations that can trigger nuisance points, this disproportionality between the underlying violation and the potential heavy burden of losing one’s home remains for the marijuana offenses that are still in the law and for other low-level offenses that garner nuisance points.³⁰ For example, 14.7 percent of Rochester’s nuisance point assignments over the same period appear to have been assigned for disorderly conduct, a violation that carries a maximum jail penalty of 15 days. And even under the revised law, two marijuana offenses occurring at a property within six months could still result in that building accumulating

the requisite 12 points to be deemed a nuisance, and therefore risk closure. That is because misdemeanor sale of marijuana offenses now garner 10 points and possession of marijuana in quantities over eight ounces – a felony – garner six.³¹

As Figure 12 illustrates, in Troy 18.7 percent of nuisance point assignments between 2012 and 2018 were for violations of Troy’s Housing and Property Maintenance Code, a category that can include building ventilation and fire hazard offenses; 13.1 percent were for littering violations; 12.0 percent were for noise violations; 10.3 percent were for buildings violations, a category which includes regulation of the amount of wood that may be used in a building and the required support for a canopy; and 9.0 percent were for marijuana offenses. All of these offenses resulted in letters being sent from the police department to property owners warning them that their properties may be a public nuisance. While the information provided by Troy did not make clear whether police response to a property served as a basis for the city code violations, or whether these violations came to the attention of the police department through code enforcement officials, police reports associated with nuisance points provided by other cities suggest that the police may have been involved in identifying the underlying violations.

Figure 12: Most Common Offenses Triggering Nuisance Point Assignments in Troy



Niagara Falls also frequently enforces its nuisance ordinance against properties for non-serious offenses. Over the five years between November 10, 2012 and November 7, 2017, Niagara Falls issued 35 letters enforcing its nuisance ordinance. Of those 35 letters, nine included points for only “loud noise/music,” four included points for only “general disturbance” associated with parties or neighbor disputes, and two were enforced against properties where the majority of points assigned were for “general disturbance” or “loud noise/music” associated with parties.

Even when a city does not follow through on enforcing its nuisance ordinance through fines or building closures, the assignment of points alone can harm tenants. Ordinances encourage landlords to evict tenants and they discourage tenants from calling the police. For example, the city of Cheektowaga sends a notice letter to property owners when nuisance activity is recorded in a police report warning that subsequent incidents will incur fines. The letter also states that “it is recommended that you notify the tenant to cease any such activity.” We know from studies elsewhere that landlords commonly react to such letters by instructing their tenants not to call 911, refusing to renew their lease, or evicting them.³²

Records from Syracuse show that in one nuisance enforcement case, the owner of a building found by the city to be a nuisance defended himself at a hearing by explaining “as soon as I got this notice . . . I told the marshall, I want to evict this person.” The owner went on to initiate eviction proceedings against his tenant and to present proof of this eviction at the hearing.³³

Hindering Help, Hurting Victims

Nuisance ordinances also impose disproportionate harm where they punish tenants for seeking police assistance. Because nuisance ordinances punish tenants for police responses to their buildings, they discourage tenants from reporting crime or seeking police help. The breadth of violations triggering a nuisance ordinance designation, including vague offenses such as “suffering or permitting the premises to become disorderly,” means that virtually any police response to a property can result in assignment of nuisance points. In Niagara Falls some points were assigned for “general disturbance” even though the police reports indicate that the responding police officer observed no disturbance upon arriving at the property.

In June 2017 an appellate court struck down the Village of Groton’s nuisance law as unconstitutional on its face under the First Amendment because it deterred tenants from seeking police assistance.³⁴ The Village of Groton law assigned nuisance points for a broad list of criminal and non-criminal activity and also provided that a property could be shown to be a public nuisance if there was evidence of “repeated criminal activity [that] has an adverse impact,” which the law defined to include “complaints made to law enforcement officials of illegal activity associated with the property.”³⁵ The court struck down the entire law because it would discourage people, including domestic violence victims, from reaching out for help.

In Fulton, the city’s Nuisance Abatement Law permits a public nuisance to be declared only where three or more offenses associated with the property result in convictions within a two-year period. Yet, in

nuisance abatement letters to building owners, the Fulton police department cites every call for service associated with a property. These letters warn, without reference to any convictions, that “[i]n light of the volume of calls for service at this location, and the appearance that the nuisance conduct is a direct and/or proximate result of activities occurring at [the property] and the impact of the conduct upon the peace and order of the neighborhood, you are hereby notified that, unless there is some intervention to address the nuisance conduct occurring at this location, it is my intent to initiate a nuisance abatement action pursuant to the City Code.” This can include closing the premises. Even though the ACLU previously reported that Fulton was penalizing domestic violence survivors through its nuisance ordinance, it appears that the city has done nothing to address these issues. Specifically, similar records from July 2011 to April 2014, collected and analyzed by the ACLU, revealed that domestic violence made up 48 percent of the 123 incidents included in Fulton properties’ nuisance abatement notices.³⁶ New records provided to the NYCLU and ACLU show that between April 1, 2014 and October 6, 2017, Fulton sent nuisance abatement letters to six addresses, citing a total of 235 calls for service.

Some of the police responses to calls for service that were counted against a property in Fulton were benign. For example, a nuisance abatement letter in June 2017 references a police unit responding to a report of a lost dog and the police officers’ subsequent return of the dog. This incident was counted by the city as one of “a series of offenses which have been reported to the police department surrounding activities” at the property in the nuisance abatement letter.

More commonly though, the Fulton police responses cited in these letters were the result of serious calls for help. According to the Fulton Police Department’s categorization of those calls, responses to domestic disputes made up almost 25 percent of calls; and Fire-Ambulance, suicide/mental health, and health and welfare related responses collectively made up another 12.6 percent.

FIGURE 13: Calls for Service (Fulton)

Nature of Offense Prompting Call for Service	Percent of Total Calls for Service
Aided Fire-Ambulance	1.6%
Suicide/Mental Health	3.8%
Harassment	6.8%
Health and Welfare Check	7.2%
Sex Offender Registry	11.1%
Disturbance	11.5%
Domestic Dispute	23.4%
Other	34.6%

Fulton did not provide the NYCLU and ACLU with all police reports associated with all of these calls for service but did provide reports for a majority. An analysis of these reports revealed that police responses to incidents related to domestic violence commonly contributed to a nuisance abatement notice. The police reports associated with the calls for service for each property that received a nuisance abatement letter included between nine and twelve reports describing a situation that appeared to involve domestic violence. On average, 37 percent of the police reports provided for each property were associated with a potential domestic-violence situation.

In March 2016 Fulton police received a call that a man and a woman were involved in a physical domestic dispute and that the woman was “yelling for someone to call 911.” When the police arrived, the woman described her boyfriend pushing her and punching her in her eye. According to the police report, the woman “said she just wanted [her boyfriend] told to stay away from her.” This call contributed to the “volume of calls for service” that resulted in the property receiving a nuisance abatement notice letter in June 2017.

In June 2015 a woman came to the police department to report a domestic dispute with her boyfriend that occurred the night before. She recounted to the police that her boyfriend had “pushed her down on the ground and tried to choke her.” After hearing her account, the police went to her home to interview the boyfriend, resulting in this “call for service” being associated with that property and contributing to its June 2017 nuisance abatement notice letter. The same couple was the subject of at least five other domestic dispute police reports associated with the same property.

Because survivors of domestic violence are more likely than other populations to need to call the police and to experience crime in their homes, they face an elevated risk of having their properties deemed a nuisance. Evictions that result from nuisance ordinances compound the elevated risk of homelessness already faced by survivors of domestic violence, and the threat of nuisance ordinance enforcement often prompts domestic violence survivors to endure abuse rather than call the police.³⁸

When calls for help contribute to a nuisance designation, tenants experiencing medical events, some of whom may suffer from disabilities, are adversely affected.³⁹ In Fulton, a significant number of police calls that contributed to nuisance abatement letters involved police responding to medical crises.

In April 2017 the Fulton police responded to a property to help a man who complained of right side pain and reported having a seizure. At another property, in May 2015, the police responded after receiving

reports of a man making suicidal threats. When they arrived, the man “stated that he wasn’t feeling well and that his medications were not working . . . that he did not want to harm himself or others but that he was seeing things, like the devil and that he was fearful.” In both cases, the police facilitated the residents’ transport to the emergency room, but both incidents also contributed to the list of calls for service cited by Fulton in its nuisance abatement letters.

RECOMMENDATIONS

RECOMMENDATIONS

As this report demonstrates, enforcement of nuisance ordinances can seriously harm communities of color and poor communities. These laws also often impose harsh punishments for low-level offenses or for calling the police for help. Many of the harms identified in this report stem from the ways in which municipalities enforce their nuisance ordinances. For example, a city may enforce its ordinance more often in poor or minority communities. Moreover, even where the text of a city's nuisance ordinance may not raise obvious concerns, the enforcement information provided to the NYCLU and ACLU suggests that enforcement often goes beyond the scope of the law. For example, while the text of Fulton's nuisance ordinance requires convictions, in practice, Fulton appears to enforce the law based on calls for service.

Municipalities in New York should critically examine their nuisance ordinances and the ways in which they are enforced and take steps to ensure that they are not disproportionately enforced in certain communities, do not impose disproportionate punishments for low-level offenses, and do not punish domestic violence survivors or other individuals in need of emergency assistance. A number of municipalities across the country have repealed such laws in order to avoid these types of harms, and the U.S. Department of Housing and Urban Development has recognized that repealing nuisance ordinances is a step that cities can take towards fulfilling their duty to affirmatively further fair housing.⁴⁰

Municipalities should, at a minimum, amend their nuisance ordinances to reduce the harms documented in this report:

- Ensure that police interventions that help residents never count towards a nuisance designation. Calls to the police for help or to report crime or unsafe conditions should never be the basis of nuisance ordinance enforcement.
- Reduce housing loss caused by nuisance ordinance enforcement. Eliminate any nuisance ordinance enforcement that permits closure of an entire building – and displacement of all tenants – based on police response to a property. Ordinances should only permit the displacement of all tenants when conditions present a serious and immediate risk to the safety of residents. Municipalities should also encourage landlords to abate a nuisance on their property through means other than eviction.
- Require that tenants receive adequate notice of and opportunities to contest enforcement of nuisance ordinances, and that tenants can provide input to and contest any plans to abate a nuisance.
- Bear the burden of proving that violations contributing to nuisance designations do not arise out of situations in which a resident is the victim of criminal activity, including domestic violence, or involved

an individual in need of police or emergency assistance. This protects innocent tenants and those seeking police assistance.

- Ensure that nuisance ordinances are not disproportionately enforced in particular neighborhoods, including those with larger poor and minority communities, by tracking enforcement and making data public to community members.

On the state level, New York legislators should enact legislation that affirmatively protects residents' rights to police and emergency assistance. A statewide law could prevent municipalities from imposing penalties on property owners or tenants based on residents' use of police or emergency assistance, and forbid landlords from taking negative housing actions against tenants for calling the police. Such a bill has been introduced in several recent New York legislative sessions, most recently in the 2017-18 term, but has not been enacted.⁴¹

ENDNOTES

1 RESTATEMENT (SECOND) OF TORTS § 821B (1979); B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 723 (1992).

2 Matthew Desmond and Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. R. 117, 119-120 (2012) [hereinafter “Unpolicing the Urban Poor”].

3 Many cities may have multiple kinds of nuisance laws in their codes. For example, the city of Troy has three discrete sections to its chapter on nuisances: one addresses more traditional health nuisances and requires individuals who have created or continued conditions that are dangerous to human life or health to abate those conditions or be held liable for the costs of abatement and risk criminal prosecution for a misdemeanor; the second permits the city’s Commissioner of Public Works to close buildings where arrests or convictions for certain drug sale, gambling, and prostitution offenses have taken place; and the third empowers the mayor to suspend a building’s licenses, permits, and certificates of use or to close the building where a certain number of violations of, though not necessarily arrests or convictions for, a long list of city or state offenses have occurred. See Troy, N.Y. Code § 205. The third section is the kind of nuisance ordinance focused on in this report. While the authors have not investigated the operation of the other two sections of Troy’s nuisance law, the third presents unique characteristics and potential for harm.

4 U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards on the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services 2-4 (Sept. 13, 2016) [hereinafter “HUD Guidance”].

5 See, e.g., Unpolicing the Urban Poor at 133 (finding that 83% of landlords in Milwaukee surveyed threatened eviction in order to discourage tenants from calling 911 in order to avoid nuisance citation); Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio* 6 (Nov. 8, 2017), https://www.researchgate.net/publication/320931526_Who_is_a_nuisance_Criminal_activity_nuisance_ordinances_in_Ohio [hereinafter “Who is a Nuisance”] (finding that even where cities in Ohio do not explicitly recommend that landlords evict tenants in order to abate a nuisance, in practice, nuisance notifications were rescinded when landlords furnished proof that they had evicted a tenant); see also Babylon, N.Y., Code § 165-9; Binghamton, N.Y., Code § 315-14(A); Rochester, N.Y., Charter § 10-12(F)(g) (formerly § 3-15(C)(1)), available at <https://ecode360.com/documents/RO0104/source/LF1030125.pdf>; Rome, N.Y., Code § 26.99; Utica, N.Y., Code § 2-17-9 (codes providing for orders of closure, revocation of permits, orders to vacate, and/or evictions).

6 See, e.g., Syracuse, N.Y. Code § 45-2 (declaring a public nuisance based on three or more arrests for an enumerated list of violations within a two-year period); Cheektowaga, N.Y. Town Code Chapter 194 (defining a public nuisance based on the number of police responses to complaints).

7 See, e.g., *Bd. of Trustees of Vill. of Groton v. Pirro*, 152 A.D.3d 149, 150 (3d Dep’t 2017) (finding nuisance ordinance unconstitutional under the First Amendment).

8 See, e.g., *Alcorn ex rel. Proas Partners, LLC v. Muhammad*, 66 N.Y.S.3d 819, 831 (Sup. Ct., Monroe Cty 2017) (finding Rochester’s former nuisance ordinance violated the Fourteenth Amendment Due Process Clause); see also *Mariemont Apartment Assn. v. Vill. of Mariemont*, No. C-050986, 2007 WL 120727, *7–8 (Ohio Ct. App. Jan. 19, 2007) (finding a procedural due process violation because the ordinance did not provide for a pre-deprivation hearing, failed to establish a time frame for filing an appeal, and allowed for only a short stay of enforcement); *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 9 (Cal. Ct. App. 2005) (finding that a nuisance ordinance violated procedural due process).

9 See, e.g., *Alcorn*, 66 N.Y.S.3d at 832.

10 Memorandum from Sara K. Pratt, Deputy Sec’y for Enforcement and Programs, Office of Fair Housing & Equal Opportunity, U.S. Dep’t of Housing & Urban Dev. to FHEO Office Directors and FHEO Reg’l Directors, Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act 4– 6 (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>; see Complaint, *HOPE Fair Housing Center v. City of Peoria, IL*, 1:17-cv-01360-JBM-JEH (C.D. Ill. filed Aug. 10, 2017).

11 This represents a survey of the 18 most populous cities, the 17 most populous towns, and the 5 most populous villages in the state.

12 We sent these requests to Babylon, Binghamton, Cheektowaga, Fulton, Greece, Village of Hempstead, New Hartford, Niagara Falls, Rome, Rochester, Schenectady, Syracuse, Troy, Utica, and Yonkers. In addition, this group sent letters to 11 of these cities detailing the constitutional deficiencies in their ordinances.

13 We are still awaiting a response from Rome, N.Y. Because we did not begin to receive Utica's records until this report was already in production, this report does not include analysis of Utica's enforcement of its nuisance ordinance.

14 While the data we obtained provides a glimpse into the way municipalities in New York enforce nuisance ordinances, it cannot fully demonstrate the consequences of such enforcement. For example, while most cities provided information about the issuance of nuisance points or of warning letters, few provided responses that made clear whether these cities went on to initiate eviction proceedings, generate a plan with a property owner to abate a nuisance that included eviction or non-renewal of a tenant's lease, or issue a closure order.

We also have reason to believe that enforcement actions taken pursuant to these laws may not be well documented or efficiently managed. For example, a 2016 report evaluating Rochester's nuisance abatement regime that was commissioned by the city noted that city staff indicated that "the number of closures were higher than the records documented" and that enforcement records were "scattered through several departments." Strategic Community Intervention, LLC, Nuisance Abatement Point System Evaluation 19 (July 25, 2016), www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=8589969598. Moreover, because many of the nuisance ordinances we examined encourage landlords to abate a nuisance by evicting tenants, private actions that are not documented by the cities themselves but nevertheless prompted by a city's assignment of nuisance points or issuance of a warning letter, may result in tenants losing their housing. *See, e.g.*, City of Schenectady, N.Y., Code § 183-1(C) (permitting eviction as a remedy that landlords may use to abate a nuisance); Town of Cheektowaga, N.Y., Code § 194-4(A) (explaining that once a property owner or manager receives a notice pursuant to the ordinance they "shall then take appropriate action to notify the tenant to cease any such activity, or evict said tenant"). We know from large-scale studies elsewhere that this is a common response to nuisance ordinance enforcement. *See* Unpolicing the Urban Poor at 131-132; Who is a Nuisance at 6; ACLU, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* (June 2015), https://www.aclu.org/files/field_document/equ15-report-nuisanceord-rel3.pdf [hereinafter "Silenced"] .

15 Complaint at 2, *HOPE Fair Housing Center*.

16 Unpolicing the Urban Poor, 78 AM. Soc. R. at 125.

17 These data do not compare nuisance ordinance enforcement to enforcement of the underlying violations, and therefore are not sufficient to determine whether nuisance ordinances are disproportionately enforced in certain communities.

18 ACLU, *The War on Marijuana in Black and White* 21-22, 47 (June 2013) <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

19 *Id.* at 49 Table 6.

20 Rochester amended its nuisance law in 2018, providing some additional procedural protections and excluding some low-level marijuana offenses. *See* Local Law No. 4, Local law amending the City Charter with respect to the abatement of nuisances, as amended, June 28, 2018, *available at* <https://ecode360.com/documents/RO0104/source/LF1030125.pdf> (codified in Rochester, N.Y., City Charter § 10-12(B)(2)(b)). The data described in this report reflect enforcement of the law prior to this amendment and, because some marijuana offenses were removed but others remain in the new law, we cannot predict how this category of violations will be enforced in Rochester under the amended law.

21 City of Rochester, N.Y., Charter § 10-12(B)(2)(o), formerly § 3-15(B). When Rochester amended its law in June 2018 it changed the number of points assigned. Now, enumerated violations garner either 6 or 12 points per instance.

22 City of Troy, N.Y., Code § 205-19. Troy recently amended its nuisance law to change the amount of time that the City has to provide an opportunity for a hearing. Formerly an opportunity for a hearing had to be provided within 60 days of the most recent violation cited in the nuisance abatement notice. The June 8, 2018 amendment doubled that to 120 days. City of Troy, Ord. No. 39, *available at* <https://ecode360.com/documents/TR1767/source/LF1027534.pdf>.

23 For example, each time Troy assessed points against a property it also appears to have sent a letter to the owner of that property explaining that the "property has been identified as a potential nuisance" and warning that "a host of possible actions . . . will be directed at your property should you allow the source of the nuisance to continue." We know from studies elsewhere, as well as from records obtained from other cities in New York, that landlords commonly react to such letters by seeking eviction of their tenants. *See* Unpolicing the Urban Poor at 131-132; Who is a Nuisance at 6; Silenced.

24 This demographic data is from the 2016 U.S. Census American Community Survey. While comparing these cities' enforcement patterns with census tract data provides useful information about the demographic makeup of the neighborhoods where nuisance ordinance enforcement is most common, it does not provide information about the demographic characteristics of individuals who are impacted by this enforcement.

25 As used in this report, "other" includes American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, some other race alone, and two or more races.

26 This block-by-block demographic information is only available from 2010, because census block information is only collected in the decennial census. In contrast, the census-tract level demographic information used in this report is taken from the 2016 American Community Survey, which does not collect block-by-block information. In 2010, the Census did not report information on race for 6 of the 86 blocks, or 6.98 percent of the blocks, within this census tract.

27 *Alcorn*, 66 N.Y.S.3d 819.

28 *Id.* at 83.

29 *Id.*

30 Local Law No. 4, Local law amending the City Charter with respect to the abatement of nuisances, as amended, June 28, 2018 (codified in Rochester City Code § 10-12).

31 *Id.*

32 *See* Unpolicing the Urban Poor at 131-132; Who is a Nuisance at 6; *see also* Silenced.

33 The owner also stated at the hearing: “as soon as I hear from the officer that called me back that was the tenant of the second floor, send the notice, and I went to talk to him. I told him he have to move.”

34 *Bd. of Trustees of Vill. of Groton*, 152 A.D.3d at 160-61.

35 Village of Groton, N.Y. Code § 152-4(c)(3).

36 Silenced at 23.

37 Silenced at 4; Unpolicing the Urban Poor at 130 (finding that domestic violence was the third most commonly cited offense under a nuisance ordinance in Milwaukee, Wisconsin);

38 Michelle Fugate et al., *Barriers to Domestic Violence Help Seeking: Implications for Intervention*, Violence Against Women 11, no. 3, 290-310 (March 1, 2005) <https://doi.org/10.1177/1077801204271959>; Emily Werth, Sargent Shriver Nat'l Ctr. On Poverty Law, *The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances* 8-10 (Aug. 2013), <http://povertylaw.org/sites/default/files/files/housingjustice/cost-of-being-crime-free.pdf>; Who is a Nuisance at 11-13.

39 Who is a Nuisance at 14-15; Int'l Assoc. Of Chiefs Of Police, Building Safer Communities: Improving Police Response To Persons With Mental Illness (2010), <http://www.theiacp.org/portals/0/pdfs/ImprovingPoliceResponsetoPersonsWithMentalIllnessSummit.pdf> (explaining that “behaviors resulting from mental illness are a factor in 3 to 7 percent of all law enforcement calls for service”).

40 *See, e.g.*, “Three Strikes Tenant Law Repealed by Norristown Council,” *The Times Herald*, Aug. 6, 2014, <http://www.timesherald.com/article/JR/20140806/NEWS/140809883> (announcing repeal of the Norristown, PA nuisance ordinance); Jessica Boehm, “Surprise nixes eviction law that harmed domestic-abuse victim,” *azcentral*, March 17, 2016, <https://www.azcentral.com/story/news/local/surprise/2016/03/17/surprise-nixes-eviction-law-harmed-domestic-abuse-victim/81666646/> (announcing repeal of Surprise, AZ nuisance ordinance); HUD Guidance at 12-13.

41 *See, e.g.*, A.2919 Lavine/S.405 Robach (N.Y. 2018).

