

HUD Guidance on Local Nuisance Ordinances and Crime-Free Housing Ordinances: A Summary

In September 2016, HUD issued guidance that examines how the enforcement of nuisance ordinances and crime-free housing ordinances could violate the Fair Housing Act, under certain circumstances. Since the overwhelming majority of domestic violence survivors are women, for example, any policies or practices that affect survivors may constitute sex discrimination under the Fair Housing Act. This HUD guidance focuses on the effect that the enforcement of nuisance and crime-free housing ordinances may have on survivors of domestic violence.

The guidance first discusses how nuisance and crime-free ordinances can have a disproportionate effect on certain groups, which may violate the Fair Housing Act, even when there was no intent to discriminate. The guidance notes that various data sources (including police records or resident data) can be used to show that such ordinances disproportionately affect groups protected by the Fair Housing Act, such as women. The guidance also states that local governments cannot rely upon stereotypes about persons who have been described as engaging in nuisance or criminal activities to defend such ordinances. The guidance also notes that it is not likely that a legitimate, core governmental interest can be served by preventing access to essential emergency services for those who have a significant need for such services, such as domestic violence survivors or other crime victims.

The guidance also discusses how jurisdictions can violate the Fair Housing Act by intentionally using the adoption or enforcement of a nuisance or crime-free ordinance to discriminate. For instance, jurisdictions can have discriminatory motives for adopting a nuisance ordinance. Factors that may indicate an intent to adopt a discriminatory ordinance include considerations such as historical context, the sequence of events leading up to the adoption of the ordinance, the administrative or legislative record, and the ordinance's impact. Another way a jurisdiction can use nuisance and crime-free ordinances is in selective enforcement. Selective enforcement has been shown by, for example, providing evidence that a housing provider sought eviction of female tenants shortly following domestic violence incidents. The guidance concludes by suggesting that local governments can further fair housing objectives by repealing nuisance or crime-free ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.

This project was supported by Grant No. 2017-TA-AX-K052, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.