

# HOUSING JUSTICE

National Housing Law Project

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## Survivor Challenges Arizona Municipality's Nuisance Law

Nuisance and crime-free ordinances are becoming increasingly common in localities. These laws impose penalties on landlords and tenants when the police are called to residential properties to respond to disturbances a certain number of times within a particular timeframe. The ordinances are very problematic for survivors of domestic and sexual violence who seek protection from the police due to the abuse being committed against them. In many situations, the ordinances force survivors to choose between protecting themselves and maintaining their housing.

In August 2015, Nancy Markham, a survivor of repeated domestic violence, sued the City of Surprise, Arizona, the city's police chief, and a Surprise police officer for enforcing the municipality's nuisance law against her. The following article summarizes the allegations and legal claims made by Ms. Markham in this lawsuit.

### Local Laws

The lawsuit challenges two Surprise municipal code sections, both passed in 2010 (collectively referred to here as the city's "nuisance law"). Ms. Markham asserts that in 2010, when local officials were considering the passage of the nuisance law, they were cautioned that these provisions could be used against crime victims, including survivors of domestic violence. Nevertheless, the city council adopted both provisions.

The first challenged provision is what the

lawsuit calls the "Nuisance Property Section" of the local code. This part of the law declares a property a "nuisance" when four or more calls regarding crimes are made to the police from the same address within a 30-day timeframe, or two or more crimes are committed on the property that impact quality of life or pose a health and/or safety threat. According to the lawsuit, the law does not make a distinction between crimes where the tenant is a victim and those where the tenant is a perpetrator, nor does the law differentiate between emergency calls and unnecessary calls to police. After receiving notice that a tenant has "allowed" nuisance activity to occur at their properties, landlords who do not address the alleged nuisance may face penalties. The law grants Surprise the authority to suspend or take away a landlord's business license. The city can also charge landlords with civil or criminal violations for failure to comply with the law. The lawsuit asserts that the Nuisance Property Section does not require Surprise to notify tenants of the nuisance law when police are called to a residence because of an emergency, and that Surprise has not notified any tenants with potential nuisance violations about how the law may be used against them. Also, the lawsuit alleges that the Nuisance Property Section does not provide tenants with the ability to challenge enforcement against their landlords.

The second challenged provision is what the lawsuit calls the "Crime Free Lease Section" of the local code. This part of the law requires landlords to include a lease provision allowing them to evict tenants after just one incident of criminal activity. Like the Nuisance Property Sec-

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tion, the lawsuit contends that this provision does not distinguish between crimes where the tenant is a victim from those in which the tenant is at fault.

According to the lawsuit, taken together, the Nuisance Property Section and the Crime Free Lease Section pressure landlords to evict tenants after a single crime is committed at the property, regardless of whether the tenant was in fact a victim of that crime.

### **Enforcement by City of Surprise**

According to Ms. Markham, from March through August 2014, her ex-boyfriend, identified only as “R.V.,” attacked and threatened her on several occasions at her residence. R.V., with whom Ms. Markham shared a minor son, allegedly choked and punched Ms. Markham, took her car, threatened her with a gun, and attempted to gain entry into the her residence. In August 2014, Ms. Markham obtained a protection order against R.V. When Surprise police officers responded to calls at Ms. Markham’s residence, the lawsuit asserts that none of these officers informed her of the local nuisance or crime-free provisions or of their consequences.

In August 2014, according to the lawsuit, the police department sent a letter to Ms. Markham’s landlord and threatened to deem the residence a criminal nuisance if the landlord failed to take corrective action. The letter allegedly threatened to hold the landlord responsible for the activity at the residence. In later exchanges, the police department allegedly told the landlord that while Ms. Markham “was the listed victim” of domestic violence, she had sometimes been uncooperative with police. Around the same time period, Ms. Markham’s neighbors wrote a letter to the police chief demanding that action be taken against her because of the police calls to the residence. The lawsuit states that the police chief responded to

the letter by informing the residents that the issue was being addressed and a “permanent solution” was being pursued. According to the lawsuit, the police department pressured the landlord to evict Ms. Markham.

### **Eviction Threat**

According to the court filing, in August 2014, the landlord’s property manager informed Ms. Markham that she would no longer be able to remain at the property, because the police department had placed the landlord in a position where the landlord could no longer keep her as a tenant. The property manager informed Ms. Markham that if she did not leave on her own, the landlord would seek to evict her. After learning that R.V. was in prison and that a protection order had been obtained, the property manager recommended that the landlord allow Ms. Markham to remain at the residence. However, the court filing asserts that the police department did not rescind earlier alleged statements urging the landlord to evict Ms. Markham. The landlord then sought to move forward with Ms. Markham’s eviction. Ms. Markham asserts that the push by the police to evict her stemmed from gender stereotypes about domestic violence survivors. After being contacted by Ms. Markham’s attorneys, the landlord abandoned any efforts to evict Ms. Markham.

Ms. Markham eventually moved within Surprise. According to the lawsuit, Ms. Markham has refrained from calling the police out of fear of eviction under the local law. Her court filing also says that her abuser is currently out of prison.

### **Legal Claims**

Ms. Markham alleges, among other claims, that the provisions of the nuisance law violate the freedom of speech and the right to petition

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the government, as guaranteed by the federal and Arizona constitutions. These constitutional guarantees include protections for requesting assistance from the police and reporting crime.

Ms. Markham further contends that Surprise's enforcement of the nuisance law against her constitutes a violation of the federal Fair Housing Act and state fair housing law by discriminating against her because of her sex. Specifically, the lawsuit alleges that, in Ms. Markham's case, the police department relied upon gender stereotypes concerning survivors of domestic violence, and also enforced the Nuisance Property Section against Ms. Markham more harshly when compared with a male domestic violence survivor under similar circumstances. Ms. Markham asserts that the city and police officials engaged in "such discriminatory conduct intentionally." The lawsuit also references the city's adoption of the nuisance law despite concerns about the potential discriminatory impact on female survivors of domestic violence.

The complaint further alleges that the Nuisance Property Section violates additional federal and state constitutional rights. First, Ms. Markham contends that the provision does not provide tenants with notice even though the city's use of the law against them can result in eviction. Second, Ms. Markham cites the provision's failure to provide a chance for tenants to challenge the law's enforcement against their landlords. Therefore, as Ms. Markham alleges, the Nuisance Property Section violates her constitutional right to due process. Additionally, Ms. Markham argues that the adoption and enforcement of the provisions of the nuisance law violate her constitutional right to equal protection under the law. For this claim, Ms. Markham cites to concerns that were raised regarding the law's impact on survivors, which were ultimately ignored by the city council, during the nuisance law's adoption; the alleged differential

enforcement of the Nuisance Property Section against a similarly situated male survivor; and the alleged reliance upon gender stereotypes by the city's police department.

Finally, Ms. Markham provides additional arguments as to why the nuisance law is not valid under state law.

### **Relief Sought**

Ms. Markham requested that the court: (1) declare the nuisance law is unlawful; (2) stop Surprise from enforcing the nuisance law against her and other residents; (3) award her damages and attorney's fees; and (4) grant any other relief the court finds appropriate.

### **Conclusion**

Nuisance and crime-free provisions continue to create barriers for survivors of domestic and sexual violence. Specifically, such provisions force survivors to choose between seeking help from the police, even in life-threatening situations—and maintaining crucial housing stability.

### **Resource**

Complaint, Nancy Markham v. City of Surprise (D. Az. Aug. 27, 2015), available at: <https://www.aclu.org/legal-document/nancy-markham-v-city-surprise-complaint> ▪