



AB 1418 Monitoring and Enforcement

Agenda

- Background on crime-free polices.
- Key AB 1418 provisions.
- Monitoring strategies.
- Litigation under AB 1418
- Additional claims.
- Q&A

What is a Crime-Free Policy (CFP)?

- Generally, there are two types of CFPs: **crime-free nuisance ordinances** and **crime-free programs**.
- **Nuisance ordinances** are generally mandatory local laws that penalize owners and/or tenants for nuisance behavior and criminal activity that occurs on or near a property.
- **Crime-free programs** are generally voluntary and have three primary components:
 - Training by local PD for owners on things like surveillance of tenants, communication with law enforcement, conducting criminal background checks, and the eviction process.
 - Requiring or encouraging the use of a crime-free lease addendum.
 - Considered the “soul” of these crime-free programs.
 - Certification of participating properties as a crime-free property and use of the designation in signage and marketing materials.
 - Usually conditioned on compliance with above-mentioned program components.

Common CFP Features

- Prohibit activities/behavior that is neither criminal or a nuisance by using broad, vague, and or subjective definitions of “criminal activity” and “nuisance behavior.”
- Require or encourage a tenant to be evicted for alleged criminal activity, even where there is no conviction and/or where the alleged activity that did not occur at the property.
- Require or encourage a landlord to evict an entire household for the alleged violation(s) of one household member.
- Define nuisance to include emergency service calls and mere contact with the police.
- Authorize a local jurisdiction to maintain a tenant registry for the purpose of tracking tenants and reporting incidents to property owners.
- Require landlords to register as rental property owners.
 - **Revocation of license is threatened to encourage an owner to pursue eviction or other tenant penalties.**
- Require criminal background checks of both prospective and existing tenants;
- Require the use of a “crime-free” lease addenda that often makes any **single alleged** violation of the lease or related ordinance a **material and irreparable breach of the lease.**

History of CFPs

- CFPs gained popularity in the early 1990s.
- First Created by the Mesa, AZ PD with the goal of “law enforcement-based crime prevention”
- In response to Black and Brown people increasing suburban growth in the 1990s.
- CFPs part of a legacy of laws and policies that perpetuate racial segregation and harassment of Black and Brown people in housing.
- By connecting CFH with protecting communities, these laws and policies contribute to the narrative that black and brown people are harmful to white communities.
- The underlying purpose is to determine who can and cannot live in white communities.

Proliferation of CFPs

- At least 130 CA jurisdictions have some variation of a CFP.
 - This is based on a review slightly more than half of CA jurisdictions, so number is likely much higher.
 - Using a more expansive definition of CFPs, the LA Times estimated that approximately 147 CA jurisdictions have some variation of a CFP.
- A 2023 Rand Corp study estimated that about 4.5 million CA renters are exposed to CFPs.
 - This study only reviewed crime-free programs, not nuisance ordinances.
- Approximately 2000 municipalities nationwide have a CFP.

CFP Justification

- Primary justification is crime reduction.
- Other purported benefits:
 - Increased property values.
 - Stronger relationship between law enforcement and the community they serve.
 - Greater community cohesion.
 - Prevention of more serious crime.

Actual Effects of CFPs

- No evidence that CFPs actually reduce crime.
 - A 2020 LA Times Article found that crime was either stable or on the decline in many jurisdictions that adopted a CFP.
 - The big change in these jurisdictions was an increase in the Black and/or Latinx population.
 - The clear implication is that CFPs are often adopted in response to demographic change, not a desire to reduce crime.

More Evidence that CFPs Target Demographics

- The 2023 Rand Corporation study confirmed that CFPs have virtually no effect on crime rates.
 - The same study also found that jurisdictions with CFPs have a larger proportion of Black residents than jurisdictions without.
 - And within CFP jurisdictions, CFP-covered units are located in neighborhood blocks with lower per capita incomes than in neighborhood blocks not covered by the CFP.
 - **In short, people of color with low incomes were disproportionately targeted by the CFPs.**

Nexus Between Demographic Change & Crime-free/Nuisance laws

Nuisance and Crime-Free Policies Often Approved in Response to “Demographic Change,” or in Increase in BIPOC Residents Moving into the Area

■ Cities with housing policies ■ No policy

Most cities with large influx of Black residents approved restrictive rental rules

A Times analysis found that 85% of California cities with the largest increases in Black population since 1990 have approved crime-free housing policies that encourage landlords to evict or exclude tenants who have had some interaction with police.

Discriminatory and Displacing Effect of CFPs

- Given their racial motivation, CFPs are disproportionately enforced against Black and Latinx renters, impacting their housing stability and increasing their risk of homelessness.
 - The disproportionate effect on Black residents was highlighted by the California Task Force on Reparations, which identified CFPs as a contributing factor to housing segregation and called for their repeal
- CFPs also disproportionately harm communities that tend to have greater contact w/ police and emergency personnel like survivors of domestic violence and persons with disabilities.
- **Critically, the 2023 Rand Corp study found that CFPs substantially increased the number of evictions in CFP jurisdictions.**
 - **This shows the significant effect of CFPs on housing stability.**
 - **Housing instability impacts all facets of life including voting rights, educational opportunities, employment and even health. CFPs also negatively impact other areas of life.**

AB 1418 in General

- Not an outright preemption of local CFPs
- Instead, AB 1418 focuses on the most common CFP features that lend themselves the most to meritless and discriminatory evictions and prohibits them one by one.
- **These features are the foundation of discriminatory CFPs, so eliminating them should make CFPs functionally inoperable as a tool for displacement.**

AB 1418 Prohibitions

- AB 1418 prohibits local governments from promulgating, enforcing, or implementing an ordinance, rule, policy, program, or regulation, that does any of the following :
 - Imposes or threatens to penalize any person as a consequence of mere contact with law enforcement, even if it occurs on or near the property;
 - Requires or encourages an owner or landlord to:
 - evict or penalize a person for their association with another tenant or HH member who has had contact with law enforcement or has a criminal conviction,
 - evict a person for unlawful conduct that is only alleged or solely because of their arrest on or near the property,
 - i.e., a conviction is required.
 - use lease provisions creating grounds for eviction beyond those provided for or that are in conflict with state or federal law,
 - i.e., prohibits broad definitions of nuisance and lease provisions that make a single violation a material and incurable breach, since state UD law requires a breach to be material and an opportunity to cure in most cases.
 - perform criminal background checks of existing and prospective tenants.

AB 1418 Prohibitions (cont.)

- It also prohibits any CFP that:
 - Defines as a nuisance emergency service calls or any act or omission not considered a nuisance under Civil Code section 3479;
 - Requires persons to obtain an occupancy permit as a condition of leasing rental property within a jurisdiction; or that
 - Establishes, maintains, or promotes a tenant registry for the purpose of discouraging landlords from either renting to persons on the registry or prohibiting such persons from leasing rental property in the jurisdiction. Gov. Code § 53165.1(b).

Key Definitions

- “Penalty” means:
 - Actual or threatened
 - assessment of fees, fines, penalties;
 - eviction or failure to renew tenancy;
 - denial of a housing subsidy;
 - suspension or nonrenewal of a certificate of occupancy, license or permit;
 - A designation or threatened closure of a property as a nuisance property or a similar designation; and
 - an actual or threatened nuisance action. Gov. Code § 53165.1(a)(3).
- “Law enforcement agency” means any department or agency of the United States, state, local government, or other political subdivision thereof, authorized to engage in or supervise the prevention, detection, investigation, or prosecution of a violation of criminal or civil law.
 - Includes ICE and the State Department of Social Services.

Application to Public Hous. Authorities (PHAs)

- AB 1418 applies to “local government agencies” as the term is defined in Government Code Section 82041.
 - This includes entities like cities, counties, special districts, and the like.
- It also includes PHAs.
 - There is case law holding that whether a PHA is considered a local government agency or a state agency is context-dependent. See e.g., *Lynch v. San Francisco Housing Authority*, 55 Cal. App. 4th 527 (1997).
 - However, those cases do not address the relevant question of whether a law intended to apply to local government agencies applies to PHAs.
 - The only case we found that addresses this question considered whether a PHA is a local gov. agency subject to the Brown Act.
 - The court held in the affirmative and explained that “. . . a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. *Torres v. Board of Commissioners*, 89 Cal.App.3d 545, 550 (1979).

AB 1418 and PHAs

- Some of the confusion seems to stem from language in case law referring to PHAs as state agencies.
- A CA Attorney General opinion clarified that a PHA is not a state agency in the literal sense that it is part of state government (as opposed to local government) but rather it is a state agency in a theoretical sense in that it performs functions of statewide concern, albeit within limited boundaries. 103 Ops. Cal. Atty. Gen. 17, 7 (2020)
- *Housing Authority of City of Los Angeles v. City of Los Angeles*, 38 Cal.2d 853, 861 n. 1 & 2 (1952) has helpful language explaining that PHAs, like other local governments, do not function independently of state law and that they are all administrative arms of the state tasked with pursuing state concerns and effecting the legislative objective

Applying AB 1418 (1 of 4)

- The City of Fresno has a standard rental housing crime-free nuisance ordinance.
 - The ordinance defines nuisance as **“unnecessary or unusual noise,”** causing **“annoyance or discomfort to an ordinary person of normal sensitivities,”** **“habitually”** engaging in prohibited conduct, and the **“disruption of the character of the community.”** City of Fresno Municipal Code, ch. 10, art. 7, § 10-708(e).
 - The ordinance punishes residents for **“frequent”** police calls to the **“adjacent area”** of a given property. Id. at § 10-708(g)
 - **“Responsible parties”** include all occupants, whether the person engaged in the alleged prohibited conduct or not. Id. at § 10-704 (k)
 - Under threat of heavy fines, owners have 5 days from when the City issues a notice of violation to abate an alleged nuisance. Id at §§ 10-709, 10-710.
 - The standard notice contains a list of “suggested” remedies, including eviction.

Applying AB 1418 (2 of 4)

- AB 1418 violations:
 - **Civ. Code § 3479** defines a nuisance as “[a]nything which is **injurious to health . . . or is indecent or offensive to the senses, or an obstruction** to the free use of property, so as to **interfere with the comfortable enjoyment of life or property**, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway . . .”
 - Fresno’s ordinance creates a broader and more subjective definition of a nuisance, including “unnecessary or unusual noise,” anything that causes “annoyance or discomfort to an ordinary person of normal sensitivities,” and the “disruption of the character of the community.”
 - Terms may include things that are neither injurious to health, indecent, offensive to the senses, or that interfere or obstruct property.
 - Defining nuisance to include “frequent” police calls to the “adjacent area” violates the prohibition on defining as a nuisance emergency service calls.
 - Defining “responsible parties” to include all occupants may violate the prohibition on penalizing a person for their association with another tenant or HH member who has had contact with law enforcement or has a criminal conviction.
 - And abatement notices that suggest evicting a tenant or HH as a way to abate the alleged nuisance violates the prohibition on encouraging the eviction of a person for alleged misconduct.

Applying AB 1418 (3 of 4)

- The City of Fremont administers a typical crime-free rental housing program.
 - The program is voluntary, but the City publicly lists “Fully Certified Properties” on its website and characterizes them as crime-free and safe.
 - **If you’re not on the list, the clear implication is that your property is not crime-free or safe, which effectively forces properties owners to participate in the program.**
 - To be a “Fully Certified Property,” an owner must complete all 3 phases of the City’s program.
 - Training for property managers on applicant screening, drug and crime recognition, the eviction process, and how to work with police and code enforcement.
 - Owners must also use the city’s “suggested” lease addendum which prohibits criminal activity on and off the property and a long list of other non-criminal behavior and **it makes these actions a material and incurable violation of the lease.....**which effectively fast-tracks evictions.

Applying AB 1418 (4 of 4)

- AB 1418 violations:
 - Standard provisions in crime-free lease addenda, bolstered by training on tenant surveillance, the eviction process, etc. **encourages** evictions based on unlawful conduct that is merely alleged and a person's association with another tenant or HH member that has come into contact with law enforcement.
 - The program also violates the prohibition on **encouraging** the use of lease provisions that create grounds for eviction beyond those provided for or that are in conflict with state or federal law as well as the prohibition on encouraging background checks of prospective and existing tenants.

Monitoring Strategies

- Determine which jurisdictions in your service area have a CFP:
 - Review CZ map.
 - Review city/county municipal codes.
 - Ask police department or the appropriate agency via a PRA asking for any and all documents related to the jurisdiction's CFP.
 - If you cannot cite a specific ordinance or program, request will have to be more general.
 - E.g., ask for “any and all documents related to any policy or program, whether formally adopted or not, that penalizes (as that term is defined under Gov. Code § 53165.1(a)) a tenant, owner, etc. for alleged criminal behavior.”

Monitoring Strategies (cont.)

- Track CFP evictions:
 - See if ordinance or program is referenced in eviction notices.
 - If not, ask if client has had police contact recently and/or has received any notices from the city regarding alleged criminal behavior or nuisance activity.
- Obtain enforcement data via PRA:
 - How many violations have been reported to local property owners and/or property management companies.
 - How many fines issued under CFP.
 - How many evictions effected under CFP.
 - Any suspensions of rental housing licenses.
 - Any databases maintained by PD (or other agency) of tenants in rental housing.

Litigation

- AB 1418 does not require a local jurisdiction to amend or repeal its noncompliant CFP, thus there is no violation for simply having a noncompliant ordinance or program on the books.
- Liability exists where a jurisdiction implements or takes enforcement action pursuant to a noncompliant CFP.
 - E.g., issuing notices of violation to owners/LLs, levying fines, continuing to track CFP violations for prohibited purposes, marketing “voluntary” crime-free programs that promote or encourage prohibited actions.
- Potential plaintiffs include residents, tenants, owners, landlords, or “other person[s].”
 - Includes 501(c)(3) nonprofit organizations.

Remedies

- Injunctive relief enjoining the government entity from further implementation/enforcement.
- Declaratory relief finding a CFP void and unenforceable.
- Other equitable relief the court may find appropriate.
- Attorneys' fees and costs.
- **These remedies are cumulative and not exclusive, so compensatory and noneconomic damages can be pursued if appropriate.**

Additional Claims

- Federal Fair Housing Act (FHA)
 - Prohibits discrimination in the sale or leasing of housing, financing of housing, and other housing related activities based on a person's protected class status.
 - A CFP may violate the FHA on several grounds, including:
 - Discrimination based upon making unavailable or denying a dwelling: 42 U.S.C. § 3604(a);
 - Discrimination in the provision of housing services or municipal services: 42 U.S.C. § 3604(b);
 - Discrimination in the terms or conditions of the tenancy: 42 U.S.C. § 3604(b);
 - Intimidation, coercion, interference with a person exercising a fair housing right: 42 U.S.C. § 3617.
 - **Discriminatory act or policy may be intentional or simply have an unintentional discriminatory effect.**

Intentional Discrimination Under FHA

Could manifest in several ways:

1. **Discriminatory motivations/statements of decisionmakers.** *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563, 565 (E.D. La. 2009).
 - Statements by mayor that “we believe in neighborhoods, not hoods” and describing students as “predominantly African American kids who bring in that mentality from the inner city where that was a gang-related thing by staking their turf. Jenna Prochaska, Breaking Free from “Crime-Free”: State-level Responses to Harmful Housing Ordinances, 27 LCLR 259 (2023)
 - Statements by a city councilmember that city CFP was needed to “correct a demographical problem” and to “improve our demographic,” adding that “those kind of people . . . [are of] no addition and of no value to this community, period” and that he wanted to “get them the hell out of our town.” *U.S. v. City of Hesperia et al.*, No. 5:19-cv-02298 AB, 2022 WL 17968834 (Cal.C.D. 2022)

Intentional Discrimination Under FHA (cont.)

2. Discriminatory animus expressed by members of the public and acquiescence by public officials. *Innovative Health Sys. Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997) (finding that “a decision maker has a duty not to allow illegal prejudices of the majority to influence the decision-making process. A ... discriminatory act [is] no less illegal simply because it enjoys broad public support.”)

- See *Jones v. City of Faribault*, No. 18-1643, 2021 WL 1192466 at *14 (D. Minn. Feb. 8, 2021) (finding that CFP adoption was driven in part by racial animus based evidenced by **record of race-based complaints by city residents against the city’s Somali population and of their negative views about the population that were expressed over a sustained period**).

3. Disparate treatment in enforcement

- For example, ordinance is overwhelmingly enforced against protected classes.

Disparate Impact under FHA

- FHA liability also exists where a policy or action has no discriminatory intent but nonetheless has an unjustified discriminatory effect.
- For example:
 - Ordinances that penalize contact with police or calls for service may have a disparate impact on Black and Latinx tenants, DV survivors, and persons with disabilities who tend to have more frequent contact with law enforcement and emergency personnel.
 - Ordinances that require the eviction of an entire HH for a violation by a single member, particularly for crimes committed at the unit, may have a disparate impact on women who are the overwhelming majority of victims of domestic and sexual violence.
 - Ordinances that target rental housing or subsidized housing create the potential for a disparate discriminatory effect, since tenants of such housing are disproportionately protected class members.

Constitutional Claims

- **EPC of the Fourteenth Amendment**

- The Equal Protection Clause of the Fourteenth Amendment provides that no State shall **“deny to any person within its jurisdiction the equal protection of the laws.”** U.S. Const. amend. XIV, §1.
- The broad purpose of the EPC is **“... to eliminate racial discrimination emanating from official sources in the states.”** *McLaughlin v. State of Fla.*, 379 U.S. 184, 192 (1964).
- **This means** a crime-free program or nuisance property ordinance could violate the Fourteenth Amendment if its enactment or manner of enforcement is **motivated by a discriminatory purpose, even if the law itself is not discriminatory on its face.** *Arce v. Douglas*, 793 F.3d. 968, 977 (9th Cir. 2015)

EPC of the Fourteenth Am. (cont.)

- A plaintiff pursuing an EPC claim does not have to prove that racial animus was the sole purpose behind the challenged law, **only that it was a motivating factor**. *Arce v. Douglas, supra*, at 977
- Factors considered in determining racial motive:
 - The impact of the law and whether it bears more heavily on one race or another;
 - the historical background of the decision, particularly any actions taken for invidious purposes;
 - the specific sequence of events leading to the challenged action;
 - the government agency's departure from normal procedure and substantive conclusions; and
 - the legislative or administrative history, especially contemporary statements made by members of the decision-making body, meeting minutes, and reports. *Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-67 (1977)
- Fourteenth Am. EPC claims are subject to a burden shifting process that gives a jurisdiction the opportunity to prove that the challenged law furthers a legitimate, non-discriminatory reason, which plaintiffs can rebut as a pretext for discrimination.

Due Process Under the Fourteenth Am.

- The Fourteenth Amendment provides that no State shall “... **deprive any person of life, liberty, or property, without due process of law.**” U.S. Const. amend. XIV, §1.
- Procedural due process under the Fourteenth Amendment requires **notice and an opportunity to be heard at a meaningful time and in a meaningful manner.** *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).
 - Tenants have a possessory interest in their leasehold that is subject to DP protections.
- Some CFPs threaten tenants’ leasehold interest:
 - CFPs that pressure or encourage LLs to evict tenants.
 - CFPs that allow for the condemnation of an entire property.
 - CFPs that rescind LL licenses and occupancy permits.
 - Generally, such CFPs give the LL notice and an opportunity to challenge the adverse action but not tenants, robbing them of basic DP protections.

First Amendment

- Under the First Amendment, a law “. . . **must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.**” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).
 - This means that a policy is void for vagueness if its prohibitions are not clearly defined.
- CFPs often fail to define key terms and instead use ambiguous terms to describe prohibited conduct that are subject to varying interpretations.
 - Fresno’s definition of nuisance is a good example.

UD Pilot Program

- State program created in 1998.
- Authorized the city attorneys for Long Beach, Los Angeles, Oakland, and Sacramento to initiate eviction cases against tenants arrested on illegal drugs or weapons charges.
- **Final report to the Assembly Judiciary Committee found that 70% of eviction notices issued under the program were issued against racial minorities.**
- The report also found insufficient evidence to determine whether or not the program reduced crime in participating cities, though city attorneys claimed the program was a useful crime-fighting tool.
- Program expired on January 1, 2024 and was not renewed.