



Nuisance Ordinances and Crime-Free Housing Policies: Impacts on Survivors of Domestic Violence

Bay Area Legal Aid
Fair Housing Law Hot Topics 2019

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What We'll Cover Today

- Overview of Nuisance Ordinances and Crime-Free Housing Programs and How They Operate
- How Nuisance Ordinances and Crime-Free Housing Programs Can Be Discriminatory
- Combatting the Discriminatory Effects of Nuisance Ordinances and Crime-Free Housing Policies
- Q&A

Introduction to Nuisance Ordinances and Crime-Free Housing Policies

What are Nuisance Ordinances?

- Local laws and policies that penalize landlords and tenants for certain activity that occurs at a given property.
- Such activity can include when police are called too many times to a property within a certain time period (e.g., a certain number of times in 3 months).



Example Nuisance Ordinance

In addition to any other act declared to be a nuisance by this Code or other ordinances of the city, nuisances are hereby defined and declared to be as follows:

[...]

(17) Any premises upon which any of the following acts or conditions have occurred or continue to occur, whether by the owner, occupants or persons frequenting or congregating about the property:

[...]

f. More than two instances within a 180-day period of incidents of peace disturbance or domestic violence resulting in calls...to the police;

-Maplewood, MO Code of Ordinances – Article III, Section 34-240 (2017)

What are Crime-Free Housing Policies?

- Local laws and policies that require landlords to screen potential tenants for past criminal activity, and penalize landlords for tenants that commit “criminal activity” at the property
- Often involve the use of a crime-free lease addendum

Crime-Free Housing

Example property management company blog post:

There's nothing in the [crime-free lease addendum] that can recognize the tenant's lack of culpability for the crime — the landlord gets fined for calls to the address, not calls *about an individual*, so what ends up happening here is that the woman who has been beaten...and probably worse is now also getting evicted because her boyfriend has too much control over her life and can't be excised from it.

Now, the argument certainly can be made that even though the situation isn't [a survivor's] fault, it's still an improvement to evict her and get someone else living there who won't disimprove the neighborhood — but that doesn't make it any easier on us landlords to take legal action against a person whose primary crime has been to suffer in a way that upsets her neighbors.

-Housing provider discussing local Michigan law requiring a crime-free lease addendum

Sample Crime-Free Housing Lease Addendum

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Resident, any member of the resident's household, or a guest or another person under the resident's control shall not engage in any illegal activity, including:

prostitution as defined in Penal Code '647(b); criminal street gang

activity, as defined in Penal Code '186.22 et seq.; **assault and battery,** as prohibited in Penal Code '240/242; threatening or intimidating as prohibited in California Penal Code 422; burglary, as prohibited in Penal Code '459; the unlawful use and discharge of firearms, as prohibited in Penal Code '245, including but not limited to the unlawful discharge of a weapon, on or off the dwelling unit premises, **or any breach of the lease**

agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent, or other tenant, or involving imminent or actual serious property damage, as

defined in California Civil Code.; **sexual offenses,** as prohibited in Penal Code '269 and 288, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent or other tenant or involving imminent or actual serious property damage;



Development and Proliferation

- How common are nuisance and crime-free ordinances?
 - For example, according to Sargent Shriver National Center on Law & Poverty's *Cost of Being Crime Free*, in 2013, Illinois alone had more than 100 such ordinances.
 - According to one estimate, since 1992, 2000 municipalities in the United States have adopted crime-free housing ordinances.
 - K. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting a Flawed Federal Eviction Law*, 65 U.C.L.A. L. Rev. 1146, 1151 (2018)

Nuisance and Crime-Free Housing Ordinances

Common Features

- While nuisance and crime-free ordinances and policies vary by municipality, these laws can share a number of characteristics, such as:
 - Imposing fines and other penalties on non-compliant landlords and tenants
 - Requiring or pressuring landlords to evict non-compliant tenants
 - Requiring criminal background checks on potential tenants
 - Requiring that landlords use crime-free lease addenda
 - Rental licensing schemes – typically where a landlord or tenant's license can be revoked for non-compliance

Issues with these Laws and Policies

- These laws and policies can:
 - Harm and punish domestic violence survivors and persons with disabilities who seek help from the police or emergency services (e.g., calling 911).
 - Fail to make exceptions for 911 calls made by people who need police or emergency assistance (e.g., domestic violence survivors).
 - Fail to distinguish between victims and perpetrators of crime.
 - Impose penalties on owners, leading to evictions of tenants (or denial of admission of tenants) – even those who are actually *victims*.
 - Broadly define nuisance activities, ranging from disorderly conduct to violent crime.
 - Negatively impact communities of color.



How Nuisance Ordinances and Crime-Free Housing Programs Can Be Discriminatory

Report on Nuisance Ordinances in Ohio

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- Cleveland State University and ACLU of Ohio examined nuisance and criminal activity ordinances in northeast Ohio.
- Implications for:
 - Communities of color
 - Survivors of domestic violence
 - Persons with disabilities, including mental health crises
 - Renters, including Section 8 Voucher holders
- See “Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio” (Nov. 2017).



HUD 2016 Nuisance Ordinance Fair Housing Guidance

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- Nuisance and crime-free ordinances can violate the Fair Housing Act by disproportionately impacting certain groups.
 - Each year, women comprise nearly **80 percent of persons** who are survivors of domestic violence.
 - Jurisdictions **cannot rely on stereotypes** about people engaging in nuisance or criminal activities to defend ordinances.
- Jurisdictions can also violate the Fair Housing Act by intentionally using the adoption or enforcement of a nuisance or crime-free housing ordinance to discriminate (e.g. selective enforcement).



HUD 2016 Nuisance Ordinance Fair Housing Guidance (cont.)

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- Guidance suggests repealing ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.

HUD Guidance on Criminal History and Housing

- HUD general counsel 2016 fair housing guidance
 - Adverse housing decisions based on a person's criminal record may violate the Fair Housing Act
 - Guidance applies to all housing covered by Fair Housing Act
 - Topics covered by guidance include use of arrests without a conviction, blanket bans
- HUD Notices PIH 2015-19/H 2015-10
 - Apply to HUD programs only

Examples of Where Nuisance or Crime-Free Ordinances Have Been Challenged

- Norristown, Pennsylvania (filed 2017, settled 2018)
- Berlin, New Hampshire (2014)
- Surprise, Arizona (2015)
- Hesperia, California (filed 2016, settled 2018)
- City of Peoria, Illinois (filed 2017)
- City of Faribault, Minnesota (filed 2018)

Combating the Discriminatory Effects of Nuisance Ordinances and Crime-Free Housing Policies

Nuisance & Crime-Free Housing Ordinances May Violate...

- **Fair Housing Act**
 - Relationship between sex discrimination and domestic violence
- **State & local laws**
 - Fair Employment & Housing Act (FEHA), Cal. Gov. Code § 12900, *et seq.*
 - Cal. Civ. Code § 1946.8; Cal. Gov. Code § 53165
- **Violence Against Women Act (VAWA)**
 - Protects survivors of domestic violence, dating violence, sexual assault, or stalking who are applying to/accessing federally assisted housing
- **U.S. Constitution**
 - First amendment right to petition government; due process

California Assembly Bill 2413

- Became effective January 2019
- Summary of protections
 - Protects individuals who need to call for police or emergency assistance (including other crime victims and individuals in an emergency) from penalties such as eviction;
 - Provides an eviction defense for tenants, residents, and occupants who face eviction for police/emergency calls; and
 - Overrides existing local ordinances that penalize tenants and landlords due to police/emergency calls, regardless of when the law was adopted.

Cal. Civ. Code §1946.8 (created by AB 2413)

- Landlords cannot penalize tenants or residents for exercising right to summon “law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, based on the person's belief that the assistance is necessary” to “to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency.”
- Can obtain injunctive relief against landlord violating these protections

Cal. Civ. Code §1946.8 (created by AB 2413)

- Creates an affirmative defense to eviction if a landlord evicts a tenant for calling police or emergency assistance as or on behalf of a **victim or abuse, victim of crime, or person in an emergency**
 - Rebuttable presumption under certain circumstances

Cal. Gov. Code §53165 (amended by AB 2413)

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- Prohibits local agencies (including cities, towns, counties, and housing authorities) from enforcing or implementing ordinances that requires (or allows) the imposition of penalties on landlords or tenants “as a consequence of law enforcement assistance or emergency assistance being summoned by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.”
- Preempts existing and future ordinances that violate this law.

Cal. Gov. Code §53165 (amended by AB 2413)

- If local agencies violate this section, tenants and landlords can obtain:
 - A court order requiring the jurisdiction to stop violating the law;
 - A court order rendering void ordinances/regulations that violate the law; or
 - Other equitable relief.

Example of Successful Advocacy: Norristown

- Norristown, PA had such an ordinance (called a “three strikes rule”).
 - No exceptions for domestic violence survivors calling the police.
- Lakisha Briggs, a domestic violence survivor, faced eviction because she called the police too many times over a certain time period.
- Ms. Briggs sustained serious injuries from her abuser because she was afraid to call the police out of fear of losing her housing.

Norristown (cont.)

- The ACLU brought a lawsuit against Norristown, alleging violations of the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA).
- HUD subsequently initiated its own administrative complaint on the grounds that the ordinance violated the FHA due to its impact on survivors.
- Norristown settled both actions, and repealed the ordinance.

Example of Successful Advocacy: Maplewood

- In 2017, the ACLU filed a lawsuit on behalf of Rosetta Watson, a domestic violence survivor, against Maplewood, MO.
- Maplewood had a nuisance ordinance with a rental licensing scheme.
 - Under Maplewood's nuisance ordinance, tenants could be penalized for making two or more calls for police assistance within 180 days.
 - Penalties not only included eviction, but went as far as **barring tenants from living in Maplewood for six-months**, by revoking their rental license.

Maplewood (cont.)

- Ms. Watson, who after having made calls for police assistance when a former boyfriend attacked her on four separate occasions, had her rental license revoked by Maplewood and initially lost her Section 8 Voucher.
 - This meant she had to move out of her town.
- In September 2018, Maplewood settled the case.
 - Settlement includes amendment of city's nuisance ordinance such that survivors and persons seeking emergency assistance are not penalized by the law.

Finding Nuisance Ordinances

- Local municipal code, which many cities have available online
- Asking local government or police department
- Letters or citations received by clients or their landlords

Considerations for Nuisance Ordinances

- How “nuisance” is defined?
- Is “domestic violence” referenced as an example of “nuisance” activity? Is domestic violence excluded?
- Could domestic or sexual violence be read to be included in “nuisance activity”?
- Does the ordinance distinguish between penalties for perpetrators and victims/survivors?
- Are a certain number of calls for emergency/police service counted toward a “nuisance” designation?

Finding Crime-Free Rental Housing Programs

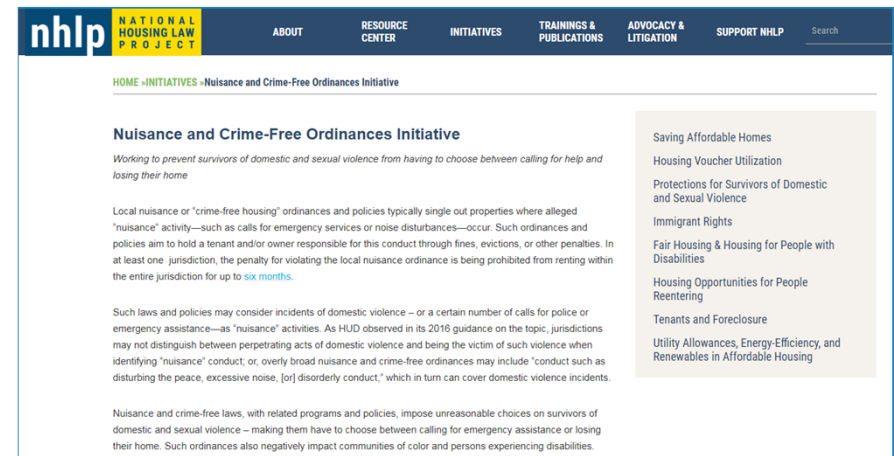
- Municipality's website
- Asking local police department
- Letters or citations received by clients or their landlords
- Tenant's lease addendum
- Training/workshop component for landlords

Considerations for Crime-Free Programs

- Is there a required lease addendum?
- Does that addendum distinguish between being a victim and a perpetrator of a crime (e.g., domestic violence, sexual assault) when it comes to establishing what is a lease violation?
- Does the program include a blanket ban on admissions for any criminal activity, regardless of the circumstances?
- Does any training requirement include considerations about the nature of domestic or sexual violence?

Our Initiative


- NHLP offers training and technical assistance on nuisance ordinances and crime-free housing policies
 - nuisance@nhlp.org
- Nuisance initiative website
 - Resources, including case summaries, info sheets, and articles



www.nhlp.org/initiatives/nuisance

Our Initiative Website

- We plan to update our website to include
 - Informational sheets for different audiences
 - Training materials
 - Additional case summaries
 - Additional links to studies and research reports
- If you feel like a specific resource would be helpful, please let us know.

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Getting Evicted for Calling the Police: Nuisance Ordinances and Their Impacts on Domestic Violence Survivors

Information for Local Advocates

What are Nuisance Ordinances?

Nuisance ordinances are local laws that often impose penalties (e.g., fines) on property owners for activity on their property that is considered to be “nuisance” activity. For example, failure to maintain one’s lawn is an example of a “nuisance.”

Such ordinances may also define nuisance activity as calling law enforcement or emergency assistance to a property a certain number of times within a certain timeframe. For example, if someone calls the police to their apartment complex too many times within a month or year, making such calls may be considered “nuisance” activity under local law. In response, property owners cited under nuisance ordinances may evict renters to avoid penalties.

How can Nuisance Ordinances Negatively Affect Domestic Violence Survivors and Other Populations?

- Local nuisance ordinances may count incidents of domestic violence or calls to 911 for assistance as nuisance activity, subject to penalties.
- Nuisance ordinances discourage survivors from calling for police or emergency assistance out of fear of eviction or other penalties. This makes survivors choose between their homes and their safety.
- Nuisance ordinances have also been shown to negatively affect persons with disabilities and communities of color.

Are there Possible Protections Under the Law?

Enforcement of nuisance ordinances against domestic violence survivors and other populations may violate laws such as:

- The Fair Housing Act and similar state laws that prohibit sex, race, and disability discrimination;
- The Violence Against Women Act, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federal housing programs;
- The U.S. Constitution, including one’s First Amendment right to seek help from the government; and
- Any state laws prohibiting nuisance ordinances that adversely impact survivors or other populations.

Need More Information?

To request training or technical assistance, please contact Renee Williams, rwilliams@nhlp.org.

Please note that this fact sheet is provided for informational purposes only, and should not be considered legal advice.

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Q & A

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Resources

- NHLP website: <https://www.nhlp.org/initiatives/nuisance/>
- Emily Werth, Sargent Shriver National Center on Poverty Law, *The Cost of Being “Crime-Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (Aug. 2013), available at: <http://www.povertylaw.org/files/docs/cost-of-being-crime-free.pdf>
- Cleveland State University and ACLU of Ohio, *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio* (Nov. 2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028

Thank You!

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