

# Reducing the Cost of Crime Free

Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois

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*A Model Ordinance by Open Communities and  
The Sargent Shriver National Center on Poverty Law*



# Reducing the Cost of Crime Free:

## Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois

In August 2013 the Sargent Shriver National Center on Poverty Law released *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances.*<sup>1</sup> This report outlined some of the real costs to local municipalities who enact these ordinances, including the serious fair housing implications of advancing and enforcing such laws.

*Reducing the Cost of Crime Free: Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois* responds to the growing recognition that these local ordinances may harm tenants and landlords, impede fair housing, and expose local governments to liability. It offers municipalities the tools necessary to create rental housing policies that value quality, safe rental housing while also protecting protected classes and respecting the rights of landlords and tenants.

Both Open Communities and The Shriver Center are available to provide technical assistance to local municipalities in the drafting of these ordinances.

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Cover: Multifamily rental buildings left to right Evanston, Niles, Skokie, and Park Ridge: Photos by Brendan Saunders  
<sup>1</sup> <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>

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## About Open Communities

Open Communities' mission is to educate, advocate and organize to promote just and inclusive communities in north suburban Chicago. The agency works with current and prospective residents and local groups to promote economically and culturally diverse communities. Its services include the investigation of fair housing discrimination and landlord/tenant complaints, foreclosure and predatory lending counseling and prevention, Homesharing, and community education and grassroots organizing for fair and affordable housing, education justice, and immigrant leadership. In 2015, it organized the campaign, *The Justice Project: The March Continues*, a grassroots social justice movement to foster welcoming northern suburbs.

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## About the Shriver Center

The Sargent Shriver National Center on Poverty Law provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty. We specialize in practical solutions. Through our advocacy, communication, and training programs, we advocate for and serve clients directly, while also building the capacity of the nation's legal aid providers to advance justice and opportunity for their clients.

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## Assessment Guide for Local Governments Considering Enacting or Enforcing Crime Free / Nuisance Property Ordinances in Illinois<sup>2</sup>

In August 2013, the Shriver Center published a report on the spread of crime-free and nuisance property ordinances throughout the country. That Report, titled “The Cost of Being ‘Crime Free’: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances”, detailed the problems these ordinances are causing for tenants, landlords, and communities throughout the country. These problems include:

- Undermining public safety by silencing crime victims and others who need to seek emergency aid or report crime;
- Increasing levels of housing instability and homelessness for low-income tenants, including victims of domestic and sexual violence, individuals with disabilities, racial and ethnic minorities, and families with children;
- Reducing the availability of desperately needed affordable rental housing; and
- Perpetuating segregation and inequality in access to opportunity.

Since the report was released, many local governments in Illinois have sought information on how to ensure that their ordinances are not harming tenants or otherwise violating fair housing laws.

In response, this Guide was drafted for local governments who have enacted or are considering enacting crime free or nuisance property ordinances in Illinois. Part One, which is targeted to local governments considering enacting crime free housing or nuisance property ordinances, flags some of the questions that must be considered and suggests alternatives that would pose fewer risks vulnerable tenants. Part Two, which is targeted to local governments who have already enacted crime free housing or nuisance property ordinances, highlights some of the enforcement factors that should be tracked and outlines an annual assessment that should be conducted to reduce the risk of harmful unintended consequences.

While utilizing this Guide and amending policies and practices accordingly can be an important step towards protecting vulnerable tenants, we caution local governments that it may not eliminate the risk of harm or liability. The only way a municipality can fully avoid the risks that result from the enforcement of these ordinances is to simply avoid them in the first place, and instead to focus on other available tools to improve public safety and rental housing quality.

### Part One: Considering Community Needs and Alternatives

The federal Fair Housing Act (FHA) forbids local governments from enacting or enforcing intentionally or unintentionally discriminatory housing policies.<sup>3</sup> Ordinances that have a disparate impact on one or more protected groups can violate fair housing law, unless they are justified as necessary to achieve an important municipal objective, which could not be achieved with a less

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<sup>2</sup> This Guide was developed by the Sargent Shriver National Center on Poverty Law and Open Communities with the generous support of the U.S. Dept. of Housing and Urban Development’s Fair Housing Initiatives Program grant funds.

<sup>3</sup> See 24 C.F.R. § 100.500 (the Fair Housing Act prohibits practices that have an unjustified disparate impact on a protected group); *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* 576 U. S. \_\_\_\_ (2015) (affirming disparate impact theory under the Fair Housing Act); see also *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563, 567-68, 577-78 (E.D. La. 2009) (finding disparate impact caused by a reduction of the supply of rental housing).

discriminatory effect.<sup>4</sup> Furthermore, entitlement jurisdictions have an affirmative obligation to further fair housing in their communities.<sup>5</sup> These communities must not simply refrain from discrimination, but must also actively promote integration and equal access to housing opportunities within the community. Local governments should scrutinize all housing-related ordinances to determine whether any have the effect of creating housing barriers for protected groups and, if so, whether options are available that would reduce the harm for those groups.<sup>6</sup>

As the Shriver Center detailed in its 2013 report, crime free and nuisance property ordinances pose many risks under the FHA, including risks of disproportionate harm to racial and ethnic minorities, individuals with disabilities, and survivors of domestic violence (who are disproportionately women). Because of these risks, it is critical that local governments carefully assess their community needs and the potential alternatives available to them before enacting a crime free housing or nuisance property ordinance. This assessment should include the following steps:

- (1) Determine what legitimate municipal objective the local government is seeking to achieve with the enactment of a crime free or nuisance property ordinance. Is the problem that has been identified supported by statistical evidence? If the community has identified a concern related to crime on rental properties, for example, does the data support the conclusion that criminal activity on rental properties has increased? How have landlords responded to the criminal activity without a crime free housing or nuisance property ordinance in place?
- (2) Where the local government finds a legitimate municipal objective, consider whether alternatives could be adopted to reduce the risks of harmful and/or discriminatory effects. One alternative that should be considered is the enactment of a rental inspection program partnered with strong tenant protections and fair housing training for landlords, tenants, and program administrators. This type of ordinance would allow local governments to improve public safety and rental housing quality without presenting the risks inherent to ordinances that incentivize eviction by making property owners responsible for the behavior of their tenants. An alternative rental property ordinance of this kind could include:

**Landlord Registration** – Landlord registration can be an important step towards gaining control over absentee landlords and improving rental housing stock. Simply by requiring property owners to register their contact information on a periodic basis through a landlord registration program, local governments can gather the information necessary to effectively inform property owners of code violations on their rental properties and, if necessary, seek abatement of those violations in court. Registration can also be key to ensuring that tenants have proper contact information for landlords so as to address conditions or other safety concerns at their property.

- For example, a local government may specify by ordinance that a rental housing unit will be registered with the City where the owner/landlord provides the local government with the following information:

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<sup>4</sup> *Id.*

<sup>5</sup> 42 U.S.C. §§ 5304(b)(2), 5306(d)(7), § 12705(b)(15), and related regulations.

<sup>6</sup> See *Office of Fair Hous. And Equal Opportunity, U.S. Dep't of Hous. and Urban Dev., Fair Housing Planning Guide, Volume 1 2-5-2-25(1996)*, available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

- Description of the rental housing property, including the street address;
- Description of all units on the rental housing property;
- Name and contact information (including phone number for during and after business hours, and email) for the owner; and
- Name and contact information (including phone number for during and after business hours, and email) for a local person or entity that the tenant may contact to request repairs or address other matters related to the property or tenancy.

**Complaint Process/Hotline** – Any rental inspection program should be partnered with the development and advertising of a process/hotline through which tenants can make complaints concerning conditions, safety, and other public health complaints and receive rapid inspection. This will invest tenants in the improvement of the housing stock and promotes healthy housing.

- Note that any inspection program adopted by a local government should incorporate provisions explicitly protecting tenants from retaliatory action and providing funded relocation assistance. These protections are critical to ensure that tenants will be safe to report poor conditions and code violations without placing their housing at risk. For an example, see the City of Chicago’s prohibition on retaliatory conduct, copied in Appendix 1.

**Tenant Relocation Assistance** – Local governments should also incorporate tenant relocation assistance provisions into their rental inspection programs to ensure that property owners will provide tenants with financial assistance to secure new housing if ordinance-driven mandatory repairs prevent the tenants from living there during the rehabilitation (e.g., no heat). Protections of this kind can be need-based, but are critical to avoid the displacement or homelessness of low-income tenants, who may not be able to afford the cost of temporary housing while critical repairs are being made. It also serves to discourage property owners from allowing their properties to fall into such a state of disrepair and thereby incurring these additional costs.

**Notice and Consent from Tenants** – Any program implementing inspections on rental properties, whether they are based on complaints or scheduled on a periodic basis, should incorporate provisions requiring clear notice to inform tenants and landlords of pending inspections. This is critical, because the Fourth Amendment provides tenants with the right to be free from unreasonable searches in their homes. Although local governments may develop rental property inspection programs related to the public health, safety, and welfare by exercising their police powers, they generally must first obtain the informed consent of tenants to carry these programs out.<sup>7</sup> For an example, see the model notice and consent provisions contained in Appendix 2.

**Fair Housing Training for Landlords and City Employees** – All landlords, code inspectors, and other municipal employees whose work may relate to the enforcement of a local inspection ordinance should be trained on the limits placed on the municipality’s authority, both by the terms of the ordinance itself and by relevant civil rights laws. This will help to ensure that employees are acknowledging and respecting those limits in all interactions with landlords and tenants. Training should also be provided to landlords as a component of the Landlord registration program described above. Training conducted by local governments should include information on:

- State and Federal Fair Housing Laws, including those protections contained in the FHA;

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<sup>7</sup> There are some limited exceptions to this requirement for severe conditions requiring immediate intervention from the local government, but inspection programs should generally incorporate notice and consent provisions.

- State and Federal protections for survivors of domestic violence, including those protections contained in the Violence Against Women Act (VAWA), Illinois Safe Homes Act, 765 ILCS 750, and the affirmative defense provision for domestic violence survivors under the Forcible Entry and Detainer Act;
- State and Federal protections for individuals with disabilities, including those protections contained in the Americans with Disabilities Act (ADA); and
- Information on where to call or file a complaint for discrimination.

**CPTED Principles** – Local governments can also employ crime prevention through environmental design (“CPTED”) principles to reduce criminal activity on rental properties.<sup>8</sup> Local governments have the option of incorporating CPTED principles into their local municipal codes. These principles, which seek to reduce criminal activity through design and management of the physical environment, include:

- Promoting proper upkeep and management of rental properties to reduce crime and send the message that a property is well cared for and therefore would be inhospitable to a criminal. Proper upkeep includes improved lighting, mowing grass, trimming trees, painting over graffiti, and picking up trash;
- Encouraging the use of landscaping to create private space (i.e, hedging) and sending a “hands off” message to potential offenders. The strategic placement of parking, sidewalks, landscaping, windows, doors, and walkways can increase the visibility of people, parking areas, vehicles, and site activities, thereby discourage criminal activity and set up natural surveillance without needing to turn to more aggressive methods of policing; and
- Promoting the strategic consideration of “access control” to the property by limiting building entrances and exits and providing clear delineations demonstrating to the public where a site goes from public to private space.

## **Part Two: Tracking and Annual Assessment of Existing Ordinances**

If a local government has already opted to adopt a crime free or nuisance property ordinance, is it critical to carefully track the enforcement of that ordinance and annually analyze its impact on protected classes. This Part of the Guide highlights some of the factors related to ordinance enforcement that local governments should track, and outlines a model Annual Assessment, which should be made on an annual basis to ensure that ordinance enforcement does not have harmful or discriminatory consequences on vulnerable tenants in the community. Although this Assessment must be tailored by each jurisdiction depending on the type of ordinance and enforcement practices in place, it should typically include the following steps:

**(1) Survey stakeholders in the community**, including disability and domestic violence service providers, homeless service providers, fair housing organizations, legal services providers, and all property owners who were sent notices or were otherwise impacted by ordinance enforcement. Some of the greatest harms that crime free housing and nuisance property ordinances cause can be informal: after receiving an enforcement notice, landlords may be incentivized to take action to push

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<sup>8</sup> See, e.g. National Crime Prevention Council, *Best Practices for Using Crime Prevention Through Environmental Design in Weed and Seed Sites* (Dec. 2009), available at <http://www.ncpc.org/resources/files/pdf/training/Best%20Practices%20in%20CPTED%20-2.pdf>.

out tenants who make frequent police calls. Ordinances may also incentivize landlords to discourage tenants from calling 911 to avoid the risk of penalties. These harmful secondary effects may be impossible to track without consulting with local service providers and property owners. See Appendix 3 for a proposed list of survey questions.

**(2) Track all data related to the enforcement** of the crime free or nuisance property ordinance, including information on each notice sent to property owners and tenants before penalties are imposed, regardless of whether penalties were ultimately imposed on the property owner. As described above, some of the most harmful effects of these ordinances can take place even where the local government does not follow through with enforcement or the imposition of penalties. The information gathered about each notice sent out under the ordinance should include:

- Information on the targeted property, including the property address and the names of any state or federal subsidies attached to the unit or tenants;
- Information on the underlying activity, including any criminal charges brought or any alleged violation of a local ordinance;
- Information about any tenants impacted, including demographic information such as age, race, gender, and any known disability;
- Information about the alleged offender, including the alleged offender's age and information on whether the alleged offender was the tenant, a guest of the tenant, or neither; and
- Information on the resolution, including any nuisance fines issued and any abatement plan entered into with the property owner.

**(3) Conduct an annual assessment of the ordinance's impact** to determine whether it is having any harmful unintended consequences on the community. The risk of harm presented by crime free and nuisance property ordinances is varied and described in more detail in the 2013 Report. They can undermine public safety by discouraging tenants from calling the police. Tenants may be harmed by facing penalties for calling 911 or by failing to call 911 out of a fear that they could be penalized as a result.<sup>9</sup> These ordinances can increase homelessness and housing instability for low-income tenants, including victims of domestic and sexual violence, individuals with disabilities, racial and ethnic minorities, and families with children.<sup>10</sup> They can also reduce the supply of desperately needed affordable rental housing and perpetuate residential segregation and inequality in access to opportunity. For these reasons, an Annual Assessment is critical to determine what secondary effects the enforcement of a local ordinance is having on the community, and in particular on classes of people protected by anti-discrimination law. The components that this Assessment should include are outlined in detail below.

- *Measuring the impact on families with children* – The risks of eviction and displacement, which can include poor school performance, trauma, depression, material hardship, and declines in

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<sup>9</sup> See Desmond & Valdez, *supra*, Note 1.

<sup>10</sup> Housing instability—which can include residential mobility, frequent moves, living in the home of another, living in a hotel, motel, or other transient housing, or living in severely overcrowded housing—can have significant, negative effects on individuals and families. See, e.g. National Housing Center, *Should I Stay or Should I Go? Exploring the Effects of Housing Instability and Mobility on Children* (2011), available at <http://www.nhc.org/media/files/HsgInstablityandMobility.pdf> (describing the educational and behavior impacts of housing instability on children); National Poverty Center, *Housing Instability and Health: Findings from the Michigan Recession and Recovery Study* (2012) available at [http://www.npc.umich.edu/publications/policy\\_briefs/brief29/NPC%20Policy%20Brief%20-%202012.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief29/NPC%20Policy%20Brief%20-%202012.pdf).

housing or neighborhood quality, can be particularly harmful for families with children.<sup>11</sup> For this portion of the assessment, the local government should:

- Based on enforcement data and landlord survey responses, track incidents of ordinance enforcement that relate to minor children and the impact that enforcement of the ordinance had on the housing status of families with minor children; and
  - Consider the extent to which any of these harmful effects primarily impacted single or female-heads of household.
- *Measuring the impact on survivors of domestic or sexual violence* – This portion of the Assessment is critical to ensure that the ordinance is not penalizing people who are reaching out for protection and placing survivors of domestic violence at increased risk of harm, as well as to reduce the risk of liability under state and federal law.<sup>12</sup> Specifically, local governments should:
    - Track every notice sent in response to incidents that could be related domestic violence, including but not limited to citations for domestic battery, noise complaints, criminal trespass, and damage to property. Assess whether any notices were sent where a tenant was a survivor of domestic violence, dating violence, sexual assault or stalking, and whether any penalties were imposed in these instances.
    - Ensure that the ordinance itself contains comprehensive carve-outs for crime victims and survivors of domestic or sexual violence.<sup>13</sup> In order to further reduce the risk of liability and harm to tenants, local governments can specify that landlords will be penalized under the ordinance for taking any action to discourage tenants from calling the police.
    - Report on any efforts to inform property owners and their representatives, such as through training programs or written information, that tenants will not be penalized for calling the police for having been victimized by guests, household members, or others.
    - Report on any trainings offered to police officers and other city employees involved with enforcement, to ensure that all city employees understand that the intent of the ordinance is not to threaten the housing of victims of domestic or sexual violence or other innocent household members; and
    - Report on any outreach efforts made by the city to local domestic violence service providers in order to ensure that clients are not being penalized through the

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<sup>11</sup> See Matthew Desmond et al., *Evicting Children*, *Social Forces*, 91, 1-2, 18 (2013), available at <http://scholar.harvard.edu/files/mdesmond/files/evictingchildren.socialforces.2013.pdf>.

<sup>12</sup>The enactment of SB 1547 will specifically prohibit local governments in Illinois from imposing penalties on the basis of calls for police service related to incidents of domestic or sexual violence, or for otherwise penalizing survivors based on the actions of their abusers. Federal and state fair housing laws further prohibit actions that have a disparate adverse impact on women, who are disproportionately the victims of such violence. See *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), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.

<sup>13</sup> See Appendix 3 for model language aimed at protecting survivors of domestic and sexual violence and individuals with disabilities from being penalized through the enforcement of a crime-free or nuisance property ordinance.

enforcement of the ordinance, threatened by landlords with eviction, or made to face other penalties.

- *Measuring the impact on individuals with disabilities* – Again, this portion of the Assessment is necessary both to ensure that people living with mental and physical disabilities are not deterred from seeking the help they need and to reduce the risk of liability under state and federal law.<sup>14</sup> Specifically, local governments should:
  - Track every notice sent in response to incidents that could be related to individuals with disabilities, including calls to report suicide attempts, calls for medical services, or incidents that are otherwise related to an individual with a mental or physical disability, and assess whether any notices were sent to tenants where the call was related to those disabilities;
  - Verify that the ordinance contains comprehensive carve-outs protecting individuals with disabilities, and report on any efforts to inform property owners and their representatives, such as through training programs or written information, that tenants should not be penalized for calling the police to report an incident related to a disability (including calls made by family, neighbors, friends, or social services staff members on behalf of individuals with disabilities); and
  - Report on any outreach efforts made by the city to local disability services providers in order to ensure that individuals with disabilities and their families are not being evicted or threatened with penalties through the enforcement of the ordinance.
  
- *Analyzing the impact on racial and ethnic minorities* – It is also critical that the local government look closely at the enforcement data to determine whether the ordinance is having an adverse disparate impact on racial and ethnic minorities, including by relying on arrest data as a basis for targeting enforcement, or reducing the supply of rental housing.<sup>15</sup> Specifically, the local government should:
  - Compare citywide demographic information with available demographic data on all notices sent out under the ordinance, even where penalties were not ultimately imposed, to determine whether the ordinance has a disproportionate impact on racial and ethnic minorities;
  - Compare citywide demographic information with available demographic information on arrests in order to determine whether the use of arrests to trigger ordinance enforcement may disproportionately target racial and ethnic minorities compared with the population as a whole;

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<sup>14</sup> The enactment of SB 1547, if signed into law, will specifically prohibit local governments in Illinois from penalizing individuals with disabilities on the basis of calls for police service related to their disabilities. Federal law provides additional protections, ensuring that individuals with disabilities are not discriminated against and have equal access to housing opportunities. *See, e.g.*, 42 U.S.C. § 3604(f).

<sup>15</sup> This is important because several protected classes, including racial and ethnic minorities and female-headed households, are more likely to live in rental housing. In Illinois only 25% of non-Hispanic white households rent, while 59.1% of African American households, 47.4% of Hispanic households, and 38.3% of Asian households rent. 2010 Census Summary File 1 (Table QT-H1). Female-headed households are more than twice as likely to rent as the general population in Illinois. 2010 Census Summary File 1 (Table QT-H3). Nationally, 41.8% of households with a nonelderly person with a disability rent as compared to just 31.6% of households that rent overall. *Office of Pol. Dev. And Research, U.S. Dep't of Hous. And Urban Dev., 2009 Worst Case Housing Needs of People with Disabilities: Supplemental Findings of the Worst Case Housing Needs 2009: Report to Congress 17* (2011), available at [http://www.huduser.org/portal/publications/WorstCaseDisabilities03\\_2011.pdf](http://www.huduser.org/portal/publications/WorstCaseDisabilities03_2011.pdf).

- Map the locations of properties that have received notices under the ordinance or have otherwise been penalized under the ordinance, and compare these geographic patterns relative to segregation and demographic patterns, as well as crime rates within each neighborhood;
  - Compare the racial composition of the city’s rental housing at the beginning of the assessment period with the racial composition at the end of the assessment period;
  - Compare the average rents for rental housing in the city at the beginning of the assessment period with the average rent at the end of the assessment period;
  - Compare the number of rental housing units registered at the beginning of the assessment period with the number of units registered at the end of the assessment period;
  - Analyze the share of properties that have received notices under the ordinance (or have otherwise been impacted by its enforcement) that have subsidies associated with tenants or units, and provide any available racial or ethnic demographic information about these properties;
  - Where the ordinance recommends a criminal record screening or where the local government recommends criminal record screening in its landlord training programs, analyze that screening to ensure that it is narrowly tailored and does not have an unjustified disparate impact on racial or ethnic minorities. See Appendix 4 for model parameters to use with criminal record screenings.
- *Verifying the confidentiality of juvenile records* – Several statutory provisions protect minors by preventing the dissemination or use of juvenile records outside of juvenile court. In Illinois, the Juvenile Court Act (JCA) prohibits local governments from making juvenile criminal records available to the public, unless the court provides them with explicit permission to do so.<sup>16</sup> These protections pertain to both the record and the information contained therein, meaning that local governments should not enforce their ordinance based upon matters protected as confidential under the JCA, as the only way to do so is to unlawfully reveal that information to property owners. To verify compliance each assessment period, the local government should:
    - Detail the process by which it is isolating documents containing confidential juvenile records before providing any notices to property owners or their representatives relating to calls for service by police.
  - *Verifying compliance with due process protections for tenant and landlords:* The Fourteenth Amendment’s due process protection ensures that no one may be deprived of property without due process of law. Municipalities can deprive tenants of this critical right by exposing tenants to the threat of eviction without first providing notice and a meaningful opportunity to be heard to dispute the allegations.<sup>17</sup> For this portion of the Assessment, local governments should:

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<sup>16</sup> See 705 ILCS 405/1-8 (providing that the inspection and copying of juvenile records relating to a minor who is the subject of a proceeding under the JCA is only allowed for the minor, the parents/guardian, and limited other categories, including for law enforcement only where essential to executing an arrest or search warrant).

<sup>17</sup> U.S. Const. amend. XIV; See, e.g. *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1058-59 (S.D. Cal. 2006)(City’s ordinance raised due process concerns by prohibiting landlords from renting to tenants deemed to be illegal aliens); *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1306-1308 (4th Cir. 1992)(summary eviction of without notice or an opportunity for a hearing was a violation of Due Process Clause)

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- Verify that the ordinance has procedures in place to provide clear notice of alleged ordinance violations and an opportunity to be heard and contest the allegations *before* the imposition of any penalties. See Appendix 5 for model due process protections;
- To avoid depriving tenants or landlords of due process rights, local governments should verify that these notice and procedure processes are actually carried out in practice. Provide statistics related to the percentage of properties where notice was sent to a tenant or occupant, as well as the percentage of such notices that resulted in a successful contact and the percentage of successful contacts that resulted in a response; and
- Outline the challenges faced in successfully contacting tenants or occupants, and offer suggestions for improvements to ensure that tenants receive notice and an opportunity to be heard before the imposition of any penalties under the ordinance.

## **Appendix 1: City of Chicago Municipal Code Prohibition on Retaliatory Conduct by Landlord (Section 5-12-150)**

It is declared to be against public policy of the City of Chicago for a landlord to take retaliatory action against a tenant, except for violation of a rental agreement or violation of a law or ordinance. A landlord may not knowingly terminate a tenancy, increase rent, decrease services, bring or threaten to bring a lawsuit against a tenant for possession or refuse to renew a lease or tenancy because the tenant has in good faith:

- a. Complained of code violations applicable to the premises to a competent governmental agency, elected representative or public official charged with responsibility for enforcement of a building, housing, health or similar code; or
- b. Complained of a building, housing, health or similar code violation or an illegal landlord practice to a community organization or the news media; or
- c. Sought the assistance of a community organization or the news media to remedy a code violation or illegal landlord practice; or
- d. Requested the landlord to make repairs to the premises as required by a building code, health ordinance, other regulation, or the residential rental agreement; or
- e. Becomes a member of a tenant's union or similar organization; or
- f. Testified in any court or administrative proceeding concerning the condition of the premises; or
- g. Exercised any right or remedy provided by law.

If the landlord acts in violation of this section, the tenant has a defense in any retaliatory action against him for possession and is entitled to the following remedies: he shall recover possession or terminate the rental agreement and, in either case, recover an amount equal to and not more than two months' rent or twice the damages sustained by him, whichever is greater, and reasonable attorneys' fees. If the rental agreement is terminated, the landlord shall return all security and interest recoverable under Section 5-12-080 and all prepaid rent. In an action by or against the tenant, if there is evidence of tenant conduct protected herein within one year prior to the alleged act of retaliation, that evidence shall create a rebuttable presumption that the landlord's conduct was retaliatory. The presumption shall not arise if the protected tenant activity was initiated after the alleged act of retaliation.

(Prior code § 193.1-15; Added Coun. J. 9-8-86, p. 33771; Amend Coun. J. 11-6-91, p. 7196)

## **Appendix 2: Model Notice and Consent Provision**

- (a) The [local government] shall serve written notice to the tenants of any inspection to be conducted by mailing such notice by first class mail at least 10 days in advance of the inspection. Such notice shall contain:
  - i. a description of the property sufficient for identification;
  - ii. the proposed date and time of the inspection; and
  - iii. the name and contact information for a representative of the [local government] who the landlord or tenant may contact to reschedule the inspection to a mutually agreeable date and time.
- (b) The [local government] shall mail the notice to the owner and the tenants, and post official notice of the inspection at a common area of the rental property.

## Appendix 3: Model Survey Questions

### *Model Questions for Service Providers*

#### Questions about Eviction/Displacement:

- Have any of your clients been evicted or displaced (including through lease termination or non-renewal) as a result of the enforcement of the local crime free housing or nuisance property ordinance, including as a result of notices sent to landlords regarding alleged unlawful activity on the rental property?
- Have any of your clients been pressured to move as a result of the enforcement of the ordinance, including as a result of notices sent to property owners?
- Have any of your clients been threatened with eviction or displacement (including through lease termination or non-renewal) as a result of the enforcement of the ordinance, including as a result of notices sent to property owners?

#### Questions about Fear of Calling 911:

- Have any of your clients reported that they were afraid to call 911 because doing so might cause them to lose their housing?
- Have any of your clients been discouraged by their landlords from calling 911 to avoid potential penalties under the ordinance?
- Have any of your clients been discouraged by local police from calling 911 to avoid potential penalties under the ordinance?

#### Questions about other negative consequences:

- Have any of your clients faced other negative consequences—including rent increases or loss of a Section 8 voucher—as a result of the enforcement of the ordinance?
- Have any of your clients been threatened with negative consequences—including rent increases or loss of a Section 8 voucher—for calling 911?

### *Model Questions for Property Owners*<sup>18</sup>

#### Questions about a specific notice:

- What actions, if any, did you take with respect to your tenants at the property subject to the notice from the local government after having received the notice? (Did you discuss the incident with your tenant? Warn your tenant about the police calls, or advise him/her not to call the police in the future? Evict your tenant, discuss the possibility of eviction, or otherwise ask your tenant to leave? Increase your tenant's rent or discuss the possibility of a rent increase? Refuse to renew a lease or discuss the possibility of lease non-renewal? Take any other action against your tenant after receiving this notice?)
- Does this tenant still live on your property? If not, under what circumstances did they leave? If the tenant was displaced, please provide any information you have on the impact this had on the tenant family. (Did the family lose a Section 8 housing voucher as a result? For

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<sup>18</sup>It is important to clarify for property owners that the purpose of this survey is to ensure that there are no harmful unintended consequences of the enforcement of its crime free housing or nuisance property ordinance, such as increasing homelessness and housing instability for low-income tenants, penalizing tenants for calling 911, or pressuring tenants not to call 911 out of a fear that they could be penalized.

example, did the tenant experience temporary homelessness? Were the children pulled out of the local school?)

General questions:

- Have you ever sent a termination notice or started eviction proceedings as a result of a notice issued to you under the local crime free housing or nuisance property ordinance?
- Have you ever increased a tenant's rent, re-located a tenant, or declined to renew a tenant's lease as a result of a notice issued to you under the local crime free housing or nuisance property ordinance?
- Have you ever warned your tenants about the potential consequences of police calls? Has a tenant ever reported that he or she was afraid to call 911 to report criminal activity committed against them because doing so might put his/her housing at risk?

## **Appendix 4: Model Protections for Survivors of Domestic Violence and Individuals with Disabilities**

No ordinance of [local government] will be enforced to impose penalties on tenants or landlords on the basis of:

- (a) contact with police or other emergency services made to respond to incidents of domestic violence or sexual violence; or
- (b) contact with police or other emergency services made by, on behalf of, or otherwise concerning an individual with a disability, where the purpose of the contact was related to the disability;
- (c) criminal activity directly related to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member, guest, or other party.

## **Appendix 5: Model Parameters for Due Process Provisions**

All local governments with crime free or nuisance property ordinances should develop and incorporate the due process provisions that follow these parameters:

1. Prior to imposing penalties on a landlord or tenant, the local government should provide notice to the landlord and tenant including:
  - a. a description of the property sufficient for identification;
  - b. a statement listing the alleged violation and basis for the allegations,
  - c. a statement of the proposed penalty; and
  - d. notice of the right to request an informal hearing and appeal;
2. Upon receiving such notice, the landlord or tenant should be given the right to request an informal hearing within a certain set time frame of the receipt of the notice;
3. At the hearing, the owner and tenant should be permitted to be represented by counsel, as well as the right to submit evidence and cross-examine witnesses;
4. Any landlord or tenant aggrieved by a decision made in connection with the informal hearing, shall have the right of appeal that decision;

## **Appendix 6: Model Parameters for Criminal Record Screening**

Criminal records are not accurate predictors of whether a person will succeed or fail at staying housed. Rather, overly restrictive criminal record screening policies can increase homelessness and create cycles of re-incarceration.<sup>19</sup> Furthermore, these policies may have a disparate impact on racial minorities, who frequently have disproportionate police contact, and these policies may therefore infringe upon the rights of housing applicant to be free from discrimination.<sup>20</sup> For these reasons, any criminal record screening should contain the following parameters and safeguards:

1. Where possible, obtain criminal background information directly from an official source such as a state government’s criminal records repository;
2. Only consider those convictions on a person’s record that are for felonies involving violence, sexual violence, or drug trafficking—or some other defined set of convictions where the nature and severity of the offenses indicates a substantial and direct threat to the safety of others in the immediate vicinity;
3. Only consider those offenses on a person’s record that resulted in a documented conviction within the prior three years;
4. Give a person who may be rejected based on a criminal background the opportunity to review the record and at least two weeks to correct any inaccuracies, including pointing out if it improperly contains charges or convictions that are incorrect or have been sealed or expunged;
5. Give a person who may be rejected based on a criminal background the opportunity to present evidence of mitigating factors, including the seriousness, extent, and recentness of any criminal activity, as well as any additional factors that might suggest the likelihood of favorable conduct in the future, including any evidence of rehabilitation.<sup>21</sup>
6. Make an individualized determination whether to rent to a person based on all relevant information.

Additionally, landlords should not directly ask prospective tenants on housing applications whether they have any prior arrests or convictions, but should instead inform applicants that criminal background screening will be conducted and identify the parameters. This is critical to ensure that individuals who have had contact with the criminal justice system are not discouraged from applying.

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<sup>19</sup> See U.S. Interagency Council on Homelessness, PHA Guidebook to Ending Homelessness 23 (2013) (quoting Suzanne Zerger, Q&A With Daniel Malone: Criminal History Does Not Predict Housing Retention (2009), <http://homeless.samhsa.gov/resource/Print.aspx?id=46132&g=printtopic&t=2147483647>), available at [http://usich.gov/resources/uploads/asset\\_library/PHA\\_Guidebook\\_Final.pdf](http://usich.gov/resources/uploads/asset_library/PHA_Guidebook_Final.pdf).

<sup>20</sup> See Marie Claire Tran-Leung, Sargent Shriver Nat’l Ctr. on Poverty Law, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing* 7 (Feb. 2015), available at <http://povertylaw.org/sites/default/files/images/publications/WDMD-final.pdf>.

<sup>21</sup> See *id.* at 9 for details on the importance of considering mitigating factors in any criminal background screening.