

Reducing the Cost of Crime Free: Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois

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A Model Ordinance by:



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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*.¹ 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.

Cover: Multifamily rental buildings left to right Evanston, Niles, Skokie, and Park Ridge: Photos by Brendan Saunders

¹ <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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Model Assessment Tool: Crime Free / Nuisance Property Ordinances

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 can include:

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

Many local governments in Illinois have since reached out for information on how to ensure that their ordinances are not harming vulnerable tenants, including survivors of domestic violence and individuals with disabilities, or otherwise violating fair housing laws.

In response to these questions, this Assessment Tool is intended to guide local governments who have enacted or are considering enacting crime free or nuisance property ordinances. Part One is targeted to those local governments who are considering enacting a crime free housing or nuisance property ordinance. It flags some of the questions that must be considered and suggests alternatives that would pose fewer risks to vulnerable tenants. Part Two is targeted to those local governments who have already enacted a crime free housing or nuisance property ordinance. This section highlights what factors local governments should be tracking and assessing to reduce the risk of harmful, unintended consequences in their community.

While utilizing this Tool 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 really avoid the risks that result from the enforcement of 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.² Ordinances that have a disparate impact on one or more protected groups can violate fair housing law, unless they are justified because they are necessary to achieve an important municipal objective, which could not be served by another practice with a less discriminatory effect.³ Furthermore, entitlement jurisdictions or sub-recipients have an affirmative obligation to further fair housing in their communities.⁴ These communities must not simply refrain from discriminating but also must actively promote integration and the right to fair housing within the community. Municipalities 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 that would reduce the harm for those groups are available.⁵

As the Shriver Center detailed in its 2013 report, crime free and nuisance property ordinances pose many risks under the FHA. Because of these risks, it is critical that local governments engage in a careful assessment of their community needs and potential alternatives before enacting a crime free housing or nuisance property ordinance. This Assessment should include the following steps:

First, determine what legitimate municipal objective is the enactment of a crime free or nuisance property ordinance targeting. Is the problem that has been identified by the community supported by data? If the community has identified a concern related to crime on rental properties, for example, does data demonstrate that criminal activity has increased? If so, is the criminal activity isolated to rental properties? What has been the response of landlords to the criminal activity without a crime free housing or nuisance property ordinance in place?

Second, where the local government finds a legitimate municipal objective, it should consider less discriminatory alternatives in order to reduce the risks of harmful and/or

²See 24 C.F.R. § 100.500 (the Fair Housing Act prohibits practices that have an unjustified disparate impact on a protected group); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (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).

³ *See id.*

⁴ *See* 42 U.S.C. §§ 5304(b)(2), 5306(d)(7), § 12705(b)(15), and related regulations.

⁵ *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>.

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 could allow local governments to gain control over their rental housing stock and improve public safety without presenting the types of risks to protected classes inherent to ordinances that incentivize eviction by making property owners responsible for the behavior of their tenants and guests. 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. By simply 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 following information:
 - 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 on and off business hours and email) for the owner; and
 - Name and contact information (including phone number for on and off 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. *See, e.g.* the City of Chicago’s prohibition on retaliatory conduct, copied in Appendix 1.

Tenant Relocation Assistance – Local governments should also incorporate 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 are such that the tenants cannot live there during the rehabilitation (i.e., 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 incur these additional costs.

Notice and Consent from Tenants Before Any Inspections – 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 any inspections. This is critical as the Fourth Amendment ensures tenants a right to be free from unreasonable searches in their homes. Although local governments do have police power authority to develop and implement rental property inspection programs where those programs are related to the public health, safety, and welfare, they generally must first obtaining the informed consent of tenants.⁶ *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 enforcement of a local inspection ordinance should be trained on the limits placed on the municipality’s authority by the ordinance itself and civil rights laws. This will help to ensure that employees are acknowledging and respecting those limits in all interactions with landlords and/or 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:

⁶ 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 Fair Housing Laws, including those protections contained in the Fair Housing Act (FHA);
- 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 survivors under the Forcible Entry and Detainer Act;
- State and Federal Protections for People 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 properties⁷. 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 would be offenders. The strategic placement of parking, sidewalks, landscaping, windows, doors, and walkways can increase 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 or oversight; 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.

⁷ 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>.

Part Two: Assessing the Impact 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 the ordinance and periodically analyze its impact on protected classes. This part of the Assessment Tool is intended to guide local governments through this process. It highlights the information that local governments should be gathering, as well as the types of analyses that should be made on periodic basis to ensure that the ordinance's enforcement is not having harmful and/or discriminatory consequences. This Assessment should include the following steps:

First, local governments should reach out to local stakeholders—including the local disability and domestic violence service providers, homeless service providers, fair housing organizations, and legal services providers—to track information about the impact of the ordinance on their client populations. Some of the greatest harm these ordinances cause can be informal: landlords may be incentivized to take action to push tenants who make frequent police calls out of their property after receiving a notice from the local government. The ordinance may incentivize landlords to discourage tenants from calling 911 to avoid the risk of incurring penalties under the ordinance. These harmful secondary effects may be impossible for a municipality to track without consulting with local service providers. *See Appendix 3* for a proposed list of survey questions to ask local service providers.

Second, local governments should carefully track of enforcement data to see how their ordinances are being enforced. This should include tracking each notice sent out under the ordinance, as well as the outcomes and demographic information of the individuals impacted, to the extent available. The information gathered about each notice should include:

- Information on the targeted property (including the property address and the names of any state or federal subsidies)
- Information on the underlying activity (including any criminal charges brought or any alleged violation of a local ordinance)
- Information on the tenants impacted (including demographic information, such as age, race, disability if known, and gender)
- Information of the alleged offender (including the alleged offender's age and information on whether the alleged offender was the tenant, guest of the tenant, or other)
- Information on the resolution (including any nuisance fines issued and any abatement plan entered into with the property owner)

Finally, the local government should analyze whether the ordinance is having any harmful, unintended consequences in 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.⁸ These ordinances can also increase homelessness and housing instability for low-income tenants, including victims of domestic and sexual violence, persons with disabilities, racial or ethnic minorities, families with minor children, which can have a variety of harmful secondary effects.⁹ These ordinances can also reduce desperately needed affordable rental housing and perpetuate residential segregation and long-standing cycles of discrimination and inequality in access to opportunity. An Assessment to determine whether a local government is creating consequences of this kind through the enforcement of their ordinance, in particular on protected classes in the community, should include:

Measuring the impact on families with minor children – Although the risks of eviction and displacement (including high residential mobility, poor school performance, trauma, depression, material hardship, and declines in housing and/or neighborhood quality) are harmful for all tenants, they can be particularly destructive for families with minor children.¹⁰ For this portion of the Assessment, the local government should:

- Track every notice sent to incidents that relate to minor children. Use this information to determine: (1) whether any of the families against who the ordinance was enforced were ultimately rendered homeless, had to move, or were evicted, and (2) whether any of the impacted families ultimately un-enrolled or transferred children from the local schools as a result, or whether the children were ultimately suspended or expelled for truancy.

⁸ See Desmond & Valdez, *supra*, Note 1.

⁹ 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-%202029.pdf.

¹⁰ See Matthew Desmond et al., *Evicting Children*, *Social Forces*, 91, 1-2, 18 (2013), available at http://scholar.harvard.edu/files/mdesmond/files/social_forces-2013-desmond-303-27.pdf.

- 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 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.¹¹ Specifically, local governments should:

- Track every notice sent in response to incidents that could be related domestic violence, including citations for domestic battery, and including but not limited to citations for noise complaints, criminal trespass, and damage to property. Use this information to verify that no notices were sent out where a tenant was a survivor of domestic violence, dating violence, sexual assault or stalking.
- Ensure that the ordinance itself contains comprehensive carve-outs for crime victims and survivors of domestic or sexual violence¹², and verify that training programs offered property owners provide clearly that tenants will not be penalized for calling the police for having been victimized. In order to further reduce the risk of liability and harm to tenants, local governments can further specify that landlords can be penalized for discouraging tenants from calling the police. Trainings should also be provided for police officers and all other city employees involved with the enforcement of the ordinance.
- Ensure, through discussions with local domestic violence service providers that no clients have been penalized through the enforcement of the ordinance, or threatened by the landlords with eviction or other penalties.

Measuring the impact on individuals with disabilities – This portion of the Assessment is necessary both to ensure that people living with mental and physical disabilities are not deterred

¹¹ P.A. 99-441 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>.

¹² 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.

from seeking the help they need and to reduce the risk of liability under state and federal law.¹³

For this portion of the Assessment, the local governments should:

- Track every notice sent for incidents that could be related to an individual 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 verify that no notices were sent out where the call was made by or on behalf of an individual with a disability and the caller was seeking assistance related to that disability.
- Ensure that the ordinance itself contains comprehensive carve-outs protecting individuals with disabilities,¹⁴ and verify that the training programs offered property owners provide clearly that tenants should not be penalized for calling the police for calling the police to report an incident related to a disability.¹⁵
- Ensure, through discussions with local disability services providers, that individuals with disabilities are not reporting that they have been evicted or threatened with penalties through the enforcement of the municipality's crime free or nuisance property 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 has had an adverse disparate impact on racial and ethnic minorities, including by destabilizing housing, reducing the supply of rental housing, or relying on arrest data as a primary basis to target enforcement.¹⁶ Specifically, the local government should:

- Compare citywide demographic information with the enforcement data to determine whether the enforcement of ordinance has a disproportionate impact on racial and ethnic

¹³ P.A. 99-441 will specifically prohibit local governments in Illinois from penalizing individuals with disabilities on the basis of calls for police service related to their disabilities, and 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); 775 ILCS 5/3-102.1.

¹⁴ *See id.*

¹⁵ This should include calls made by individuals with disabilities themselves, or calls made by family, neighbors, friends, or social services staff members on their behalf.

¹⁶ 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.

minorities, because they are disproportionately targeted relative to the percentage of racial and ethnic minorities in the community as a whole;

- Determine whether the use of arrests to trigger ordinance enforcement disproportionately targets racial and ethnic minorities compared with the population as a whole;
- Determine where the ordinance is primarily being enforced geographically within the community relative to segregation and demographic patterns, as well as crime rates within each community area;
- Compare the number of rental housing units available at the beginning of the assessment period with the number of units available at the end of the assessment period;
- Determine to what extent racial minorities participate in subsidized housing programs, and determine to what extent the ordinance has been enforced against that population and harmed them (including, but not limited to, landlords leaving the program, tenants having to move out of subsidized properties, and tenants losing their housing vouchers);
- Compare the racial composition of the local government's rental housing at the beginning of the assessment period with the racial composition at the end of the assessment period;
- Compare the proposed rents for rental housing in the community at the beginning of the assessment period with the proposed rents at the end of the assessment period; and
- Ensure that, where there is a criminal record screening required or recommended by the ordinance or incorporated into a mandatory training, it is narrowly tailored and does not have an unjustified disparate impact on racial or ethnic minorities. *See* the model parameters for criminal record screenings contained in Appendix 4.

Verifying the confidentiality of juvenile records – Several statutory protections protect minors by preventing the dissemination or use of juvenile records outside of juvenile court. In Illinois, the Juvenile Court Act (JCA) clarifies that local governments may not make juvenile criminal records available to the public, unless the court provides them with explicit permission to do so.¹⁷ 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:

¹⁷ *See* 705 ILCS 405/1-8 (clarifying 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 categories, including law enforcement only when essential to executing an arrest or search warrant).

- Detail the process by which it is isolating documents containing confidential juvenile records before providing any notices to property owners through the enforcement of a crime free housing or nuisance property ordinance, and track any notices sent out to properties where the alleged offender was a minor to ensure that confidential information pertaining to juveniles was not unlawfully disseminated.

Verifying provision of due process protections to tenant and landlords – The Fourteenth Amendment’s due process protection ensures that no one will be deprived of property without due process of law.¹⁸ Tenants are entitled to procedural safeguards against instances where their housing security is at risk, and landlords are entitled to protections when their property—including their ability to continue collecting rent from a tenant—is at risk. For this portion of the assessment, local governments should:

- Verify that the ordinance has procedures in place to provide clear notice of alleged violations of any crime-free or nuisance property ordinance and an opportunity to be heard and contest the allegations *before* the imposition of any penalties. To avoid depriving tenants or landlords of due process rights, local governments should also verify that these notice and procedure processes are carried out in practice. *See* Appendix 5 for model due process protections.

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

¹⁸ *See* U.S. Const. amend. XIV

- 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] whom 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 Questions for Local Service Providers

- Questions about Eviction/Displacement:
 - Have any of your clients been evicted as a result of the enforcement of the crime free housing or nuisance property ordinance?
 - Have any of your clients been pressured to move as a result of the enforcement of the crime free housing or nuisance property ordinance?
 - Have any of your clients been threatened with eviction by their landlord as a result of the enforcement of the local crime free or nuisance property ordinance?
- Questions about Fear of Calling 911:
 - Have any of your clients reported that they were afraid to call 911 out of a fear that they might lose their housing under the crime free housing or nuisance property ordinance?
 - Have any of your clients been discouraged by their landlords from calling 911 to avoid potential penalties under the crime free housing or nuisance property ordinance?
 - Have any of your clients been discouraged by local police from calling 911 to avoid potential penalties under the crime free housing or nuisance property ordinance?

- Questions about other negative consequences:
 - Have any of your clients faced other negative consequences—including rent increases, loss of a Section 8 voucher, lease non-renewal, or relocation—as a result of the enforcement of the crime free housing or nuisance property ordinance?
 - Have any of your clients been threatened with negative consequences—including rent increases, loss of a Section 8 voucher, lease non-renewal, or relocation—for calling 911?

Appendix 3: 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 made with police or other emergency services, if (i) the contact was made to prevent or respond to incidents of domestic violence or sexual violence; (ii) the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or (iii) contact made 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;
- (b) an incident or incidents of actual or threatened domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, against a tenant, household member, guest, or other party; or
- (c) criminal activity or a local ordinance violation occurring on the premises or in the dwelling unit that is 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 4: Model Due Process Provisions

Provisions ensuring that the neither the tenant nor the landlord will be penalized without adequate due process, such as:

- (a) Notice: Prior to imposing penalties on a landlord or tenant, the [local government] shall provide notice to the landlord and tenant including:
 - i. a description of the property sufficient for identification;
 - ii. a statement listing the alleged violation and basis for the allegations,
 - iii. a statement of the proposed penalty;
 - iv. notice of the right to request an informal hearing and appeal, described below, in subsections (b) and (c).
- (b) Informal Hearing: Upon receiving such notice, the landlord or tenant shall have the right to request an informal hearing before within 10 days of receipt of the notice.
 - i. The owner or tenant shall be permitted counsel and have the right to submit evidence and cross-examine witnesses at the hearing.
- (c) Appeal: Any person aggrieved by the decision in connection with a hearing as provided, shall have the right of appeal.
 - i. Such appeal shall be taken by filing, within 10 days after the hearing decision is rendered, a written statement under oath setting forth specifically the grounds for appeal.

- ii. The [local government] shall set the time and place for a hearing on such appeal and provide notice of such hearing to the landlord and tenant in accordance with subsection a [or those provision(s) of the local government's municipal code containing notice procedures similar to those described above, in subsection a].

Appendix 5: Model Parameters for Criminal Record Screening

Any criminal record screening engaged in by private landlords should contain the following parameters and safeguards:

1. If possible, obtain criminal background information directly from an official source—such as a state government's criminal records repository.
2. Only consider those offenses on a person's record that resulted in a documented conviction within the prior three years.
3. 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 that a person poses a substantial and direct threat to the safety of others in the immediate vicinity;
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 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.¹⁹
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.

¹⁹ 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* 9 (Feb. 2015), available at <http://povertylaw.org/sites/default/files/images/publications/WDMD-final.pdf> for more details on mitigating factors.