

“Crime Free” But At What Cost?

The Legal and Practical Consequences
of Crime Free Rental Housing and
Nuisance Property Ordinances.

Kate Walz, Director of Housing Justice



SHRIVER
CENTER

October 2, 2014

Sargent Shriver National Center on Poverty Law

What Are Crime Free Rental Housing and Nuisance Property Ordinances?

Common features:

- ❑ License, certificate, or occupancy permit;
- ❑ Rental property must pass rental inspection;
- ❑ Mandatory crime-free training;
- ❑ Criminal background checks of tenants;
- ❑ Mandatory crime free lease addendum;
- ❑ Mandatory eviction of all tenants if violation;
- ❑ Enforcement for “excessive calls” to the police;
- ❑ Fines of landlords and tenants if violation.

Features of Crime Free and Nuisance Property Ordinances Cont'd.

- ❑ Police generally enforcing these ordinances – “crime free cop”;
- ❑ Notice to landlord of violation – generally no notice to tenant/household members.
- ❑ Landlords can lose ability to lease housing if fail to comply.

Crime Free Ordinances

- ❑ Focused on criminal activity, mandatory actions and penalties for landlords and tenants;
- ❑ Criminal activity on or off the premises for some ordinances.

Nuisance Property Ordinances

- ❑ Identifies conduct or conditions that lead to property being deemed a nuisance and then abatement action taken if there is non-compliance;
- ❑ Abatement action could include a vacate order for the entire property, closure of all of the landlord's rental housing, or condemnation proceedings;
- ❑ Many jurisdictions take a hybrid approach or adopt both types of ordinances;
- ❑ Many jurisdictions have adopted variations of ordinances previously enacted by other jurisdictions.

The History of Crime Free Rental Housing and Nuisance Property Ordinances.

- ❑ Began in 1992 in Mesa, AZ;
- ❑ Approximately 108 municipalities in Illinois have some version of an ordinance. That number grows each year;
- ❑ About 2,000 local governments in 44 states have some form of such an ordinance;
- ❑ Many are entitlement jurisdictions or sub-recipients.

Potential Problems With These Ordinances

□ Fair Housing Concerns:

- Effect on minority and female headed households, if more likely to live in rental housing;
- Premised on stereotypes about who lives in rental housing or that rental housing is occupied by “transient” populations or “outsiders”.

Fair Housing Concerns, Contd.

Effect on Victims of Domestic Violence:

- ❑ Sex discrimination; See Feb. 9, 2011 FHCO Guidance;
- ❑ Illinois Civil Rights Act of 2003;
- ❑ Order of Protection status under the IHRA;
 - 775 ILCS 5/1-103(Q);
- ❑ Conflict with VAWA 2013 and state FED;
- ❑ *Unpolicing The Urban Poor: Consequences of Third Party Policing for Inner-City Women*, 78 Am. Soc. Rev. 117 (2013).

Fair Housing Concerns, Contd.

- ❑ Effect on persons with disabilities;
- ❑ The duty to affirmatively further fair housing imposed upon entitlement jurisdictions and subrecipients;
- ❑ Adoption of these ordinances may be inconsistent with the AFFH obligation, because of the adverse impact on protected groups.

Due Process Concerns

- ❑ No notice provided to the tenants, only the landlord;
- ❑ No opportunity for tenants to challenge the municipal actions or come forward with relevant information;
- ❑ No true mechanism for landlords to contest violations before enforcement occurs.

First Amendment Concerns

- ❑ Enforcement tied to the number of police calls to the property interferes with the “right to petition the government for redress of grievances” guaranteed by the First Amendment;
- ❑ Right to petition the government includes the right to seek municipal assistance, such as calling the police;
- ❑ Chilling effect on landlords and tenants, particularly victims of domestic violence and persons with disabilities;
- ❑ Opportunity for abusers.

Criminal Background Check Concerns

- ❑ Generally no guidance by local governments on how to conduct the criminal background checks;
- ❑ Minorities have disproportionate arrest rates;
- ❑ EEOC Guidance, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Under Title VII of the Civil Rights Act of 1964* (2012);
- ❑ *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568 (1st. Dist. 2010) (mere existence of arrests not sufficient evidence of criminal activity and cannot be used alone to deny admission).

“Crime Free” Litigation

- ❑ Briggs v. Borough of Norristown et al., No. 2013 C 2191 (E.D. Pa. April 24, 2013);
- ❑ Grape v. Town/Village of East Rochester, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007);
- ❑ Threat to sue letter issued to the Village of Country Club Hills, Illinois by the Shriver Center and the ACLU in August 2011.

Alternatives to Crime Free and Nuisance Property Ordinances?

- ❑ Routine inspections of rental housing to ensure housing quality standards are met;
- ❑ Use of state law civil and criminal remedies for problem properties;
- ❑ Landlord and Property Manager registry;
- ❑ Training Landlords, including fair housing training;
- ❑ Procedures for tenants to complain about conditions, nuisances without fear of retaliation;
- ❑ Carve out protecting domestic violence victims?

Resources/More Information

Kate Walz, Esq.,

Director of Housing Justice

Sargent Shriver National Center on Poverty Law

50 E. Washington, Suite 500

Chicago, IL 60602

312.368.2679

katewalz@povertylaw.org,

<http://www.povertylaw.org/advocacy/housing>

Shriver Center Reports

- *The Cost of Being “Crime Free” – Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances*, Emily Werth, August 2013.

<http://povertylaw.org/sites/default/files/housing-justice/cost-of-being-crime-free.pdf>

- *Stemming the Tide of Crime-Free Rental Housing and Nuisance-Property Ordinances*, Clearinghouse Review, Journal of Poverty Law and Policy, January – February 2014, pp. 349 – 353.