

## **The Impact of Crime-Free Housing and Nuisance Ordinances, and What Pro Bono Lawyers Can Do**

An interaction with the criminal justice system – even one that does not result in conviction of a crime – can result in reduced access to housing. Recently, some jurisdictions have attempted to remove these barriers to housing access. Pro bono lawyers can help by supporting legislation to remove these barriers and by representing individual tenants in their housing cases.

### **Part I: The situation in Minneapolis, Minnesota**

On June 1, 2020, a novel barrier-reducing ordinance took effect in Minneapolis, MN. This ordinance limited the criminal history and other “offenses” that landlords could consider when screening prospective renters. Following its passage, landlords could no longer screen potential renters for misdemeanors older than three years, felonies older than ten years, violent felonies older than ten years, evictions older than three years, lack of rental history, or poor credit history.

This “crime-free” housing ordinance took effect as part of a larger program of renter protection in Minneapolis, including a ban on refusing Section 8 vouchers and a movement to [secure the right to counsel in housing](#).

Unsurprisingly, the ordinance received a mixed response. The protections, primarily focused on removing barriers to housing for low-income populations and people of color, have been lauded by members of these communities and housing rights activists.

Landlords, however, took a more critical response and [sued the city](#) to ask that the policy be halted as further court proceedings on its constitutionality take place. The trial court denied the landlords’ request for a preliminary injunction and that decision is currently on appeal in the Eighth Circuit. In May of 2021, the Pro Bono Institute as part of the Minnesota Collaborative Justice Project, and several public interest organizations that advocate for Minnesotans facing housing instability, filed an amici brief supporting the City of Minneapolis on appeal. Oral argument [occurred](#) on Wednesday, October 20, 2021. The Court has yet to issue an opinion; a recording of the oral argument is available [here](#).

This was not the first suit that landlords brought against the city of Minneapolis over ordinances regarding renter protections. Previously, landlords sued the city for a ban preventing them from rejecting tenants with Section 8 vouchers, a program started by HUD (the U.S. Department of Housing and Urban Development) to provide rental assistance to families whose income does [not exceed 50% of the median income for the area, with 75% of vouchers going to families whose income does not exceed 30%](#) of the median income for the area. The Minnesota Supreme Court [ruled in favor](#) of the city in the Section 8 voucher suit.

Minneapolis landlords have also raised several arguments against the crime-free housing ordinance. One argument is that the ordinance violates landlords’ Fifth Amendment rights by allowing the government to take their property for government use without adequate

compensation. The legislation's proponents argue that the ordinance does not prevent landlords from using or profiting from their land, but rather permissibly regulates land use.

Landlords also argue that the ordinance violates the Fourteenth Amendment's "right to exclude," which has been upheld in certain situations as a "fundamental right." Proponents respond that such ordinances, though facially race-neutral, have a [disparate impact](#) on Black and Latinx people, and serve as racially restrictive covenants, which cannot be enforced, as ruled decades ago in *Shelley v. Kraemer*, 334 U.S. 1 (1948).

Tenants, particularly those who would otherwise be adversely affected by stringent screening processes, are largely in favor of Minneapolis's crime-free housing ordinance, which limits the scope of tenant screenings. From their perspective, Minneapolis's law protects tenants from discrimination by landlords due to arbitrary eviction, including evictions due to interaction with police that did not lead to arrest, interactions with police that led to arrest but not conviction, prior arrests with time served, phone calls to 911 unrelated to a crime at their residence, phone calls to 911 relating to the residence from outside sources, and more. However, landlords argue that the ordinance leaves landlords unable to protect the other residents of their properties from those engaged in "criminal activity." Nonetheless, the [Institute for Research on Poverty](#) indicated that even areas with crime-free ordinances that allow landlords to evict tenants with any evidence of criminal activity do not reduce crime.

Notably, the legislature in St. Paul, Minnesota passed a similar renter protection ordinance called the Stable, Accessible, Fair and Equitable (S.A.F.E.) Housing Ordinance. This ordinance was passed to prevent landlords from screening housing applicants for evictions, credit histories, and criminal histories. Before the ordinance went into effect on March 1, landlords successfully sued the city in federal court to seek a preliminary injunction, which the court [granted](#), finding that the ordinance was likely to be found unconstitutional. The City of St. Paul then rescinded the S.A.F.E. ordinance on June 23, 2021 and the lawsuit was [dismissed](#) with prejudice on September 8, 2021.

## **Part II: Crime-Free Housing and Nuisance Ordinances**

Crime-free housing ordinances vary widely state to state and within county and city jurisdictions, but generally bar renters' housing access based on issues like prior criminal history and bad credit. These ordinances' purported purpose is to provide protection for both landlords and tenants from potential criminal activity in their community. However, due to their wide variation of standards, the ordinances are easily weaponized against the recently or previously incarcerated, communities of color, the disabled community, survivors of and those living with domestic violence, and other vulnerable peoples.

The arguments in favor of crime-free housing ordinances are largely in line with the arguments presented by landlords in Minneapolis, MN against limitations on the screening process. Landlords assert that crime-free ordinances protect their Fifth and Fourteenth amendment rights, the property owner's right to exclude, and the owner's general right to maintain access to its property.

[Some advocates](#) argue against crime-free ordinances because they can violate both tenant and landlord rights. These rights include the right (1) “to be free from discrimination,” (2) “to contact the government for assistance,” and (3) to “receive due process.” Crime-free ordinances can violate Fourteenth Amendment due process rights by threatening displacement and burdening housing access without notice or an opportunity to dispute the landlord’s allegations.

In [findings released by HUD](#) regarding nuisance and crime-free ordinances, the Department found that these ordinances might also violate the [FHA](#) (Fair Housing Act) and [VAWA](#) (Violence Against Women Act). *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence*, Page 1. These ordinances could violate the FHA and VAWA because they disproportionately impact certain groups without protecting domestic violence victims.

In fact, domestic violence survivors have avoided calling the police for fear of eviction. *Id.* at 4. Further, some cities selectively enforce nuisance or crime-free ordinances in communities of color. *Id.* at 10. This could violate the FHA facially or in application. *Id.* at 10-11. In response, HUD recommended that governments repeal ordinances that penalize 911 callers for seeking aid. *Id.* at 13. HUD also provided [guidance](#) that ordinances allowing housing decisions based on a person’s arrest record without conviction likely violates the FHA. *Office of General Counsel Guidance on Application for Fair Housing Standards to the Use of Criminal Records*, Page 5. Although these recommendations apply only to HUD programs, HUD’s reasoning can be applied to any nuisance or crime-free ordinance.

[Some advocates and states](#) have pushed for change regarding nuisance and crime-free housing ordinances effect on domestic violence survivors. *National Housing Law Project’s Nuisance and Crime-Free Ordinances and their Impact on Housing Access for Survivors*, at 11. [Twenty-four states](#) and localities have eviction defense laws for survivors as of 2017. *Id.* at 24. Additionally, 19 states and DC protect individuals who call the police. *Id.* (Pictured below, states include: Alaska, Arkansas, Arizona, California, Colorado, District of Columbia, Delaware, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Minnesota, Nevada, Oregon, Pennsylvania, Texas, Utah, and Wisconsin). Local reforms are also critical. Notably, in 2018 Maplewood, MO [settled a survivor’s case](#) and stopped enforcing its ordinance so that persons seeking emergency assistance would not be penalized for calls to law enforcement. Part III, below, expands on the ordinances’ disparate impact on certain communities.



[Image From:](#) *Nuisance and Crime-Free Ordinances and their Impact on Housing Access for Survivors International Conference on Sexual Assault, Intimate Partner Violence, and Increasing Access*, National Housing Law Project, April 22, 2019.

### **Part III: Communities Harmed by Crime-Free Housing and Nuisance Ordinances**

Many vulnerable communities are disproportionately harmed by crime-free housing and nuisance ordinances. Three communities that are the most affected are communities of color, survivors of and those experiencing domestic violence, and disabled persons.

#### **III.A: Communities of Color**

A study by the [American Sociological Association](#) found that in Milwaukee, properties in African American neighborhoods were disproportionately deemed “nuisances.” This trend not only suggests discrimination, conscious or unconscious, against Black neighborhoods, but it also increases risk to residents in these neighborhoods. Landlords, to avoid nuisance labels, may dissuade tenants from calling 911, even when they are at a real risk. Some crime-free housing ordinances penalize communities or community members for any 911 calls, regardless of the call’s content or reason. Ordinances that include these calls under the “crime-free” umbrella misidentify actions that are not necessarily tied to crime. For example, calls made by neighbors regarding “disturbances” such as BBQs and birthday parties could be enough to declare someone a “nuisance” and evict them. We see this in the case of [Thelma Jones in Faribault, MN.](#)

Ms. Jones lived in Faribault for a decade and in the home from which she was evicted for five years. Ms. Jones’s landlord told her that she had two weeks to vacate her property after the landlord was charged with a misdemeanor for failing to uphold crime-free ordinance requirements. The landlord was instructed to evict Ms. Jones and her children because police responded to complaints at her residence 82 times. Police said that Ms. Jones’s home was a place of “ongoing criminal activity.”

Most 911 calls made regarding Ms. Jones’s residence were from her White neighbors for instances such as [her children jumping on the trampoline](#) or family BBQs. The calls did not

involve “ongoing criminal activity,” but were a way to leverage crime free ordinances against a Black family in the community. This intent became clear when a neighbor approached Ms. Jones and told her to [“go back where she came from.”](#) In this instance, crime free ordinances were weaponized against people of color to encourage community segregation. As argued by Professor Deborah N. Archer, this example illustrates how crime free ordinances facilitate [a new Jim Crow](#).

Arrest databases also disproportionately harm communities of color. Property owners and law enforcement offices create these databases by compiling a list of “police actions” with current and potential tenants. Included in the database are felony and misdemeanor records, cases like Ms. Jones’s, and [arrests that do not lead to conviction](#).

In communities with crime-free housing ordinances, limiting housing with arrests that do not lead to conviction also primarily impacts communities of color because not only are people of color disproportionately imprisoned in our criminal justice system, they also account for a disproportionately high number of [arrests without conviction](#). Consider, for example, the case of [Leory Ebanks in Orlando, FL](#). Police provided Mr. Ebanks’s rental complex Mr. Ebanks’s arrest record, which noted two prior arrests. Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, Page 198. Neither arrest resulted in a conviction, but the rental complex evicted Mr. Ebanks because of his arrest record.

### **III.B: Survivors of and those experiencing domestic violence**

Another community that disproportionately suffers under crime-free housing ordinances are survivors of domestic violence and victims of ongoing domestic violence. As seen in the case of Ms. Thelma Jones, crime-free housing ordinances concern themselves merely with volume of 911 calls from and to a residence; they do not consider the reason for the calls or the individual calling. In cases of domestic violence and assault, this can have chilling effects on survivors and victims’ ability to seek assistance. From exposing victims of abuse to eviction because of neighbors’ calls after overhearing fights with abusive partners, to discouraging victims from calling the police when they are in danger for fear of eviction, crime-free housing ordinances make already dangerous situations more dangerous for victims of domestic violence. Moreover, these broad ordinances allow for evictions if a tenant’s guests break laws like assault or battery. If “guests” are abusive partners, these ordinances could force victims to pay for the consequences of their abuser’s actions.

Consider, for example, the case of [Rosetta Watson in Maplewood, MO](#). Under the nuisance ordinance where she lived, landlords could initiate eviction proceedings if there were “more than two instances within 180-day period of incidents of peace disturbance or domestic violence resulting in calls . . . to the police.” This ordinance included calls made by renters to the police for help. Ms. Watson called the police for assistance when her former boyfriend attacked her. Per Maplewood’s ordinance, she was evicted from her residence, she lost her Section 8 Voucher, and she lost her occupancy permit. Suddenly, Ms. Watson was forced to move out of her town, which put her in a more vulnerable position, prohibiting her from living in Maplewood for six months.

In 2017, the ACLU filed a federal lawsuit on Ms. Watson's behalf against the city of Maplewood, which the city settled in 2018. Under the [settlement](#), Maplewood compensated Ms. Watson and agreed not to enforce the ordinance against crime victims or residents who call 911 for help from police or emergency services. Unfortunately, cases like Ms. Watson's are not uncommon under nuisance and crime-free housing ordinances.

### **III.C: Disabled persons**

[Disabled persons suffer a similar dilemma](#) to victims and survivors of domestic violence. Nuisance and crime-free housing ordinances instill a fear of calling 911, even in situations of medical need. Although some states addressed this issue in relation to domestic violence and criminal activity, most did not make exceptions for 911 calls made by people who need emergency assistance for other reasons. Additionally, disabled persons face disproportionate numbers of arrest, particularly those who are mentally disabled, which often do not lead to conviction and can be used to support evictions. [The Sargent Shriver National Center on Poverty Law](#) believes that crime-free and nuisance ordinances are contributing to higher rates of homelessness among the disabled community.

Disabled tenants also might not have knowledge of criminal activity taking place around them. Consider the case of [75-year-old Herman Walker](#). Eviction proceedings were initiated against him because his home health aide had cocaine in his apartment, unbeknownst to Mr. Walker. Mr. Walker's story is part of the landmark case *Department of Housing and Urban Development v. Rucker*, which upheld Oakland, CA's one-strike law and allowed the eviction of Mr. Walker and three other residents in similar situations. Although courts, including those in California, have reached varying decisions on whether to uphold *Rucker*, crime-free and nuisance ordinances provide another method by which such "innocent tenants," often those suffering from disability, can be evicted.

## **Part IV: What can We Do?**

Pro bono lawyers can help advocate for tenants' access to housing and can represent tenants in their housing cases.

Some of the organizations that you can work with include [local legal aid organizations](#) such as [Bay Area Legal Aid](#), and organizations that litigate against crime-free and nuisance ordinances like the [ACLU](#), the [National Housing Law Project](#), and the [Shriver Center on Poverty Law](#). Many chapters of the ACLU are currently looking for pro bono volunteers to help with this work and to address other issues of unfair housing practices.

Individual pro bono representation is desperately needed in communities like the Twin Cities, St. Cloud, and Orlando, which are working towards fair housing practices and have extremely stringent crime-free ordinances. Because these ordinances vary city by city and town by town, attorneys in every state can look towards their most impacted communities to find those in need of representation on these grounds; there are many.



As Ms. Watson's case in Maplewood, MO demonstrates, legal representation can make an enormous difference not just for the individual, but for the entire community.

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