



DELIVERED VIA MAIL AND EMAIL

September 16, 2015

Mayor George Van Dusen  
5127 Oakton Street  
Skokie, IL 60077

Village Manager John T. Lockerby  
5127 Oakton Street  
Skokie, IL 60077

Corporation Counsel Michael M. Lorge  
5127 Oakton Street  
Skokie, IL 60077

Dear Mayor Van Dusen, Village Manager Lockerby, and Corporation Counsel Lorge:

We write to draw your attention to an important issue that affects the well-being of Skokie residents and creates liability for the Village itself. The Sargent Shriver National Center on Poverty Law's Housing Justice Unit ("the Shriver Center") advocates to preserve affordable housing and to protect the rights of low-income tenants throughout Illinois. The ACLU of Illinois works to ensure that all in our society are free from discrimination, unwarranted invasions of privacy and interference with constitutional and statutory rights. Both organizations take action by engaging in litigation, public education, and legislative advocacy to defend women's rights, including the rights of survivors of domestic and sexual violence to access housing.

As you may know, on Aug. 21, 2015, Governor Rauner signed into law Senate Bill 1547, which goes into effect on Nov. 19, 2015. SB 1547, now Public Act 99-441, prohibits any municipality from enacting or enforcing any ordinance or regulation that penalizes tenants or landlords based on (A) police calls that were intended to prevent or respond to domestic or sexual violence or that were made on behalf of an individual with a disability, (B) incidents of actual or threatened domestic or sexual violence, or (C) criminal activity or ordinance violations that are directly related to domestic or sexual violence. A municipality that is in violation of P.A. 99-441 is subject to suit for declaratory and injunctive relief, money damages, and attorneys' fees and costs.

The crime free housing and public nuisance provisions of the Village of Skokie Code violate P.A. 99-441 by penalizing landlords and tenants based on the number of police calls to a residence. Specifically, Section 42-35 of the Village of Skokie Code defines an unlawful public nuisance to include those properties "wherein the Village has responded to an unreasonably high number of calls, or initiated an unreasonably high number of contacts based upon information and belief of a need, for: (i) police service," without including an exception for survivors of domestic or sexual violence or individuals with disabilities. This and other provisions of Skokie's public nuisance and crime free housing ordinances (Sections 42-31 through 42-43) likely also violate the law by imposing penalties on tenants and landlords for criminal activity without regard for whether the activity relates to domestic or sexual violence or involves an

individual with a disability. Although Skokie’s crime free housing provision (Section 42-43) exempts from the mandatory eviction process tenants who were non-culpable victims or who were not participating in the criminal activity, and “victims of domestic violence, dating violence, sexual assault, or stalking,” this Section makes no mention of individuals with disabilities. Moreover, Section 42-35, quoted above, contains no such exceptions.

In addition to violating P.A. 99-441, these ordinances may run afoul of other state and federal statutory and constitutional protections. Skokie’s ordinances raise concerns that include, but are not limited to:

- *First Amendment/Right to Petition the Government*: By linking police calls with penalties that harm landlords and tenants, these ordinances may violate the First Amendment of the U.S. Constitution, which guarantees “the right of the people . . . to petition the government for a redress of grievances.” This includes the right to seek law enforcement assistance.<sup>1</sup> Similarly, Article I, Section 5 of the Illinois Constitution protects the right to “apply for redress of grievances,” which has been interpreted consistently with the federal constitutional right to petition.<sup>2</sup> By labeling residents who seek assistance from the police or emergency assistance as a “nuisance” that must be abated, Skokie is unlawfully chilling the exercise of this constitutionally protected right. Furthermore, discouraging crime victims and others responding to aid crime victims from contacting the police only undermines public safety.
- *Fair Housing Act Concerns*: The federal Fair Housing Act (FHA),<sup>3</sup> the Illinois Human Rights Act,<sup>4</sup> and the Illinois Civil Rights Act<sup>5</sup> forbid local governments from enacting or enforcing intentionally or unintentionally discriminatory housing policies. Ordinances that have a disparate impact on protected groups can violate fair housing laws, unless they are justified as necessary to achieve an important municipal objective, which could not be achieved with a less discriminatory effect.<sup>6</sup> Furthermore, as an entitlement jurisdiction, Skokie has an affirmative obligation to further fair housing.<sup>7</sup> This means it must not simply refrain from discriminating, but also must *actively promote* integration and the right to fair housing within the community. Crime free housing and nuisance

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<sup>1</sup> See, e.g., *Meyer v. Bd. of Cnty. Comm’rs*, 482 F.3d 1232, 1243 (10th Cir. 2007); *Gable v. Lewis*, 201 F.3d 769, 771 (6th Cir. 2000); *Ibarra v. City of Chicago*, 816 F. Supp. 2d 541, 550 (N.D. Ill. 2011).

<sup>2</sup> See, e.g., *Creek v. Vill. of Westhaven*, No. 83 C 1851, 1993 WL 291786, at \*7 (N.D. Ill. Aug. 2, 1993); *Concealed Carry, Inc. v. City of Chi.*, No. 02 C 7088, 2006 WL 2860975, at \*5 (N.D. Ill. Sept. 28., 2006).

<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).

<sup>4</sup> 775 ILCS 5/3-102 to 3-102.1. See *Turner v. Human Rights Comm’n*, 532 N.E.2d 392, 398 (Ill. App. Ct. 1988) (finding that because the housing discrimination portions of the Illinois Human Rights Act are similar in language and intent to the federal Fair Housing Act, courts will look to federal discrimination law in interpreting the state law).

<sup>5</sup> 740 ILCS 23/5. See *Thorncreek Apartments III, LLC v. Vill. of Park Forest*, 970 F. Supp. 2d 828, 845 (N.D. Ill. 2013); *Cabrini-Green Local Advisory Council v. Chicago Hous. Auth.*, No. 04 C 3792, 2005 WL 61467, at \*1 (N.D. Ill. Jan. 10, 2005).

<sup>6</sup> See *supra* note 3.

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

property ordinances can be enforced in ways that disproportionately harm protected classes, including by disproportionately harming survivors of domestic violence (who are overwhelmingly women),<sup>8</sup> relying on arrest data as a primary basis of enforcement, reducing the overall supply of rental housing,<sup>9</sup> or targeting enforcement in minority communities.<sup>10</sup>

- *Due Process Concerns:* The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and its Illinois counterpart, protect individuals from being deprived of property without due process of law.<sup>11</sup> Skokie's ordinances may violate tenants' procedural due process rights by failing to provide tenants with adequate notice and a hearing when the Village forces their landlord to evict them or face penalty under these ordinances.<sup>12</sup> Skokie's ordinance may also violate landlords' procedural due process rights if it allows the Village to impose fines and/or penalties on a landlord without adequate procedural protections, including sufficient notice and an opportunity for a neutral pre-deprivation hearing.<sup>13</sup>

As shown above, the crime free housing and public nuisance provisions of the Village of Skokie Code violate P.A. 99-441 and potentially other federal and state laws. The best way for Skokie to avoid liability is to repeal the offending provisions. Crime free housing and nuisance property ordinances ultimately undermine public safety because they deter crime victims and their neighbors from contacting the police and displace vulnerable individuals from their homes.<sup>14</sup>

At the very least, if Skokie chooses to keep some form of its crime free housing or nuisance property provisions in place, it must undertake a comprehensive overhaul including amending its

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<sup>8</sup> See Sarah K. Pratt. U.S. Dep't of Hous. & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act and the Violence Against Women Act (2011)*.

<sup>9</sup> 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).*

<sup>10</sup> Matthew Desmond and Nicol Valdez. *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*. 78(1) *American Sociological Review* 117-141, 117 (February 2013) (available at: <http://asr.sagepub.com/content/78/1/117>) (describing a study of nuisance citations in Milwaukee, which found that properties in black neighborhoods disproportionately received citations, and those located in more integrated neighborhoods had the highest likelihood of being deemed nuisances).

<sup>11</sup> See U.S. Const. amend. XIV; Ill. Const. art. I, § 2.

<sup>12</sup> Cf. *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 537-38 (M.D. Penn. 2007); *Garrett v. City of Escondido*, 465 F.Supp.2d 1043, 1058-59 (S.D. Cal. 2006) (both holding that third-party policing ordinances may violate the Due Process Clause when they penalize landlords for renting to certain tenants without offering notice or an opportunity for a hearing to the tenants in question).

<sup>13</sup> See *Javinsky-Wenzek v. City of St. Louis Park*, 829 F.Supp.2d 787, 796 (D. Minn. 2011); *Cook v. City of Buena Park*, 126 Cal.App.4th 1, 3 (Cal. Ct. App. 2005).

<sup>14</sup> See, e.g., *ACLU Women's Rights Project and the Social Science Research Council, Silenced: How Nuisance Ordinances Punish Crime Victims in New York* 4 (2015).

ordinances, making significant changes to policies and practices, developing tracking and assessment tools, and implementing training and outreach strategies. These changes are essential if Skokie wishes to adopt and enforce ordinances that avoid liability under P.A. 99-441 and other state and federal statutory and constitutional protections.<sup>15</sup>

Please do not hesitate to reach out to us with any questions. We would be happy to meet with you to discuss these issues. Please contact Amy Meek at [ameek@aclu-il.org](mailto:ameek@aclu-il.org) or Kate Walz at [katewalz@povertylaw.org](mailto:katewalz@povertylaw.org) to discuss further.

Sincerely,



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Katherine E. Walz  
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<sup>15</sup> Subsection (b)(1) of P.A. 99-441 clarifies that the Act covers both the enactment and the enforcement of any ordinances that penalize tenants in violation of the protections outlined in Subsection (b).