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**Supplemental Materials for “Housing Rights for Survivors Who Have Interacted with the Criminal Justice System: Admissions and Nuisance Ordinances”: January 22, 2015 webinar**

1. Domestic Violence Survivors with Criminal Records: What You Should Know When Applying for Federally Subsidized Housing (written for survivors; Spanish translation available upon request)
2. Letter from Shaun Donovan, HUD Secretary, and Carol Galante, Acting Assistant Secretary, to all owners and agents of HUD assisted housing (Mar. 14, 2012)
3. Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds (chart)
4. Sample Tenant Selection Plan Policy & Sample Tenant Screening Criteria Policy (currently used in San Francisco supportive housing)
5. First Amended Complaint, *Briggs v. Norristown* (provided by ACLU Women’s Rights Project)
6. *Briggs* Settlement Agreement (provided by ACLU Women’s Rights Project)
7. *Briggs* HUD Conciliation Agreement (provided by ACLU Women’s Rights Project)
8. Pennsylvania House Bill 1796 (2014) (provided by ACLU Women’s Rights Project)
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## **Domestic Violence Survivors with Criminal Records: What You Should Know When Applying for Federally Subsidized Housing**



This informational packet has basic information for survivors of domestic violence that have a criminal record and are applying for federally subsidized housing. Many survivors have a prior arrest or conviction that is related to the violence committed against them. For example, the abuser may have forced the survivor to commit a crime, the survivor may have been mistakenly arrested during an incident of abuse, or the survivor may have used drugs as a way to cope with the abuse.

Owners and housing authorities can adopt their own policies for screening applicants for prior convictions, within certain limits. These limits vary for different subsidized housing programs. These policies must be in writing and available to applicants. Survivors should work with advocates, including legal aid attorneys, to examine these policies and identify their housing options.

### **1. Can I be permanently barred from certain housing programs?**

Yes. Two types of households are barred from federally subsidized housing. First, a household is barred if any member is a lifetime registered sex offender. Second, a household is barred from public housing and the Section 8 Voucher program if any member has been convicted for the manufacture or production of methamphetamine (“meth”) at federally assisted housing.

### **2. Can I be temporarily barred from certain housing programs? Are there exceptions?**

Yes. For certain programs, there is a three-year (or longer) ban if any member of your household has been evicted from federally assisted housing for drug-related criminal activity. The three-year ban applies to applicants for public housing, Section 8 vouchers, and project-based Section 8.

However, there are exceptions to the ban. You still may be able to apply if you or the household member involved in the drug-related activity successfully completed a drug rehabilitation program. You also may be able to apply if your circumstances have changed, such as where the household member responsible for the drug-related activity died or is in prison.

### **3. What are my options if I am temporarily banned due to my criminal history?**

If you face a temporary ban by a housing authority or a Section 8 owner, you could apply to another housing authority or Section 8 owner. In addition, you may be eligible for other programs, such as Shelter Plus Care or Supportive Housing, or state or locally funded housing programs. For more information, please consult with advocates, including your local legal aid office, and check the HUD website for available housing, [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance).

### **4. Can I be denied housing for being convicted of other crimes?**

Maybe. A housing authority or owner may have additional criminal screening rules. However, not all convictions can be a reason for denying housing. Only convictions for crimes that are drug-related, violent, or would threaten the health, safety, or peaceful enjoyment of the housing can be reasons for denying housing. Domestic violence survivors and family members with convictions such as shoplifting, writing bad checks, or prostitution should not be rejected unless the housing authority or owner can show that the activity would threaten the health and safety of other residents. See also Question 6.

Importantly, the housing authority or owner must find that the crime occurred within a “reasonable period” of time before the admission decision. Many housing authorities and owners go back three years in checking an applicant’s criminal history. The Department of Housing and Urban Development (HUD) suggests that “five years may be reasonable for *serious* offenses” and notes that housing providers should consider the type of crime when deciding how far back to check criminal records.

## **5. Can I be denied housing on the basis of an arrest alone?**

No. A housing provider should never reject you on the basis of an arrest that did not lead to a conviction. If that happens, you should contact a legal aid office.

## **6. What if I am denied housing because of my criminal record?**

If a housing authority or Section 8 owner denies you housing because of your criminal history, you have a right to see a copy of the criminal background check that the housing authority or owner used to make the decision. Since this information can sometimes be wrong, it would be important for you to review the background check.

If there is a close link between the criminal history and acts of domestic violence against you, you may be able to argue that the denial violates the Violence Against Women Act (VAWA). You may also be able to argue that the denial of housing violates fair housing laws. In addition, you may be able to challenge the denial in a hearing. Contact your local legal aid office to find out whether these laws apply to you.

Survivors sometimes face denials of housing based on the abuser's criminal history if the abuser was originally listed on the household's application. For example, the abuser may have been living with you when the application was submitted, but moved out by the time the housing provider looked at your application for criminal history. In this situation, you should give proof to the housing provider showing that the abuser is no longer part of the household, such as a restraining order, divorce judgment, or a statement from you or a service provider.

## **7. What if I am not sure about my criminal record?**

Be careful of what you say if you are not certain about what happened or the status of your criminal case. For example, you may be unsure as to whether there was a conviction in your case, whether it was dismissed, or whether it was considered a felony. If a housing application asks about a criminal record, and you are unsure of the answer, you should say "I don't know" or "I'm not sure." If you are untruthful about your criminal history, that untruthful statement may be a reason for denying your housing application, and/or for an eviction or termination if it is discovered later.

## **8. Will the information I provide a housing authority or owner regarding past domestic violence be confidential?**

Yes. A federal law, the Violence Against Women Act (VAWA), states that applicants of most federally assisted housing who provide information on their status as survivors of domestic violence have a right to confidentiality. Housing authorities and owners may not share this information with outside parties or enter it into a shared database. The information can only be shared with employees who need it for their work.

## **9. How can I improve my chances of being admitted?**

You should give the housing authority or owner any information that helps to show that circumstances have changed since the arrest or conviction occurred. It is especially helpful to provide documents showing that you will be a good tenant, such as letters of support from employers, pastors, substance abuse treatment providers and family, or flyers from groups you belong to, including volunteer organizations and church. If your criminal history is related to violence committed against you or a household member, you should explain that to the housing provider and include any supporting documents, if it is safe for you to do so. You should also explain why it is unlikely that you will be involved in any future crimes, such as by showing that you ended your relationship with the abuser and that you have sought help for the abuse.

*This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*

Attachment 2:

Letter from Shaun Donovan, Secretary of HUD and Carol Galante, Acting Assistant Secretary, to all owners and agents of HUD assisted housing, March 14, 2012



U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, D.C. 20410-0001

THE SECRETARY

Dear Owners and Agents:

Each year, more than half a million people are released from prisons in the United States, and an additional seven million are released from jails. Research shows that ex-offenders who do not find stable housing in the community are more likely to recidivate than those who do, yet people returning to their communities from prison often face significant barriers to obtaining housing. Studies have also found that the majority of people released from prison intend to return to their families, some of whom may live in assisted housing.

The Department is asking owners of HUD-assisted properties to seek a balance between allowing ex-offenders to reunite with families that live in HUD subsidized housing, and ensuring the safety of all residents of its programs. Accordingly, the Department encourages owners of HUD-assisted properties to develop policies and procedures that allow ex-offenders to rejoin the community to the extent that this balance can be maintained. When screening family behavior and suitability for tenancy, owners may consider all relevant information, including factors that indicate a reasonable probability of favorable future conduct; for example, evidence of rehabilitation and evidence of the applicant family's participation in or willingness to participate in social services such as counseling programs. Discretion is, however, afforded to each owner.

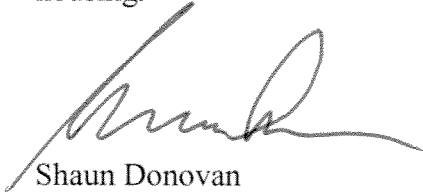
Despite the discretion given to owners to set admission and termination policies for their properties, HUD statute and regulations require owners to prohibit admission to sex offenders subject to a lifetime registration requirement under a state government's sex offender registration program (24 CFR 5.856). Additionally, owners must establish standards that prohibit admission if the owner determines that any household member is currently engaged in illegal use of a drug, or the owner has reasonable cause to believe that a household member's illegal drug use, alcohol use, or pattern of drug or alcohol abuse may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents (24 CFR 5.854, 24 CFR 5.857).

Owners must also prohibit admission of an applicant for 3 years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. In this case, however, owners retain discretion to consider the circumstances and may admit households if the owner determines that the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, including those supervised by drug courts, or that the circumstances leading to eviction no longer exist (24 CFR 5.854).

As President Obama recently made clear, this is an Administration that believes in the importance of second chances – that people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace

the future. Part of that support means helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live.

Thank you for your continued commitment to providing quality affordable rental housing.



Shaun Donovan  
Secretary



Carol J. Galante  
Acting Assistant Secretary for Housing -  
Federal Housing Commissioner

## Appendix 2B: Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds\*

	Convicted of producing meth at federally-assisted housing <sup>^</sup>	Lifetime registered sex offender	Prior eviction from federally-assisted housing <sup>^</sup> for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
<b>Public Housing</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 960.204(a)(3).	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 960.204(a)(4).	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661(a) and 13664; 24 C.F.R. § 960.203(d). § 960.204(a)(1).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 960.203(d).	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 960.204(a)(2).
<b>Voucher Program</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 982.553.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 982.553.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 982.553.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 982.553.
<b>Section 8 Mod Rehab</b>	Permanent ban on admission. 42 U.S.C. § 1437n(f); 24 C.F.R. § 882.518.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 882.518.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 882.518.	PHA must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 882.518.

\* There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603).

<sup>^</sup> Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.

## Appendix 2B: Federally Assisted Housing Programs: Admissions for Applicants with Certain Criminal Backgrounds\*

	Convicted of producing meth at federally-assisted housing <sup>^</sup>	Lifetime registered sex offender	Prior eviction from federally-assisted housing <sup>^</sup> for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
<b>Section 8 SRO Mod. Rehab. for homeless</b>	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805(c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may require a ban. 24 C.F.R. §§ 882.805 (c); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	PHA or owner has discretion to admit applicant. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2), <i>see also</i> provisions cited above under Section 8 Mod. Rehab.	Current funds are appropriated for homeless individuals. 42 U.S.C. §11401. Regulations may deny admission. 24 C.F.R. §§ 882.805 (c) and 882.808(b)(2); <i>see also</i> provisions cited above under Section 8 Mod. Rehab.
<b>Project-based Section 8</b>	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854

\* There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603).

<sup>^</sup> Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.



## Appendix 2B: Federally Assisted Housing Programs for Applicants with Certain Criminal Backgrounds\*

	Convicted of producing meth at federally-assisted housing <sup>^</sup>	Lifetime registered sex offender	Prior eviction from federally-assisted housing <sup>^</sup> for drug-related activity	History of drug-related criminal activity	History of violent criminal activity	History of crimes that threaten health, safety, or peaceful enjoyment	Current user of illegal substances
<b>Sections 202, 811, 221(d)(3), 236</b>	No requirement imposed by federal law. Owner has discretion to admit applicant. 42 U.S.C. § 1437n(f); 24 C.F.R. § 5.855.	Permanent ban on admission. 42 U.S.C. §§ 13663 and 13664; 24 C.F.R. § 5.856.	3-year ban on admission unless applicant is rehabilitated. 42 U.S.C. §§ 13661 and 13664; 24 C.F.R. § 5.854.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855.	Owner has discretion to admit applicant. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854.	Owner must deny admission. 42 U.S.C. § 13661(b); 24 C.F.R. § 5.854.
<b>USDA Housing</b>	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13663 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>but see</i> 42 U.S.C. §§ 13661 and 13664, which extend to Section 515 and 514 housing.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154.	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>see also</i> 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).	Owner has discretion to admit applicant. 7 C.F.R. § 3560.154; <i>see also</i> 42 U.S.C. § 13661(b) and 24 C.F.R. § 5.850(c).
<b>HOME</b>	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).	No requirements imposed by federal law; Owner has discretion to admit applicant. 24 C.F.R. § 92.253(d).

\* There are no federal requirements regarding admission of individuals with criminal background to Low-Income Housing Tax Credit (LIHTC) housing, Shelter Plus Care (S+C) (see generally 24 C.F.R. §§ 582.325 and 582.330), Supportive Housing Program (SHP) (see generally 24 C.F.R. § 583.325) or Housing Opportunities for Persons with AIDS (HOPWA) (see generally 24 C.F.R. § 574.603).

<sup>^</sup> Federally-assisted housing is defined, in this context, to include, public housing, Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 515 and Section 514.

## EXHIBIT H

### Tenant Selection Plan Policy

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),<sup>1</sup> **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

#### Application Process

- Application Materials. The housing provider's written and/or electronic application materials should:
  - outline the screening criteria that the housing provider will use;
  - provide space(s) for the applicant to explain any conviction, eviction, tenancy issues or credit concerns and present evidence that he or she will be a suitable tenant;
  - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
  - be written in language that is clear and readily understandable.
- First Interview. In accordance with the housing provider policies, each applicant with the minimum eligibility requirements for housing unit shall be offered the opportunity for an interview.
- Second Interview. Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- Confidentiality. All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process.
- Delays in the Process. If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.

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<sup>1</sup>See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2**; **Unruh Civil Rights Act, Civil Code § 51**; **California Disabled Persons Act, Civil Code § 51.4**; Dymally-Alatorre Bilingual Services Act, Gov't Code §**7290-7299.8**; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**

- Problems with the Referring Agency. If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.
- **Limited English Proficiency Policy.** Throughout the application process, the housing provider must comply with the language access requirements for applicants with limited English proficiency.

### **Reasonable Accommodation and Modification Policy**

**Reasonable Accommodation:** The application process should provide information about how an applicant may make a reasonable accommodation request. At any stage in the admission process, an applicant may request a reasonable accommodation, if the applicant has a disability and as a result of the disability needs a modification of the provider's rules, policies or practices, including a change in the way that the housing provider communicates with or provides information to the applicant that would give the applicant an equal chance to be selected by the housing provider to live in the unit.

**Reasonable Modification:** Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

**Response to Request:** The housing provider shall respond to a request for reasonable accommodation or modification within ten (10) business days. The response may be to grant, deny, or modify the request, or seek additional information in writing or by a meeting with the applicant. The housing provider will work with the applicant and referring agency to determine if there are ways to accommodate the applicant.

The housing provider shall grant the request if the provider determines that:

- the applicant has a disability;
- reasonable accommodation or modification is necessary because of the disability; and
- the request is reasonable (i.e., does not impose an undue financial or administrative burden or fundamentally alter the nature of the housing program.)

If the reasonable accommodation request is denied, the rejection must explain the reasons in writing. If the denial of the reasonable accommodation request results in the applicant being denied admission to the unit, the provisions of the section on Notice of Denial and Appeal Process apply.

### **Notice of Denial and Appeal Process**

- The housing provider shall:
  - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
    - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
    - explain how the applicant can request an in person appeal to contest the decision;
    - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
    - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
    - provide referral information for local legal services and housing rights organizations;
    - describe the evidence that the applicant can present at the appeal;
  - give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
  - unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
  - confine the subject of the appeal to the reason for denial listed in the notice;
  - give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
  - have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
  - within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.

- If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Credit Reporting Act and the Investigative Consumer Reporting Agencies Act impose additional notice requirements.<sup>2</sup>

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<sup>2</sup> Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.* and Investigative Consumer Reporting Agencies Act (ICRAA), Cal. Civ. Code § 1786 *et seq.*

**EXHIBIT I**  
**Tenant Screening Criteria Policy**

The City expects that housing providers will use maximum feasible efforts to ensure that those individuals and families who are referred are accepted for occupancy in a timely fashion. To that end, the City has adopted the following screening criteria for applicants with a criminal record. If a problem arises in the application and screening process that may cause unreasonable delay in screening outcome, the housing provider should immediately notify the referring agency and DPH or HSA to assist with an expeditious resolution.

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants who have a criminal record. They describe a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

**Screening Criteria**

- Housing providers shall not automatically bar applicants who have a criminal record<sup>1</sup> in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers shall not consider:
  - arrests that did not result in convictions, except for an open arrest warrant;
  - convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;<sup>2</sup>
  - juvenile adjudications.
- Housing providers shall consider:
  - the individual circumstances of each applicant; and
  - the relationship between the offense, and
    - (1) the safety and security of other tenants, staff and/or the property; and
    - (2) mitigating circumstances such as those listed below.

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<sup>1</sup> The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

<sup>2</sup> The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release “from all penalties and disabilities resulting from the offense.”

- only those offenses that occurred in the prior 3 years, except in exceptional situations, which must be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity. As necessary, DPH or HSA will assess the justification for a longer look-back period and determine whether an exception is warranted. In these exceptional situations, the housing provider may consider offenses that occurred in the prior 5 years.
- mitigating factors, including, but not limited to:
  - (1) the seriousness of the offense;
  - (2) the age and/or circumstances of the applicant at the time of the offense;
  - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;
  - (4) if the offense is related to acts of domestic violence committed against the applicant;
  - (5) if the offense was related to a person's disability.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAKISHA BRIGGS	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 2:13-cv-02191-ER
	:	
BOROUGH OF NORRISTOWN and DAVID R.	:	
FORREST, ROBERT H. GLISSON, RUSSELL J.	:	JURY TRIAL DEMANDED
BONO, WILLIE G. RICHEL and JOSEPH E.	:	
JANUZELLI, in their individual and official	:	
capacities	:	
	:	
Defendants.	:	

**VERIFIED FIRST AMENDED COMPLAINT**

**INTRODUCTION**

1. This action is brought on behalf of an African-American, female victim of repeated domestic violence, who has periodically needed to rely on the police for protection at her rental home in Norristown, Pennsylvania.

2. Defendants – a Pennsylvania municipality, its Former and Interim Municipal Administrator, Former and Interim Chief of Police, and Municipal Code Manager – have enacted and enforced two consecutive ordinances that authorize them to penalize landlords, and cause those landlords to remove their tenants from their homes, where the tenants have required the assistance of law enforcement for incidents of “disorderly behavior” at their rental properties.

3. Until November 2012, Defendants maintained and enforced Section 245-3 of the Norristown Municipal Code (the “Old Ordinance”) against landlords and tenants in Norristown.

4. The Old Ordinance authorized Defendants *to revoke or suspend a landlord’s rental license and forcibly remove a tenant from any property* where the police have responded to three instances of “disorderly behavior” at the property within a four month period.



5. The Old Ordinance broadly defined “disorderly behavior” to cover any “activity that can be characterized as disorderly in nature” and provided several examples of activities that constituted “disorderly behavior,” including instances of domestic violence.

6. The Old Ordinance vested the Chief of Police with sole discretion to determine whether the activity to which the police respond constituted “disorderly behavior” under this definition.

7. Thus, under the Old Ordinance, “disorderly behavior” could be found in virtually any call to which the police responded, including incidents where the tenant was blameless, reasonable in seeking police assistance, or facing a true emergency, and even where the police responded to a baseless call from a vindictive neighbor.

8. Between April and September 2012, Defendants enforced the Old Ordinance against Plaintiff and Plaintiff’s landlord by revoking Plaintiff’s landlord’s rental license and attempting to remove Plaintiff and her infant daughter from their home, on grounds that the police were called upon one too many times to protect her and her daughter from incidents of domestic violence.

9. In the course of enforcing the Old Ordinance, Defendants assigned three “strikes” to Plaintiff and placed her property on a 30-day probationary period.

10. During this probationary period, Plaintiff was so terrified she would lose her home due to Defendants’ enforcement of the Old Ordinance that she refrained from calling the police during an incident in which she was brutally attacked and almost killed by her former boyfriend.

11. Notwithstanding this violent episode, Defendants proceeded undeterred to take steps to remove Plaintiff from her rental property until Plaintiff’s counsel interceded.

12. In a September 2012 letter, Plaintiff's counsel explained to Defendants how enforcement of the Old Ordinance violated Plaintiff's constitutional rights and demanded that Defendants cease enforcement of the Old Ordinance against Plaintiff and other tenants in Norristown.

13. Following a meeting with Plaintiff's counsel, Defendants acknowledged the constitutional deficiencies of the Old Ordinance and subsequently repealed the Old Ordinance in its entirety, in November 2012.

14. Yet, within two weeks after repealing the Old Ordinance, Defendants quickly proceeded to enact, and ultimately did enact, a nearly identical, replacement ordinance (the "New Ordinance") in December 2012, without ever informing Plaintiff's counsel.

15. The New Ordinance permits Defendants *to assess a series of escalating criminal fines against landlords* of any property, at which, within a four-month period, the police have responded to three instances of "disorderly behavior," including instances of domestic violence.

16. The New Ordinance is substantially similar to the Old Ordinance. While the New Ordinance changes the penalties on landlords for violations thereof (from a suspension or revocation of rental licenses to a series of criminal fines), the New Ordinance has the same adverse impact as the Old Ordinance on tenants in Norristown and continues to suffer from all of the same constitutional and legal failings. Although the New Ordinance purports to target landlords, the New Ordinance directly infringes on Norristown tenants' constitutional rights.

17. Specifically, Defendants' previous enforcement of the Old Ordinance violated, and threatened enforcement of the New Ordinance continues to violate, Plaintiff's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution, their Pennsylvania constitutional equivalents, and federal and state housing law.

18. Accordingly, Plaintiff brings this action seeking damages for injuries suffered by Defendants' unconstitutional enforcement of the Old Ordinance and to enjoin Defendants from enforcing the New Ordinance.

19. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 3601 *et seq.*

20. Plaintiff seeks declaratory and injunctive relief, as well as compensatory damages, punitive damages and attorneys' fees as provided under 42 U.S.C. § 1988.

### **JURISDICTION AND VENUE**

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) & (4).

22. This Court has supplemental jurisdiction over the state constitutional and statutory claims pursuant to 28 U.S.C. § 1367.

23. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

24. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

25. This Court has personal jurisdiction over Defendants because they are located or reside in the Eastern District of Pennsylvania and/or the events that give rise to this action occurred within the Eastern District of Pennsylvania.

26. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) in that Defendants are subject to personal jurisdiction within the Eastern District of Pennsylvania and the events that give rise to this action occurred within the Eastern District of Pennsylvania.

### **PARTIES**

27. Plaintiff Lakisha Briggs ("Ms. Briggs") is a 33 year old, African-American, single mother. She is a citizen of the United States and is a resident of Norristown, in Montgomery

County, in the Commonwealth of Pennsylvania. Ms. Briggs has lived in Norristown for 24 years, since she was nine years old, and intends to live in Norristown for the rest of her life.

28. Between November 1, 2010 and February 1, 2013, Ms. Briggs lived on Wayne Avenue, in Norristown.

29. Ms. Briggs currently lives at another rental house in Norristown.

30. Ms. Briggs has two children: a three year old daughter, who lives with Ms. Briggs, and a 21 year old daughter, who lives independently in Philadelphia.

31. Defendant Borough of Norristown (“Norristown” or “the borough”) is a municipal corporation, having the name of “Borough of Norristown,” (*see* Borough of Norristown Home Rule Charter) located in Montgomery County, in the Commonwealth of Pennsylvania, with administrative offices and police headquarters located at 235 East Airy Street, Norristown, PA 19401.

32. Defendant David R. Forrest is the former Municipal Administrator for Norristown and in that position had the responsibility under the Old Ordinance for, among other things, determining whether and when to revoke or suspend rental licenses and whether and when to condemn private property and declare it unlawful to occupy the property as a rental unit. Defendant Forrest had ultimate supervisory authority over enforcement of the New Ordinance. Defendant Forrest maintained an office at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401. Defendant Forrest resigned from his position effective February 28, 2013. Defendant Forrest is currently the City Manager for the City of Canandaigua and maintains an office at 2 North Main Street, Canandaigua, NY 14424.

33. Defendant Robert H. Glisson is the Interim Municipal Administrator and, in this position, has ultimate supervisory authority over enforcement of the New Ordinance. Defendant

Glisson maintains an office at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401. Defendant Glisson assumed his position immediately after Defendant Forrest's resignation.

34. Defendant Russell J. Bono is the former Chief of Police for the Norristown Police Department and in that position, under both the Old Ordinance and the New Ordinance (collectively "the Ordinances"), had responsibility for, among other things, determining whether a call to which the police respond involves activity that can be characterized as disorderly in nature under the Ordinances. Defendant Bono maintained an office at the Norristown Police Department, 235 East Airy Street, Norristown, PA 19401. Defendant Bono resigned from his position effective February 28, 2013. Defendant Bono resides in Norristown, PA.

35. Defendant Willie G. Richet is the Interim Chief of Police for the Norristown Police Department and in that position, under the New Ordinance has responsibility for, among other things, determining whether a call to which the police respond involves activity that can be characterized as disorderly in nature under the New Ordinance. Defendant Richet maintains an office at the Norristown Police Department, 235 East Airy Street, Norristown, PA 19401. Defendant Richet assumed his position immediately after Defendant Bono's resignation.

36. Defendant Joseph E. Januzelli is the Municipal Code Manager for Norristown and in that position had and has responsibility for, among other things, enforcement of the Ordinances. Defendant Januzelli maintains an office with the Building & Code Enforcement Department at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401.

37. Defendants Forrest, Glisson, Bono, Richet, and Januzelli (collectively, the "Individual Defendants") are named herein in both their individual and official capacities. Each

of the Individual Defendants is a “person” as that term is defined in 42 U.S.C. § 1983 and at all relevant times has been acting under color of state law.

### **THE OLD ORDINANCE**

38. At all relevant times, Norristown has required landlords to obtain rental licenses for each property that a landlord desires to rent to tenants in Norristown. *See* Section 245-2 of the Norristown Municipal Code, attached hereto as Exhibit A.

39. The Old Ordinance was in effect between January 5, 2009 and November 7, 2012 and allowed Norristown’s Municipal Administrator to revoke or suspend the rental license for any property where the police have responded to three instances of what the Chief of Police – in his sole discretion – considered “disorderly behavior” at the property within a four month period, including any “[d]omestic disturbances that do not require that a mandatory arrest be made.”<sup>1</sup> *See* Section 245-3 of the Norristown Municipal Code, attached hereto as Exhibit A. For each incident of “disorderly behavior,” landlords and their tenants were assigned a “strike.”

40. While the Old Ordinance purported to provide two exceptions to its enforcement for calls seeking “emergency assistance,” a plain reading of the relevant language reveals that these supposed “exceptions” were devoid of meaning:

a. First, the “exceptions” only exempted emergency calls made by “a tenant, a member of a tenant’s family or a tenant’s guest” and, thus, excluded calls for emergency assistance or otherwise by neighbors or any others outside the rental property;

b. Second, one of the “exceptions” did not apply if it was later determined, in the unilateral discretion of the Norristown Police Department, that any acts of “disorderly behavior” (as defined in the Old Ordinance) had occurred at the property; and

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<sup>1</sup> Pennsylvania does not have a mandatory arrest provision in the law for domestic violence crimes.

c. Third, the other “exception” only excused such calls seeking “emergency assistance that is protected by Pennsylvania statute.”

41. The emptiness of these supposed “exceptions” was borne out by Defendants’ enforcement of the Old Ordinance against Ms. Briggs when the police were called to respond to emergency situations at her property and to protect her from incidents of domestic violence, as discussed herein.

42. The Old Ordinance unconstitutionally penalized domestic violence victims, like Ms. Briggs, who cannot control or prevent the violence perpetrated against them.

43. Although the nominal targets of the Old Ordinance were landlords in Norristown, the Old Ordinance had several direct, adverse effects on Ms. Briggs and other victims of domestic violence:

a. The Old Ordinance stripped domestic violence victims – some of the most vulnerable citizens in the community – of police protection, silenced them from reporting acts of violence against them, and emboldened their abusers to perpetrate their acts of violence in the home. Under the Old Ordinance, victims of domestic violence were essentially forced to choose between eviction and calling for help when they were being battered in their homes.

b. The Old Ordinance exacerbated the preexisting challenges that victims of domestic violence already face in accessing and maintaining housing. It is well-documented that domestic violence is a primary cause of homelessness and housing instability for women and children. Congress has found that women and families are being discriminated against and evicted from housing because of their status as victims of domestic violence, 42 U.S.C. § 14043e. Norristown itself reported to the federal Department of Housing and Urban

Development in 2012 that 20% of its homeless population are domestic violence victims. *See* Norristown Third Program Year Action Plan at 26, attached hereto as Exhibit B.

44. Domestic violence is a serious criminal, public health, and societal issue. One in three women in the United States has experienced rape, physical violence and/or stalking by an intimate partner in her lifetime, and it has been estimated that 85% of victims of domestic violence are women. Federal, state, and local governments have recognized the need for effective law enforcement response to these crimes, which historically were treated as private matters unworthy of police intervention. *See, e.g.*, Chapter 19 – Domestic Violence, U.S. Dept. of Hous. and Urban Dev., Pub. Hous. Occupancy Guidebook, at 216-19 (June 2003), attached hereto as Exhibit C.

45. Because the overwhelming numbers of domestic violence victims are women, the Old Ordinance had an inherent disparate impact on female tenants in Norristown.

#### **THE RENTAL PROPERTY**

46. Between November 1, 2010 and February 1, 2013, Ms. Briggs rented a house with a Section 8 voucher on Wayne Avenue, in Norristown (“the Property”).

47. Ms. Briggs’ landlord at the Property is named Darren Sudman (“Mr. Sudman”). Mr. Sudman considered Ms. Briggs to be a good tenant who paid her rent in a timely fashion.

#### **EPISODES OF DOMESTIC VIOLENCE**

48. While living at the Property, Ms. Briggs experienced several incidents of domestic violence where the police were called.

#### **Early Incidents**

49. On or about January 20, February 4, and March 12 and 17, 2012, Ms. Briggs called the police for assistance with domestic disturbances.



50. The police responded to all four of these calls but did not inform Ms. Briggs of the Old Ordinance and did not mention at that time whether the call would count as a strike.

**April 9, 2012 Incident**

51. On or about April 9, 2012, Ms. Briggs' boyfriend at the time, Wilbert Bennett ("Wilbert"), came to her home around 2:00 a.m. and tried to wake her up. He was intoxicated.

52. Wilbert and Ms. Briggs began arguing, and Wilbert hit her.

53. Ms. Briggs' 21 year old daughter, who was at the Property at the time, called the police. When the police arrived, they arrested Wilbert and charged him with disorderly conduct, public drunkenness, and possession of marijuana.

54. The police did not charge Ms. Briggs with a crime, issue a citation or accuse her of any violation of law.

55. This was the first occasion that the police informed Ms. Briggs about the Old Ordinance and warned her that this incident of domestic violence was her first strike. The police told her that they were charging her with a strike under the Old Ordinance because they were tired of responding to Ms. Briggs' previous calls to the police.

56. The police officer who told her about the Old Ordinance said: "You are on three strikes. We're gonna have your landlord evict you." The officer did not give Ms. Briggs any paperwork regarding the Old Ordinance or the three strikes policy.

57. Following this incident, Ms. Briggs had a lengthy discussion with members of her family and Wilbert regarding the Old Ordinance. She told them that any "disorderly behavior" could get her evicted under the Old Ordinance. She told them that it would be terrible if she got evicted and she needed to keep the rental house to raise her three year old daughter.

**April 15, 2012 Incident**

58. Just six days later, on or about April 15, 2012, Wilbert and members of Ms. Briggs' family were at Ms. Briggs' home for a barbeque.

59. A fight arose between Wilbert and the boyfriend of Ms. Briggs' 21 year old daughter.

60. None of the individuals from Ms. Briggs' home called the police for fear of incurring a second strike.

61. Instead, a neighbor called the police. Upon arrival, the police entered the house with guns drawn because it was reported – erroneously – that shots had been fired.

62. The police arrested Wilbert and Ms. Briggs' 21 year old daughter's boyfriend and charged them with simple assault and reckless endangerment.

63. The police officers did not mention the Old Ordinance or any strikes at that time.

64. However, Mr. Sudman, Ms. Briggs' landlord, later received a notice in the mail indicating that this incident constituted a second strike against Ms. Briggs.

65. When Ms. Briggs found out about the second strike, she filed a Pennsylvania "Right to Know" Request to learn more and spoke to Detective Todd Dillon of the Norristown Police Department, who informed her that this incident counted as her second strike.

66. Following the April 15 incident, Ms. Briggs broke up with Wilbert and told him that he could no longer stay at or even visit her home.

67. Ms. Briggs wanted everyone out of her home, except for her three year old daughter. She did not want to do anything to risk losing her home.

**May 2, 2012 Incident**

68. Two and a half weeks later, on or about May 2, 2012, Ms. Briggs returned home from work and saw Wilbert in an alleyway near her house, drinking and talking with some unknown individuals.

69. Wilbert chased Ms. Briggs down the alley with a brick and followed her to her house, where he attacked her.

70. An unknown person called the police. When the police arrived at her house, Wilbert ran into the house to hide from the police.

71. Ms. Briggs remained on the porch in only her bra; her shirt had been ripped off by Wilbert during the struggle.

72. Notwithstanding the obvious appearance of being assaulted, Ms. Briggs declined to tell the police what had happened and told them that there was no one in the house. She was reluctant to tell the police the truth for fear that it could lead to a third strike under the Old Ordinance.

73. When the police asked if they should remove Wilbert from the house, Ms. Briggs declined because she was worried about eviction under the Old Ordinance.

74. The police eventually entered the house and arrested Wilbert. Wilbert was charged with public drunkenness, and both Ms. Briggs and Wilbert were cited for disorderly conduct and fighting.

75. For each of the April 9, April 15, and May 2, 2012 incidents, the police charged Ms. Briggs with a strike under the Old Ordinance. The borough then initiated license-revocation proceedings against Mr. Sudman, Ms. Briggs' landlord.

### MEETING WITH BOROUGH OFFICIALS

76. On or about May 23, 2012, Ms. Briggs accompanied Mr. Sudman to a meeting with borough officials, regarding whether Mr. Sudman's license for the property on Wayne Avenue should be suspended or revoked and whether Ms. Briggs could continue to live in the house.

77. In attendance at the meeting were Defendants Forrest, Bono, and Januzelli, and Norristown's Solicitor, Sean Kilkenny, Esq.

78. The meeting lasted approximately 30 minutes. No official record, transcript or minutes were kept and no one appeared to be designated as a finder of fact.

79. Defendant Bono did most of the talking at the meeting, reporting what was recorded in the police reports.

80. Ms. Briggs attempted to tell her side of the story and describe the incidents, but she was interrupted by Defendant Bono's statements that the police had responded to a call, and that one of the callers had claimed erroneously that shots had been fired at the house. Defendant Bono also made specious allegations of drug-related activity at the house.

81. Mr. Sudman also spoke at the meeting and described Ms. Briggs as a good tenant who paid her rent in a timely manner. He explained that he had never had a problem with Ms. Briggs.

82. Mr. Sudman added that it would be a significant loss for him to lose Ms. Briggs as a tenant and noted that it would be an even greater loss for Ms. Briggs to lose her home because she had a three year old child to care for.

83. Ms. Briggs brought a friend, Dana Henderson, to support her at the meeting, but Ms. Henderson was not permitted to speak.

84. Later the same day, Defendant Forrest issued a letter decision and placed the property on a 30-day probationary period.

85. Defendant Forrest declared in his letter decision that any further violations during the 30-day period would result in suspension or revocation of the rental license.

86. Thus, through this letter as well as their previous communications, the Defendants affirmatively instructed Ms. Briggs that any future calls to the police would lead to her eviction. They restricted her communications with law enforcement, despite the government's interest in encouraging the reporting of crimes and responding to domestic violence.

#### **June 23, 2012 Incident**

87. Wilbert was briefly incarcerated for some period of time as a result of the May 2nd incident.

88. However, Wilbert was released from prison around the middle of June and went to find Ms. Briggs at her house.

89. Wilbert wanted to get back together. He threatened Ms. Briggs: "You are going to be with me or you are going to be with no one."

90. Ms. Briggs told Wilbert that she did not want to be with him anymore, but Wilbert would not accept her decision and refused to leave.

91. Ms. Briggs permitted Wilbert to stay because she could not by herself physically force him to leave and knew that she could not call on the police to remove him without violating the probationary period and facing eviction under the Old Ordinance.

92. Left powerless, Ms. Briggs acquiesced to Wilbert's demands. She let her abuser stay because she felt intimidated and worried that he would harm her or her three year old daughter if she tried to do anything to force him out, and she knew that she could not call the police for help without risking eviction.

93. On or about the evening of June 23, 2012, Wilbert invited some of his friends over to Ms. Briggs' house.

94. Powerless to prevent Wilbert's and his friends' intrusion without calling the police, Ms. Briggs let them stay. She could not call the police without violating the Old Ordinance.

95. Later that evening, Wilbert attacked Ms. Briggs for allegedly flirting with other men.

96. He bit and tore her lip.

97. He broke a glass ashtray against the right side of her head, knocking her down and leaving a two-inch gash.

98. He stabbed her in the neck with one of the large broken glass shards.

99. Ms. Briggs ultimately passed out, with blood gushing from a four-inch-long puncture wound in her neck.

100. Ms. Briggs did not call the police for fear of triggering eviction under the Old Ordinance. A neighbor called the police.

101. Ms. Briggs was quickly flown by trauma helicopter to the University of Pennsylvania Hospital for emergency medical care.

102. Wilbert later turned himself in to authorities and was held on aggravated assault charges.

103. Ms. Briggs subsequently obtained a Protection from Abuse ("PFA") restraining order against Wilbert on July 12, 2012, which expires on July 11, 2015.

## **EVICITION PROCEEDINGS**

104. Three days after the stabbing incident, on or about June 26, 2012, Defendant Forrest told Mr. Sudman that his rental license was revoked and that Ms. Briggs had ten days to vacate the property. However, Defendant Forrest told Mr. Sudman that he could apply for a new rental license as soon as Ms. Briggs vacated the property. *See* June 26, 2012 email chain, attached hereto as Exhibit D.

105. Ms. Briggs had just returned home from the hospital after being treated for the stabbing incident. It was the middle of her pay period and she did not have the money to go anywhere else.

106. Mr. Sudman told Ms. Briggs that the borough was, unfortunately, forcing him to file for her eviction.

### **First Eviction Hearing**

107. Ms. Briggs, her attorney Susan Strong, Esq., and Mr. Sudman attended the first eviction hearing before Magisterial District Justice Margaret Hunsicker.

108. Mr. Sudman told District Justice Hunsicker that he did not want to evict Ms. Briggs because she was a good tenant who paid her rent in a timely fashion, and was bringing the eviction action solely because he was required to do so by the borough.

109. The Court issued a continuance and postponed its decision to give the borough some time to reconsider its decision.

110. Susan Strong communicated what had transpired at the eviction hearings to the borough.

**Second Eviction Hearing – August 22, 2012**

111. At the second eviction hearing, on or about August 22, 2012, District Justice Hunsicker ruled that Ms. Briggs could continue to live at the rental house if she paid her rent up through the end of August and Mr. Sudman's court filing fees relating to the eviction proceedings.

112. Ms. Briggs promptly paid the required amounts and was, therefore, entitled to remain in the property.

113. Susan Strong communicated the outcome of the hearing to Mr. Sudman and the borough.

**SUBSEQUENT ATTEMPTS TO REMOVE MS. BRIGGS**

114. Despite District Justice Hunsicker's ruling, the borough continued to pursue the removal of Ms. Briggs from her home.

115. On or about August 27, 2012, Defendant Forrest told Mr. Sudman that – based on advice of counsel and notwithstanding the U.S. Constitution, applicable federal law and District Justice Hunsicker's decision – the borough had an "independent right" under the Old Ordinance to revoke his rental license, condemn the property as "unlawful," and remove Ms. Briggs for trespassing. Accordingly, the borough strongly recommended that Mr. Sudman encourage Ms. Briggs to vacate the property voluntarily. *See* August 27, 2012 email from D. Forrest to D. Sudman, attached hereto as Exhibit E.

**NOTICE OF CONSTITUTIONAL VIOLATIONS UNDER THE OLD ORDINANCE**

116. Ms. Briggs, through her undersigned counsel, sent Defendants a letter on September 10, 2012 notifying Defendants of the unconstitutionality of Defendants' actions under the Old Ordinance and demanding that Defendants cease enforcement of the Old Ordinance



against Ms. Briggs and other tenants in Norristown. *See* September 10, 2012 letter, attached hereto as Exhibit F.

117. The September 10, 2012 letter also outlined the numerous constitutional problems associated with enforcement of the Old Ordinance and pointed out that the Old Ordinance violated the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and their Pennsylvania equivalents, as well as federal and state statutory law. *See id.*

118. Plaintiff's counsel later met with Defendants and Defendants' counsel on September 19, 2012 to discuss the constitutional concerns described in the September 10, 2012 letter.

119. At this meeting Defendants appeared to acknowledge the constitutional failings of the Old Ordinance.

120. Following this meeting, Defendants agreed to five demands by Plaintiff's counsel, including a repeal of the Old Ordinance:

a. First, Norristown agreed to cease any enforcement activities against Ms. Briggs under the Old Ordinance. Ms. Briggs would be free to call the Norristown Police Department without fear of eviction. Ms. Briggs would also not risk a strike or eviction if a neighbor or another person called the Norristown Police Department concerning Ms. Briggs' property.

b. Second, Norristown agreed to cease any enforcement activities against Ms. Briggs' landlord, Darren Sudman, under the Old Ordinance. Norristown would restore Mr. Sudman's rental license in full.

c. Third, Norristown agreed to suspend any enforcement of the Old Ordinance against any individuals (landlords or tenants) pending re-evaluation of the Old Ordinance by the Norristown Municipal Council.

d. Fourth, Norristown agreed to restore, where possible, the pre-enforcement positions of recently affected individuals (landlords or tenants).

e. Fifth, Norristown agreed to take steps to repeal the Old Ordinance in its entirety. *See* October 25, 2012 email chain, attached hereto as Exhibit G.

121. Plaintiff's counsel subsequently attempted to memorialize an agreement on these points with Defendants on October 25, 2012 in a written settlement agreement. *See id.*

122. However, Defendants, through their counsel, rejected Plaintiff's counsel's proposed settlement agreement and refused to enter into any written settlement agreement. *See id.*

123. Defendants subsequently repealed the Old Ordinance on November 7, 2012 by enacting Ordinance No. 12-11, attached hereto as Exhibit H.

124. In enacting Ordinance No. 12-11, the Norristown Municipal Council gave two reasons for repealing the Old Ordinance:

a. First, the Old Ordinance resulted "in the deprivation of property rights for tenants without due process in violation of the 5th and 14th Amendments to the U.S. Constitution and other federal and state statutes"; and

b. Second, a repeal of the Old Ordinance was "in the best interests of protecting the rights of the residents of Norristown." *See id.*

#### **THE NEW ORDINANCE**

125. Notwithstanding Norristown's admissions above in repealing the Old Ordinance, Defendants immediately began the process for introducing a proposed ordinance to re-enact the Old Ordinance in a "new" form.

126. On November 20, 2012, at the very next meeting of the Norristown Municipal Council following the repeal of the Old Ordinance, the Norristown Municipal Council introduced a proposed ordinance, “amending the 3-strikes ordinance.” *See* November 20, 2012 Municipal Council minutes, attached hereto as Exhibit I.

127. Defendants did not notify Ms. Briggs or Plaintiff’s counsel of the process or their plan to enact this new ordinance immediately following the repeal of the Old Ordinance.

128. At the following meeting of the Norristown Municipal Council on December 4, 2012, Defendants enacted the New Ordinance (Ordinance No. 12-15), to replace former Section 245-3 of the Norristown Municipal Code. *See* Ordinance No. 12-15, attached hereto as Exhibit J.

129. The New Ordinance permits Norristown’s Municipal Administrator to assess a series of daily, escalating criminal fines against landlords of any property where the police have responded to three instances of what the Chief of Police – in his sole discretion – considers “disorderly behavior” at the property within a four month period, including any “[d]omestic disturbances that do not require that a mandatory arrest be made.” *See id.*

130. The New Ordinance is substantially similar to the Old Ordinance in its direct, adverse impact on tenants in Norristown and is plagued by the same constitutional and legal deficiencies. *See* Blackline Comparison of the Old Ordinance and the New Ordinance, attached hereto as Exhibit K.

131. Whereas the Old Ordinance permitted Norristown to revoke or suspend a landlord’s rental license, the New Ordinance allows Norristown to impose criminal fines on landlords for the alleged “disorderly behavior” of a landlord’s tenants. *See id.*

132. Like its predecessor, the New Ordinance:

a. Gives the Chief of Police the authority and unfettered discretion to determine what “disorderly behavior” is and whether a landlord’s tenants or guests have engaged in such “disorderly behavior”;

b. Broadly defines “disorderly behavior” as conduct that “involves activity that can be characterized as disorderly in nature,” including “[d]omestic disturbances that do not require that a mandatory arrest be made”;<sup>2</sup>

c. Imposes a penalty on landlords where three instances of “disorderly conduct” have occurred at a property within a four month period; and

d. Provides a hollow exception for calls seeking “emergency assistance.” *See id.*

133. Unlike its predecessor, however, the New Ordinance goes further to penalize landlords and adversely impact tenants by:

a. Encouraging landlords to “include in their leases language that provides that it is a breach of the lease for a tenant to be convicted for disorderly behavior”; and

b. Subjecting landlords to criminal penalties according to a graduating series of fines for each instance of “disorderly behavior” that occurs at a landlord’s rental property, where “[e]ach day that a violation continues [] constitute[s] a separate offense.” *See id.*

134. Although the fifth recital of the New Ordinance states that the “Municipal Council desires that no . . . landlord [shall be] criminally responsible for the acts of their tenants,” subsections D, E, and K expressly provide that a landlord shall be subject to criminal fines up to \$1,000 per day for each incident of “disorderly behavior” of their tenants. *See Ordinance No. 12-15, attached hereto as Exhibit J.*

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<sup>2</sup> Again, Pennsylvania does not have a mandatory arrest provision in the law for domestic violence crimes.

135. Although subsection H of the New Ordinance provides that “[n]o tenant shall be evicted or forced to vacate a rental dwelling unit by the Municipality of Norristown for violation of the provisions of Ordinance,” subsection F expressly provides that “adverse action may be taken [against a landlord] when the [landlord] fails to diligently pursue the eviction process.” Similarly, subsection I states that “[i]t is strongly encouraged that all [landlords] include in their leases language that provides that it is a breach of the lease for a tenant to be convicted for disorderly behavior.” *See id.*

136. Notwithstanding the shift from suspending or revoking landlords’ rental licenses to imposing criminal fines on landlords, the New Ordinance continues to suffer from the same constitutional and legal failings as its predecessor in that it:

- a. Adversely impacts and penalizes victims of domestic violence, like Ms. Briggs, who cannot control or prevent the violence perpetrated against them;
- b. Continues to strip victims of domestic violence of police protection, silences them from reporting acts of violence against them, and emboldens their abusers to perpetrate acts of violence in the home;
- c. Exacerbates the preexisting challenges that victims of domestic violence face in accessing housing;
- d. Has an inherent disparate impact on women; and
- e. Deprives domestic violence victims of a protected liberty interest in a dwelling without due process of law.

137. Defendants have attempted to sidestep the constitutional concerns of the Old Ordinance by drafting the New Ordinance in a way that: (a) penalizes landlords with criminal fines for the alleged “disorderly behavior” of their tenants, instead of revoking or suspending

their rental licenses; and (b) expresses Norristown's disinterest in evicting tenants but establishes a system by which landlords are obligated to take actions that Defendants have admitted would be unconstitutional if taken by them.

138. Such cosmetic alterations do nothing to rescue the New Ordinance from the same constitutional and legal failings that plagued the Old Ordinance.

**THE NEW ORDINANCE CONTINUES TO VIOLATE MS. BRIGGS'  
CONSTITUTIONAL RIGHTS**

139. Ms. Briggs continues to fear that contacting the police for any reason may once again place her at risk of losing her home, even when she calls the police to protect her physical safety.

140. This fear was exacerbated when, on December 7, 2012, only a few days after the New Ordinance was enacted, Ms. Briggs learned that Norristown would be inspecting her home at the Property, without her consent, on December 11, 2012 as part of Norristown's new program of "random inspections" of rental units throughout the borough.

141. On information and belief, the proposed inspection of Ms. Briggs' home was not random; rather, Norristown officials had affirmatively selected her home for inspection.

142. Plaintiff's counsel sent Defendants' counsel a December 8, 2012 email objecting to and challenging the legality of Norristown's planned inspection of Ms. Briggs' home. *See* December 10, 2012 email chain, attached hereto as Exhibit L.

143. While Defendants have since agreed not to inspect Ms. Briggs' home without her consent, they have not indicated any agreement that they will not seek to do so in the future. *See id.*

### THE NEW RENTAL PROPERTY

144. On February 1, 2013, Ms. Briggs and her three year old daughter moved from the Property to another location in Norristown, where she rents a house with a Section 8 voucher.

145. The landlord at Ms. Briggs' new property is named Rick Gallo ("Mr. Gallo").

146. Even at her new home, Ms. Briggs continues to fear that contacting the police for any reason may place her at risk for losing her home.

147. For example, on or about April 5, 2013, Ms. Briggs heard gun shots in her neighborhood and saw the gunman run through her backyard. She did not call the police to report this information for fear that it could lead to her eviction.

148. Defendants have not advised Ms. Briggs or her new landlord, Mr. Gallo, that Defendants consider the New Ordinance invalid or illegal, or that it will not be applied against them.

149. Defendants' initial actions to enforce the Old Ordinance against Ms. Briggs, their feigned repeal of the Old Ordinance, and their actions in enacting the New Ordinance continue to cause an undue chilling effect on the exercise of Ms. Briggs' free speech rights and her ability to seek the assistance of law enforcement.

150. At all relevant times, Defendants were acting within the enforcement and policy-making authority delegated to them under the Old Ordinance and the New Ordinance, which are both official laws, enacted by the Norristown Municipal Council.

151. Accordingly, Defendants are liable in both their individual and official capacities for harm caused to Ms. Briggs under both the Old Ordinance and the New Ordinance. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

**INJUNCTIVE AND DECLARATORY RELIEF IS NECESSARY**

152. Absent injunctive and declaratory relief, Ms. Briggs and other tenants in Norristown face an ongoing threat that they will lose their homes if they contact the police for help, which causes an undue chilling effect on the exercise of Ms. Briggs' and other Norristown tenants' free speech rights and their ability to seek the assistance of law enforcement.

153. Ms. Briggs will suffer irreparable harm, for which there is no adequate remedy at law, if Defendants are not enjoined from enforcing the New Ordinance against her.

154. Injunctive relief is necessary to ensure that Mr. Gallo is not penalized and, thus, encouraged to evict Ms. Briggs if she reports an incident of domestic violence to the police, and that Ms. Briggs and her three year old daughter are not evicted from their home for exercising their rights under the First Amendment.

**COUNT I – RIGHT TO PETITION  
(U.S. Const. amend. I; Pa. Const. Art. I, § 20)**

155. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

156. The First Amendment to the United States Constitution and its Pennsylvania equivalent guarantee the right to petition the government for redress of grievances.

157. Under the First Amendment's "right to petition" clause, communications to law enforcement – including (1) reporting physical assault, (2) reporting criminal activity, and (3) filing a complaint with law enforcement – are constitutionally protected activities.

158. Defendants' enforcement of the Old Ordinance against Ms. Briggs and her landlord for calls made to the police, reporting physical violence and/or criminal activity, directly violated her right to petition the government to redress grievances.



159. Ms. Briggs was reluctant to report physical violence and/or criminal activity to the police for fear of receiving a “strike” under the Old Ordinance and triggering eviction from her home.

160. Thus, the Old Ordinance created an undue chilling effect on Ms. Briggs’ fundamental right to petition the police for protection.

161. Ms. Briggs suffered severe bodily injury as a result. The police affirmatively instructed her that any future calls to the police would lead to her eviction. Ms. Briggs was then effectively prevented from contacting the police when she was brutally attacked and almost killed by Wilbert.

162. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

163. Thus, Defendants’ threatened enforcement of the New Ordinance against Ms. Briggs and her landlord, and against other Norristown tenants and their landlords, continues to cause an undue chilling effect on the fundamental right of Ms. Briggs and other Norristown tenants to seek police protection.

164. The Old Ordinance did not and the New Ordinance does not advance any compelling government interest, and neither Ordinance is narrowly tailored to justify the infringement of Ms. Briggs’ or other Norristown tenants’ fundamental right to call the police.

165. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the First Amendment and its Pennsylvania equivalent.

**COUNT II – UNREASONABLE SEIZURE  
(U.S. Const. amend. IV; Pa. Const. Art. I, § 8)**

166. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

167. The Fourth Amendment to the United States Constitution and its Pennsylvania equivalent guarantee individuals the right to be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

168. Under the Fourth Amendment and its Pennsylvania equivalent, a seizure of property occurs if there is some meaningful interference with an individual’s possessory interest in that property.

169. Tenants have possessory interests in their leaseholds.

170. Defendants, through their enactment and enforcement of the Old Ordinance, unreasonably and meaningfully interfered with Ms. Briggs’ property interest in her leasehold by revoking her landlord’s rental license and attempting to forcibly remove her from her rental property.

171. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

172. Thus, Defendants, through the enactment and enforcement of the New Ordinance, continue to threaten to unreasonably and meaningfully interfere with Ms. Briggs’ property interest in her leasehold by subjecting her landlord to potential criminal fines for any future alleged “disorderly behavior” at her home, and by directing and incentivizing her landlord to initiate eviction proceedings against her.

173. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourth Amendment and its Pennsylvania equivalent.

**COUNT III – PROCEDURAL DUE PROCESS**  
**(U.S. Const. amend. XIV; Pa. Const. Art. 1, §§ 1, 9, and 11)**

174. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

175. The Fourteenth Amendment to the United States Constitution and its Pennsylvania equivalents provide that no person shall be deprived of life, liberty or property without due process of law.

176. Enforcement of the Old Ordinance threatened to deprive Ms. Briggs of her property interest in her leasehold by revoking her landlord's rental license and attempting to forcibly remove her from her rental property without adequate procedural protections.

177. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

178. Thus, enforcement of the New Ordinance continues to threaten to deprive Ms. Briggs of her property interest in her leasehold by subjecting her landlord to potential criminal fines for any future alleged "disorderly behavior" at her home, and by directing and incentivizing her landlord to initiate eviction proceedings against her without adequate procedural protections.

179. The Old Ordinance did not and the New Ordinance does not provide adequate legal procedures to protect against the deprivation of Ms. Briggs' property interests. Neither Ordinance requires any notice to be given to the tenant of violations of the Ordinance, nor gives the tenant an opportunity to contest either the Chief of Police's discretionary decision to characterize an incident as "disorderly behavior" or the borough's decision to enforce the Ordinance against the landlord.

180. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Procedural Due Process Clause and its Pennsylvania equivalents.

**COUNT IV – SUBSTANTIVE DUE PROCESS (STATE-CREATED DANGER)  
(U.S. Const. amend. XIV; Pa. Const. Art. 1 § 26)**

181. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

182. The Fourteenth Amendment to the United States Constitution and Pennsylvania equivalent provide that no person shall be deprived of life, liberty or property without due process of law.

183. Individuals have a constitutional liberty interest in personal bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

184. Under the Due Process Clause, Norristown has an obligation to protect its citizens from dangers it creates.

185. Defendants' enactment and enforcement of the Old Ordinance created a danger to Ms. Briggs because she was effectively prohibited from calling the police during an emergency without risking a strike and ultimate eviction under the Old Ordinance and, as a result, suffered severe bodily injury when she was brutally attacked and almost killed by Wilbert.

186. Defendants knew that Wilbert was violent, had a criminal record, and had a history of physically abusing Ms. Briggs. Indeed, the Norristown police had arrested Wilbert on at least two occasions for violent assaults on Ms. Briggs before he brutally attacked and almost killed her.

187. Defendants knew that the issuance of strikes to a domestic violence victim and tenant, such as Ms. Briggs, for calling the police for protection against domestic violence would cause such victim-tenants to refrain from calling the police for fear of triggering their evictions and would likely result in further injury from their abusers.

188. Defendants knew that Ms. Briggs was a specific target of Wilbert's violence and physical abuse because the police had arrested Wilbert on at least two occasions for violent assaults on Ms. Briggs before she was brutally attacked and almost killed by him.

189. Defendants, by enforcing the Old Ordinance against her, were grossly negligent and/or deliberately indifferent to Ms. Briggs' victimhood and effective inability to call the police for help.

190. Defendants deliberately ignored the clear signs of Wilbert's physical abuse of Ms. Briggs, continued to assign her strikes for Wilbert's attacks against her, and doggedly pursued her removal from the property for incidents of domestic violence at her home. Indeed, immediately after the police arrested Wilbert for his first attack on Ms. Briggs, on April 9, 2012, a Norristown police officer told Ms. Briggs: "You are on three strikes. We're gonna have your landlord evict you." Defendants even sought to remove Ms. Briggs from her home just days after she was brutally attacked and almost killed by Wilbert.

191. Defendants affirmatively enacted and enforced the Old Ordinance, issued strikes against Ms. Briggs for seeking emergency assistance from Norristown police, attempted to remove her from her rental property, and terrified her into believing that she would be evicted if she continued to seek emergency assistance from the police. But for Defendants' overt actions, Ms. Briggs would have sought police protection against the repeated domestic violence perpetrated against her by Wilbert.

192. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown and continues to create a danger to Ms. Briggs and other domestic violence victims who are tenants in Norristown.

193. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Substantive Due Process Clause and its Pennsylvania equivalent.

**COUNT V – EQUAL PROTECTION**  
**(U.S. Const. amend. XIV; Pa. Const. Art. I, §§ 26 & 28)**

194. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

195. The Fourteenth Amendment to United States Constitution and its Pennsylvania equivalents prohibit the denial of equal protection of the law.

196. The Old Ordinance provided less protection to victims of domestic violence than to other victims of violence, because “domestic disturbances” were specifically targeted as “disorderly behavior” that can result in the eviction of the victim.

197. The Old Ordinance and its application against domestic violence victims blamed victims for criminal conduct perpetrated against them, and treated domestic violence as a criminal justice problem less seriously than other crimes.

198. The Old Ordinance, thus, intentionally discriminated against female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence by specifically including “domestic disturbances” in the statute.

199. Ms. Briggs was injured by the Old Ordinance because she could not seek police assistance without being evicted.

200. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

201. The New Ordinance was enacted by Norristown with the knowledge and intent that it adversely impacts domestic violence victims' ability to seek police assistance and maintain their housing.

202. The New Ordinance continues to provide less protection to victims of domestic violence than to other victims of violence, because "domestic disturbances" are specifically targeted as "disorderly behavior" that can result in the eviction of the victim.

203. The New Ordinance and its application against domestic violence victims blame victims for criminal conduct perpetrated against them, and treats domestic violence as a criminal justice problem less seriously than other crimes.

204. Thus, the New Ordinance continues to intentionally discriminate against female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence by specifically including "domestic disturbances" in the statute.

205. The Old Ordinance did not and the New Ordinance does not advance a compelling or important government interest, and neither is narrowly tailored nor substantially related to advance such an interest.

206. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Equal Protection Clause and its Pennsylvania equivalents.

**COUNT VI – VAGUENESS**  
**(U.S. Const. amend. XIV; Pa. Const. Art. 1, §§ 1, 9, and 11)**

207. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

208. The Fourteenth Amendment to the United States Constitution and its Pennsylvania equivalents prohibit the enforcement of legislation that is unduly vague.

209. The Old Ordinance failed to provide sufficient notice as to what conduct constitutes “disorderly behavior” and was covered by the Old Ordinance.

210. The Old Ordinance was largely incomprehensible and confusingly defined “disorderly behavior” as “activity that can be characterized as disorderly in nature,” including, among other things, “disorderly conduct.”

211. The Old Ordinance provided the Chief of Police with limitless discretion to determine what conduct was covered by the Old Ordinance and, thus, encouraged arbitrary and discriminatory enforcement.

212. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

213. Thus, the New Ordinance continues to fail to provide sufficient notice as to what conduct constitutes “disorderly behavior” and is covered by the Ordinances.

214. The New Ordinance continues to be largely incomprehensible and confusingly defines “disorderly behavior” as “activity that can be characterized as disorderly in nature,” including, among other things, “disorderly conduct.”

215. The New Ordinance continues to provide the Chief of Police with sole discretionary authority to determine what conduct is covered by the New Ordinance and, thus, encourages arbitrary and discriminatory enforcement.

216. Accordingly, the Old Ordinance was and the New Ordinance is void for vagueness under the Fourteenth Amendment and its Pennsylvania equivalents.



**COUNT VII – FEDERAL FAIR HOUSING ACT AND PENNSYLVANIA HUMAN  
RELATIONS ACT**

**(Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; Pennsylvania Human  
Relations Act, 43 P.S. § 951 *et seq.*)**

217. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

218. The Fair Housing Act and its Pennsylvania equivalent prohibit discrimination on the basis of any protected class (including sex) in housing and further prohibit any law that purports to require or permit any action that would constitute a discriminatory housing practice or has a disparate impact on a protected class.

219. The Old Ordinance specifically targeted “domestic disturbances” as “disorderly behavior.”

220. The Old Ordinance did not distinguish between domestic violence perpetrators or victims, but instead applied against both.

221. By including domestic violence as “disorderly behavior,” Norristown had a policy of treating domestic violence offenses differently from other crimes and punishing victims who reported offenses.

222. The Old Ordinance discriminated against and had a disparate impact on female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence and, therefore, discriminated on the basis of sex.

223. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

224. The New Ordinance continues to target “domestic disturbances” even though Norristown was fully aware of the effects of the New Ordinance on domestic violence victims like Ms. Briggs when it was enacted.

225. The New Ordinance continues Norristown's policy of treating domestic violence offenses differently from other crimes and punishing victims who report offenses.

226. Thus, the New Ordinance continues to discriminate against and continues to have a disparate impact on female tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence and, therefore, continues to discriminate on the basis of sex.

227. Defendants intentionally discriminated against Ms. Briggs on the basis of sex, making a dwelling unavailable to her, discriminating against her in the rental terms, conditions, privileges, and provision of services, and interfering with her exercise and enjoyment of rights guaranteed under 42 U.S.C. § 3604, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b) and 3617.

228. By adopting a policy of penalizing victims for police response to "domestic disturbances," Defendants engaged in a practice that has a disparate impact on women, because the great majority of domestic violence victims are women, and that discriminates on the basis of sex in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b) and 3617.

229. Defendants engaged in such discriminatory conduct intentionally, willfully, and in disregard of the rights of Ms. Briggs, and she suffered injury as a result.

230. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fair Housing Act and its Pennsylvania equivalent.

**COUNT VIII – VIOLENCE AGAINST WOMEN ACT**  
**(Violence Against Women Act, 42 U.S.C. § 1437f, et seq.)**

231. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

232. In 2005, the federal Violence Against Women Act enacted housing protections for victims of domestic violence who live in public and Section 8 housing. The law provides that

incidents of actual or threatened domestic violence, dating violence, or stalking, shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. Furthermore, the Violence Against Women Act provides that criminal activity directly relating to domestic violence engaged in by a member of a tenant's household or any guest or other person shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence.

233. Enforcement of the Old Ordinance against tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence, for calls made to the police, reporting physical violence and/or criminal activity, penalized them for being victims of domestic violence.

234. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

235. Thus, enforcement of the New Ordinance against tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence, for calls made to the police, reporting physical violence and/or criminal activity, threatens to penalize them for being victims of domestic violence.

236. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the federal Violence Against Women Act and the New Ordinance is preempted under the Supremacy Clause. Federal law clearly protects domestic violence victims who hold Section 8 vouchers, like Ms. Briggs, from termination of assistance, tenancy, or occupancy rights based on incidents of domestic violence.

**PRAYER FOR RELIEF**

WHEREFORE, Ms. Briggs respectfully requests the following:

a. a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting Defendants from further implementing or enforcing the New Ordinance, enacted pursuant to Ordinance 12-15, or the Old Ordinance, codified at Section 245-3 of the Norristown Municipal Code, against Ms. Briggs, other tenants residing in Norristown, or their landlords for any alleged “disorderly behavior” at rental properties in Norristown or from requiring their employees to do so, and from deeming any calls for police assistance to tenants’ homes as a “strike” under the Ordinances;

b. a permanent injunction prohibiting Defendants from enforcing the Old and New Ordinances, codified at Section 245-3 of the Norristown Municipal Code and enacted pursuant to Ordinance 12-15;

c. a declaratory judgment pursuant to 28 U.S.C. §§ 2201 & 2202 and 42 U.S.C. § 1983 declaring the Old and New Ordinances, codified at Section 245-3 of the Norristown Municipal Code and enacted pursuant to Ordinance 12-15, violate the First, Fourth, and Fourteenth Amendments to the United States Constitution, their Pennsylvania constitutional equivalents, and federal and state housing law;

d. damages against all Defendants for violating Ms. Briggs’ rights under the United States Constitution, and federal and state housing law by enforcing the Old Ordinance, codified at Section 245-3 of the Norristown Municipal Code, against her;

e. punitive damages against the Individual Defendants due to their intentional, willful, and reckless deprivation of Ms. Briggs’ rights under the United States Constitution and pursuant to 42 U.S.C. § 3613(c);

- f. an order directing Defendants to take such affirmative steps as necessary to prevent discrimination, harassment and retaliation against Ms. Briggs in the future;
- g. an order awarding Ms. Briggs' the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988 and § 3613(c); and
- h. such other relief as the Court deems just and proper.

Dated: April 29, 2013

Respectfully submitted,

/s/ Sara J. Rose

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*Attorneys for Plaintiff Lakisha Briggs*

**VERIFICATION**

I, Lakisha Briggs, hereby declare and affirm under penalty of perjury and pursuant to 28 U.S.C. § 1746 that I am the Plaintiff in this action, that I have personal knowledge of the facts set forth in the foregoing Verified First Amended Complaint, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on April <sup>18</sup>29, 2013.

  
Lakisha Briggs

**CERTIFICATE OF SERVICE**

I, Peter M. Smith, hereby certify that on April 29, 2013 a true and correct copy of the foregoing Verified First Amended Complaint was filed via ECF and served via Federal

Express upon the following:

Borough of Norristown  
c/o Robert H. Glisson  
Municipal Administrator  
Norristown Municipal Building  
235 East Airy Street  
Norristown, PA 19401

David R. Forrest  
City Manager  
The City of Canandaigua  
2 North Main Street  
Canandaigua, NY 14424

Robert H. Glisson  
Municipal Administrator  
Norristown Municipal Building  
235 East Airy Street  
Norristown, PA 19401

Russell J. Bono  
3248 Hayes Road  
Norristown, PA 19403-4052

Willie G. Richet  
Chief of Police  
Norristown Police Department  
235 East Airy Street  
Norristown, PA 19401

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/s/ Peter M. Smith  
Peter M. Smith

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Release") is made and entered into by and between Lakisha Briggs ("Plaintiff), and the Municipality of Norristown, ("Releasee"), Defendant.

WHEREAS, the Plaintiff has presented various claims against the Defendant and various employees and officials of the Defendant arising out of an incident or series of incidents occurring in 2012 which are more fully described in Plaintiff's Second Amended Complaint which was filed in the United States District Court for Eastern District of Pennsylvania at Civil Action No. 13-cv-02191 ("the Lawsuit"), and

WHEREAS, Plaintiff alleged that she sustained bodily harm and suffered a deprivation of her constitutional rights as set forth more fully in the Second Amended Complaint; and

WHEREAS, Defendants deny these allegations and contend that Plaintiff suffered no harm and no violation of her constitutional rights based on the allegations set forth therein; and

WHEREAS, the Plaintiff and the Defendant Releasee desire to settle the matters raised in the lawsuit, together with any and all other matters pertaining to the parties named herein and the above noted incident or incidents, that might have been raised, that could be raised, that could have been raised, or that might be raised in the future concerning the actions of Defendants through the date of the execution of this Release, and

WHEREAS, Plaintiff agrees that the Court may enter an Order dismissing, with prejudice, the individual Defendants named in the aforesaid Lawsuit, being, David R. Forrest, Russell J. Bono, Willie G. Richet, Joseph E. Januzelli and Crandall O. Jones.

NOW THEREFORE, with the foregoing background being incorporated herein by reference, and made part hereof, Plaintiff, and her attorneys, for and in consideration of the total sum and sole consideration of **Four Hundred and Ninety-Five Thousand Dollars (\$495,000.00)**, which shall be payable to Lakisha Briggs and her attorneys, Pepper Hamilton LLP as set forth more fully herein, receipt of which is hereby acknowledged, do hereby remise, release, and forever discharge, and by these presents, do for themselves, their successors, administrators, assigns, heirs and executors, remise, release, and forever discharge the Defendants and Releasee and its respective past, present, and future officials, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, predecessors, and successors in interest and assigns, of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Plaintiff may now have on account of the facts asserted in the Lawsuit (and all related pleadings), or which the Plaintiff may hereafter accrue or otherwise acquire on account of the facts asserted in the Lawsuit (and all related pleadings), including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff, and the consequences thereof, which have resulted or may result from the alleged



negligent or intentional acts or omissions, of the Releasee, Defendants or their agents, employees and officials related to the subject of the Lawsuit. This Release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendants and Releasee and all parties represented by or claiming through the Plaintiff save only the executory provisions of this Release and Settlement Agreement.

1. Payments and Settlement Funds

In consideration of the release set forth above, the Insurer on behalf of the Defendants and Releasee, Municipality of Norristown, agrees to pay the payees identified above within fourteen (14) days of the execution of this agreement by all parties and counsel and said settlement check shall be sent by overnight mail to Timothy Stephen Jenkins at Pepper Hamilton LLP.

From the settlement fund identified above, Pepper Hamilton LLP shall distribute to Ms. Briggs \$250,000 representing damages flowing from personal physical injuries under the Internal Revenue Code § 104(a)(2). The balance of the settlement fund shall constitute attorneys' fees and costs which shall be distributed in accordance with any agreement regarding fee sharing between Pepper Hamilton LLP and the ACLU.

Beyond the payment described in the preceding paragraphs, the parties do not bear any other responsibility for attorneys' fees and costs arising from their actions or the actions of their own counsel in connection with the Lawsuit identified above, this Release and Settlement Agreement, and the matters and documents referred to herein and all related matters.

The Plaintiff hereby acknowledges and agrees that the Release set forth hereinabove is a General Release, and she further expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but which the Plaintiff does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this Release and Settlement Agreement. The Plaintiff further agrees she has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact, and she fully assumes the risk that the facts or the law may be otherwise than Plaintiff believes.

The Plaintiff agrees and acknowledges that she accepts payment of the sums specified in this Release and Settlement Agreement as a full and complete compromise of matters involving disputed issues. It is further acknowledged that payment of the sums by the Defendants and Releasee and the negotiations for this settlement (including all statements, admissions or communications) by the Defendants and Releasee, or their attorneys or representatives are made solely for purposes of avoiding the excessive cost of litigation of this matter only and that the Defendants and Releasee do not in any way admit any liability to the Plaintiff by entering into this Agreement to settle this matter. In fact, the Defendants and Releasee expressly deny any and all liability whatsoever in this matter.

The Plaintiff represents and warrants that no other person or entity other than her legal counsel has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Release and Settlement Agreement; that she and they have the sole and

exclusive right to receive the sums specified in it; and, that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release and Settlement Agreement.

Plaintiff agrees to indemnify and hold harmless the Defendants and Releasee from, and to satisfy in full, any and all claims or liens presently existing or that might exist in the future against the Plaintiff on the settlement fund herein by any person, entity, or corporation. Plaintiff's agreement to indemnify and hold harmless Defendants and Releasee includes any claim, demand or suit made in connection with any medical lien including any lien by Medicare or any healthcare provider.

Plaintiff has represented and Defendants have relied upon Plaintiff's representation that there are no Medicare and social security liens against the proceeds of this settlement. To the extent that there is any Medicaid lien or any other medical lien from any healthcare provider, Plaintiff will satisfy such lien and indemnify and hold harmless Defendant Releasee from any claims, demands, or suits seeking payment in satisfaction of such lien.

**2. Repeal of §245-3 of the General Laws of Norristown**

The Municipality of Norristown represents and warrants that it has repealed §245-3 of the General Laws of Norristown by Ordinance No. 14-09 of 2014 which was adopted on August 6<sup>th</sup>, 2014, a copy of which is attached hereto and marked Exhibit 1.

**3. Publication of Repeal of §245-3**

The Municipality of Norristown will publish Notice of Repeal of §245-3 in the Times Herald, a newspaper of general circulation in the County of Montgomery, Pennsylvania, and shall change its website pages on code enforcement (at <http://norristown.org/code-enforcement>) and for tenants (at <http://norristown.org/userfiles/file/TenantInformationGuide.pdf> and <http://norristown.org/userfiles/file/tlgspanish.pdf>) to add an affirmative statement that the three-strikes ordinance (Section 245-3 of the General Laws of Norristown) has been repealed and no longer applies, and shall maintain such notice on the webpages for a period of one (1) year from the date the statement first appears.

**4. Subsequent Ordinances**

The Municipality of Norristown agrees that it will not adopt an ordinance that penalizes a resident, tenant or landlord as a result of requests for police or emergency assistance made by or on behalf of a victim of abuse as defined in 23 Pa.C.S. § 6102 (relating to definitions), a victim of a crime pursuant to 18 Pa.C.S. (relating to crimes and offenses), or an individual in an emergency pursuant to 35 Pa.C.S. § 8103 (relating to definitions).

The Municipality of Norristown agrees that in the future if its legislative body seeks to enact an ordinance that regulates the subject matter at issue (a) in Ordinance No. 12-15 of 2012 as it relates to Section 245-3, attached hereto as Exhibit 2 and incorporated herein by reference as if set forth herein at length, or (b) in Plaintiff's Second Amended Complaint, attached hereto as Exhibit 3 and incorporated herein by reference as if set forth herein at length, that it will provide notice to the Executive Director of the American Civil Liberties Union of

Pennsylvania, currently at P.O. Box 40008, Philadelphia, PA 19106, at least thirty (30) days prior to the enactment of any such ordinance.

**5. Submission of Requested Orders to the Court**

The parties shall submit a stipulation executed by one or more counsel on behalf of the parties dismissing the individual Defendants identified above and, further, requesting that the Court enter an order retaining jurisdiction over the settlement for three (3) years and dismissing this lawsuit pursuant to Local Rule 41.1 (b).

**6. Authorization**

The persons executing this Release and Settlement Agreement hereby represent and warrant that they have full right, power and authority to sign this settlement agreement. Ms. Briggs and the Municipality of Norristown further represent and warrant that they have the capacity to enter into this Release and Settlement Agreement.

**7. Advice of Counsel**

This Release and Settlement Agreement has resulted from negotiation by the parties represented by counsel, and in the event of ambiguity or otherwise, it shall not be construed against or in favor of any party on the grounds that counsel for such party was the draftsman of this Release and Settlement Agreement or any particular part of it. Each party represents and warrants that the terms of this Release and Settlement Agreement have been completely read by her or it and that the terms set forth herein are fully understood and voluntarily accepted by her or it. Both parties further represent that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choice and that the terms of the this Release and Settlement Agreement have been completely read and explained to them by one or more of their attorneys and that they fully understand and voluntarily accept this Release and Settlement Agreement.

**8. Entire Agreement**

This Release and Settlement Agreement embodies the entire agreement between the parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. There are no other understandings or agreements, oral or otherwise in relation thereto, between the Plaintiff and the Defendant Releasee.

**9. Modification**

This Release and Settlement Agreement may not be modified except by a writing executed by each party.

**10. Governing Law and Jurisdiction**

The terms of this Release and Settlement Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

**11. Dismissal of this Action**

Upon the execution of this Release and Settlement Agreement by both parties, counsel for the parties will submit a stipulation to the Court seeking the dismissal of the individual Defendants and the entry of an order retaining jurisdiction over the settlement for three (3) years and dismissing this lawsuit pursuant to Local Rule 41.1 (b) as described in paragraph 5 of this Release.

If the Court approves the aforesaid stipulation and agrees to enter the aforesaid order retaining jurisdiction and dismissing the lawsuit, the Court's approval of the aforesaid stipulation and entry of the aforesaid order will constitute the dismissal of the action. If the Court does not agree to enter the aforesaid order, the parties will file a stipulation of dismissal within three (3) days after the Court advises the parties that it does not so agree to retain jurisdiction, and the filing of that stipulation will constitute the dismissal of this action.

**12. Counterparts**

This Release and Settlement Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signatures in PDF format transmitted by email shall be deemed originals.

**13. Headings**

The headings to various clauses of this Settlement Agreement have been inserted for convenience only and shall not be used to interpret or construe the meaning of the terms and provisions hereof.

**14. Survival**

All representations, warranties, covenants and agreements made herein shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Settlement Agreement.

**15. Successors and Assigns**

The rights and obligations set forth in this Settlement Agreement shall be binding on the parties and their successors and assigns.

**16. Severability**

If any provision of this Release and Settlement Agreement or the application thereof is adjudicated to be void, invalid or unenforceable, such action shall not make the entire Settlement Agreement void, but rather only such provision. All remaining provisions shall remain in full force and effect.

IN WITNESS WHEREAS, the parties hereto have executed this Release and Settlement Agreement.

CAUTION: READ BEFORE SIGNING. THIS IS A RELEASE.

Lakisha Briggs Date 09-08-2014  
Lakisha Briggs, Plaintiff

Sworn to and subscribed before me this 8<sup>th</sup> day of September, 2014.

Lorraine M. Bradley  
Notary Public  
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
LORRAINE M. BRADLEY, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 23, 2016

Crandall O. Jones Date 9/18/14  
Crandall O. Jones  
Norristown Municipal Administrator

*Crandall O. Jones, Norristown Municipal Administrator, is expressly authorized by Norristown and the other individual Defendants to enter into this Settlement Agreement on their behalves. Crandall O. Jones' signature shall constitute acceptance of the terms of this Settlement Agreement by all Defendants.*

Sworn to and subscribed before me this 18<sup>th</sup> day of September, 2014.

Sandra Felice Grubb  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Sandra Felice-Grubb, Notary Public  
Norristown Boro, Montgomery County  
My Commission Expires Jan. 3, 2017  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**TITLE VIII AND SECTION 109**

**CONCILIATION AGREEMENT**

**Between**

**U.S. Department of Housing and Urban Development  
Assistant Secretary of the Office of Fair Housing and Equal Opportunity  
(Complainant)**

**And**

**Municipality of Norristown  
(Respondent)**

**SECRETARY INITIATED COMPLAINT CASE NUMBERS:**

**03-13-0277-8 and 03-13-0277-9**

**A. PARTIES AND SUBJECT PROPERTIES**

1. The parties to this conciliation agreement are as follows:

a. Complainant

Assistant Secretary for the Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Washington, D.C. 20410

b. Respondent

Municipality of Norristown  
Crandall O. Jones, Municipal Administrator  
235 East Airy Street  
Norristown, PA 19401

Representing the Municipality of Norristown:

David J. Sander  
Friedman Schuman, P.C.  
101 Greenwood Avenue, Fifth Floor  
Jenkintown, PA 19046  
Work: 215-690-3828                      Fax: 215-635-7212

2. The subject properties consist of rental properties in the Municipality subject to Ordinance 12-03 and Ordinance 12-15.

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**B. STATEMENT OF FACTS**

1. A complaint was filed on June 5, 2013 by the Assistance Secretary for Fair Housing and Equal Opportunity ("FHEO") alleging that the Respondent unlawfully discriminated against females by enacting and enforcing Ordinance 12-03 and subsequently enacting a similar Ordinance 12-15 as its replacement. The complaint alleged that the Ordinances were enacted to hold landlords responsible for their tenants and encouraged landlords to evict tenants cited for "disorderly behavior" or risk losing their rental license and/or be subject to fines. The definition of "disorderly behavior" in both Ordinances included any "domestic disturbances that do not require that a mandatory arrest be made." FHEO also alleged that the Ordinances had a disproportionate effect on females who suffer from domestic violence incidents.
2. The Municipality contends that both Ordinances sought to reduce the numerous instances of disorderly behavior to which the Norristown Police Department had to respond at predominately tenant-occupied properties. Respondent states that both

Ordinances are gender-neutral and therefore do not have a disproportionate effect on females or females who suffer from domestic violence incidents. Respondent states that if domestic violence occurs, and there is probable cause to believe that such a crime was committed, the Municipality's Police Department is required by its own policy and procedure to arrest and not charge a landlord with a "strike" under the Ordinances. Nevertheless, the Respondents agree to settle the claims in the underlying actions by entering into this Conciliation Agreement.

3. On August 6, 2014, the Municipality enacted Ordinance 14-09, which repeals Section 245-3 of the General Laws of Norristown or Ordinance 12-15. The repeal is effective five days after enactment of Ordinance 14-09.

**C. TERM OF AGREEMENT**

This Conciliation Agreement (hereinafter "Agreement") shall govern the conduct of the parties to it for a period of two (2) years from the effective date of the Agreement.

**D. EFFECTIVE DATE**

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Assistant Secretary of the Office of FHEO and the FHEO Regional Director or his or her designee.
2. This Agreement shall become effective on the date on which it is approved by the Assistant Secretary for the Office of FHEO, U.S. Department of Housing and Urban Development.

**E. GENERAL PROVISIONS**

1. The parties acknowledge that this Agreement is a voluntary and constitutes a full settlement of the claims set forth in the complaint in the above-referenced cases. The parties affirm that they have read and fully understand the terms set forth herein. The parties agree that they have not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
2. The Respondent acknowledges that it has an affirmative duty not to discriminate under the Act and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The Respondent further acknowledges that any subsequent retaliation or discrimination after the effective date of this Agreement constitutes both a material breach of this Agreement and a statutory violation of the Act.



3. This Agreement, after it has been approved by the Assistant Secretary, FHEO or his or her designee and the FHEO Regional Director, is binding upon the Respondent, its employees, heirs, successors and assigns and all parties to this Agreement.
4. The parties understand that upon approval of this Agreement, this Agreement is a public document, pursuant to 810(b)(4) of the Act.
5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Respondent made pursuant to the Act, or any other complaint within the Department's jurisdiction. This Agreement does resolve all issues that are raised or could have been raised in the complaint.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Assistant Secretary, FHEO and Regional Director, Philadelphia Office.
7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
8. The Assistant Secretary of FHEO hereby forever waives, releases, and covenants not to sue the Respondent and its respective heirs, executors, assigns, officers, commissioners, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of or in any way related to the subject matter of HUD Case Numbers 03-13-0277-8 and 03-13-0277-9, or which could have been filed in any action or suit arising from said subject matter.
9. The Respondent hereby forever waives, releases, and covenants not to sue the Department, its heirs, executors, assigns, successors, agents, officers, employees, and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-13-0277-8 and 03-13-0277-9, or which could have been filed in any action or suit arising from said subject matter.

**F. RELIEF IN THE PUBLIC INTEREST**

1. Within thirty (30) days of the effective date of this Agreement, Respondent shall provide all employees with a copy of this Agreement and allow an opportunity for such employees to have any questions concerning the Agreement answered. Respondent will retain a copy in its Municipal Building for the public to review upon request.

2. Within forty-five (45) days of the effective date of this Agreement, Respondent shall submit to the Department for review and approval the name and credentials of the fair housing source that the Municipality plans to contract to provide fair housing training as outlined in Provision 3 below.
3. Within sixty (60) days of the effective date of this Agreement, Respondent shall submit to the Department for review and approval the training curriculum that the Department's approved fair housing instructor will provide to:
  - a. The Municipal Administrator, the Director of Code Enforcement, the Chief of Police, and all other persons who have interaction with victims of crime or abuse (i.e., police officers) or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15). The fair housing training shall:
    - i. be at least three (3) hours in length;
    - ii. have an emphasis on sex and disability discrimination; and
    - iii. include cultural diversity and sensitivity training.
  - b. All Councilmembers. The fair housing training shall:
    - i. be at least an hour and a half (1.5) hours in length;
    - ii. have an emphasis on sex and disability discrimination; and
    - iii. include cultural diversity and sensitivity training.
4. Within ninety (90) days of the effective date of this Agreement, Respondent shall have all Councilmembers, the Municipal Administrator, the Director of Code Enforcement, the Chief of Police, and all other persons who have interaction with victims of crime or abuse or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) undergo the Department's approved fair housing training by the mutually agreed upon fair housing source. This training shall be provided on an annual basis throughout the duration of this Agreement in accordance with Provision 3a and 3b.
5. Within ninety (90) days of hiring new employees and/or Councilmembers, who have interaction with victims of crime or abuse or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15), these persons shall undergo the Department's approved fair housing training by the mutually agreed upon fair housing instructor. For purposes specific to Provision 5, new employees and/or Councilmembers hired after the annual fair housing training may view the most recently recorded fair housing training that was provided by the Department's approved fair housing source.

6. Within ninety (90) days of the effective date of this Agreement, Respondent shall develop an education and outreach program, including a brochure concerning rights regarding the Fair Housing Act. The brochure shall contain:
  - a. The express statement that the Municipality encourages all tenants to call the police when they are in need of assistance and that the Municipality does not discourage victims of crime or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) from calling the police.
  - b. A summary of rights under the Fair Housing Act and how someone can report a claim of discrimination, including HUD's Fair Housing Hotline Number.

This brochure shall be provided to tenants when police arrive at a unit for an instance of alleged disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) and to landlords when they apply for their rental license and when they renew their license.

7. Within thirty (30) days of publication of notice of the repeal of Ordinance 12-15, in accordance with terms agreed upon in a separate agreement with Lakisha Briggs, Respondent shall provide the Department with a copy of its notice in the Times Herald and a copy of the notices placed on three separate pages of its website.
8. Within one hundred-eighty (180) days of the effective date of this Agreement, Respondent shall partner and seek guidance from a local domestic violence advocacy group to develop a community service activity that will raise awareness about domestic violence.
9. Within forty-five (45) days of the date of the community service activity that will help raise awareness about domestic violence, Respondent shall submit to the Department a draft of its notification that will be used to inform the public about said activity.
10. Within thirty (30) days of the date of the community service activity, Respondent shall publicize its community service activity that will help raise awareness about domestic violence.
11. Within three hundred-sixty (360) days of the effective date of this Agreement, Respondent shall conduct its community service activity that was developed under the guidance of a local domestic violence advocacy group that will help raise awareness about domestic violence. This activity is to be conducted annually for the duration of the Agreement.

## **G. MONITORING**

The Department shall determine compliance with the terms of the Agreement. During the term of the Agreement, the Department may review compliance with this Agreement. As part of such review, the Department may examine witnesses and copy pertinent records of the Respondent. Respondent agrees to provide its full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

## **H. REPORTING AND RECORDKEEPING**

1. Within sixty (60) days of the effective date of this Agreement, Respondent shall certify that it has provided a copy of the Agreement to all employees, provided an opportunity to answer questions, and retained a copy of the Agreement in its Municipal Building as required by Provision F.1.
2. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit certifications of training completion for all participants of the mandatory training outlined in Provisions F.3 and F.4.
3. Within one hundred and twenty (120) days of any new hire who will be required to take the training outlined in Provision F.5, Respondent shall submit certifications of training completed.
4. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit an outline of its education and outreach program and a copy of its brochure as required in Provision F.6. Annually for the duration of the agreement, the Respondent shall certify that it meets the requirements of distributing this brochure to tenants when police arrive at a unit for an instance of alleged disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) and to landlords when they apply for their rental license and when they renew their license.
5. Within (30) days of the publication of notices required under a separate agreement with Lakisha Briggs, Respondent shall provide copies of the notices to the Department as required by Provision F.7.
6. Annually for the duration of this Agreement, Respondent shall certify completion of its community service activity outlined in Provisions F.8 through F.11. within thirty (30) days of completion of the activity.
7. Annually for the duration of this Agreement, Respondent shall report to the Department all complaints of housing discrimination received by the Municipality, including the name of the complainant, a summary of the allegations, what steps the Municipality took to investigate the claim, and the outcome of the investigation.

8. All required certifications and documentation of compliance must be submitted to:

Barbara Delaney  
Program Center Director  
U.S. Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
The Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107-3389

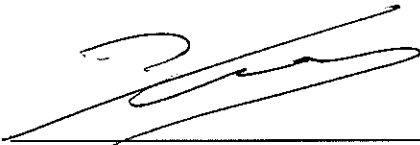
**I. CONSEQUENCES OF BREACH**

Whenever the Department has reasonable cause to believe that the Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814 (b)(2) of the Act.

FHEO CASE NUMBERS 03-13-0277-8 AND 03-13-0277-9

**J. SIGNATURES**

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.

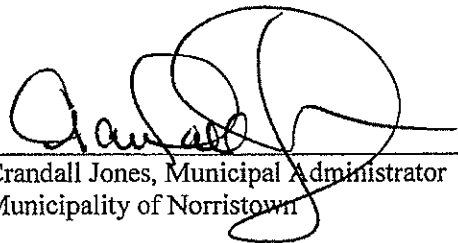
  
\_\_\_\_\_  
Assistant Secretary for the Office of FHEO  
U.S. Department of Housing and Urban Development

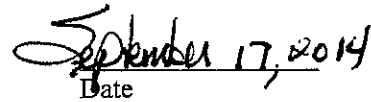
9/18/14  
Date

FHEO CASE NUMBERS 03-13-0277-8 AND 03-13-0277-9

**K. SIGNATURES**

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.

  
\_\_\_\_\_  
Crandall Jones, Municipal Administrator  
Municipality of Norristown

  
\_\_\_\_\_  
Date

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1796 Session of 2013

INTRODUCED BY STEPHENS, VEREB, SCHLOSSBERG, ROZZI, COHEN, SWANGER, GODSHALL, WATSON, MURT, REED, DELOZIER, HARPER, SAYLOR, PARKER, DIGIROLAMO, QUINN, FRANKEL, SANTARSIERO, DAVIS, BRADFORD, BROWNLEE, SCHREIBER, MUNDY, DERMODY, GAINNEY, M. DALEY, DONATUCCI, KIM, SIMS, D. MILLER AND HACKETT, OCTOBER 22, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JANUARY 13, 2014

AN ACT

1 Amending Title 53 (Municipalities Generally) of the Pennsylvania
2 Consolidated Statutes, in preemptions, providing for
3 protection for victims of abuse or crime.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 53 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 303. Protection for victims of abuse or crime.

9 (a) Declaration of policy.--The General Assembly finds and
10 declares as follows:

11 (1) It is the public policy of the Commonwealth to
12 ensure that all victims of abuse and crime and individuals in
13 an emergency are able to contact police or emergency
14 assistance without penalty.

15 (2) This section is intended to shield residents,
16 tenants and landlords from penalties that may be levied



1 pursuant to enforcement of an ordinance or regulation if  
2 police or emergency services respond to a residence or  
3 tenancy to assist a victim of abuse or crime or individuals  
4 in an emergency.

5 (3) This section is not intended to prohibit  
6 municipalities from enforcing an ordinance or regulation  
7 against a resident, tenant or landlord where police or  
8 emergency services respond to a residence or tenancy that  
9 does not involve assistance to a victim of abuse or crime or  
10 individuals in an emergency.

11 (b) Protection.--No ordinance enacted by a municipality  
12 shall penalize a resident, tenant or landlord for a contact made  
13 for police or emergency assistance by or on behalf of a victim  
14 of abuse as defined in 23 Pa.C.S. § 6102 (relating to  
15 definitions), a victim of a crime pursuant to 18 Pa.C.S.  
16 (relating to crimes and offenses) or an individual in an  
17 emergency pursuant to 35 Pa.C.S. § 8103 (relating to  
18 definitions), if the contact was made based upon the reasonable  
19 belief of the person making the contact that intervention or  
20 emergency assistance was necessary to prevent the perpetration  
21 or escalation of ~~or to respond to~~ the abuse, crime or emergency <--  
22 OR IF THE INTERVENTION OR EMERGENCY ASSISTANCE WAS ACTUALLY <--  
23 NEEDED IN RESPONSE TO THE ABUSE, CRIME OR EMERGENCY.

24 (c) Remedies.--If a municipality enforces or attempts to  
25 enforce an ordinance against a resident, tenant or landlord in  
26 violation of subsection (b), the resident, tenant or landlord  
27 may bring a civil action for a violation of this section and  
28 seek an order from a court of competent jurisdiction for any of  
29 the following remedies:

30 (1) An order requiring the municipality to cease and

1 desist the unlawful practice.

2 (2) Payment of compensatory damages, provided that a  
3 resident, tenant or landlord shall make a reasonable effort  
4 to mitigate any damages.

5 (3) Payment of reasonable attorney fees.

6 (4) Payment of court costs.

7 (5) Other equitable relief, including, but not limited  
8 to, reinstating a rental license or rental permit, as the  
9 court may deem appropriate.

10 (d) Preemption.--This section preempts any local ordinance  
11 or regulation insofar as it is inconsistent with this section,  
12 irrespective of the effective date of the ordinance or  
13 regulation. This section shall not affect or apply to  
14 enforcement of the act of October 11, 1995 (1st Sp.Sess.,  
15 P.L.1066, No.23), known as the Expedited Eviction of Drug  
16 Traffickers Act, or to the enforcement of 18 Pa.C.S. § 7511  
17 (relating to control of alarm devices and automatic dialing  
18 devices).

19 (e) Definition.--As used in this section, the term  
20 "penalize" includes the actual or threatened revocation,  
21 suspension or nonrenewal of a rental license, the actual or  
22 threatened assessment of fines or the actual or threatened  
23 eviction, or causing the actual or threatened eviction, from  
24 leased premises.

25 Section 2. This act shall take effect in 90 days.

# Housing Rights for Survivors Who Have Interacted with the Criminal Justice System: Admissions and Nuisance Ordinances



Catherine Bishop & Deborah Thrope  
NATIONAL HOUSING LAW PROJECT

Michaela Wallin  
AMERICAN CIVIL LIBERTIES UNION  
WOMEN'S RIGHTS PROJECT

JANUARY 22, 2015

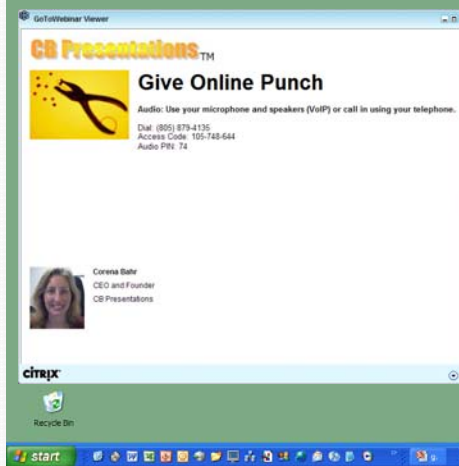
## HOUSING JUSTICE

National Housing Law Project

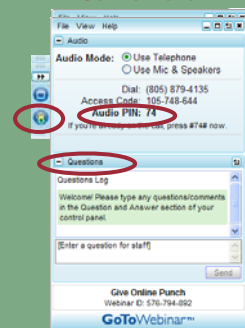
www.nhlp.org

## GoToWebinar Interface

1. Viewer Window



2. Control Panel



## Housekeeping

3

- Materials were emailed yesterday and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at <http://nhlp.org/node/1484/>
- MCLE certificates will be emailed to California attorneys.

## Today We'll Cover

4

- Barriers to access federally assisted housing faced by domestic violence survivors who have interacted with the criminal justice system
- Laws and rules affecting access to housing for such persons
- Strategies (Case Examples) for helping such survivors to obtain housing
- Policies that can improve housing access for survivors who have interacted with the criminal justice system

## Discussion

5

- What are some reasons why a domestic violence survivor might have interacted with the criminal justice system (including police reports, an arrest, conviction, or guilty plea)?
- Enter answers in the Questions Box.

## The Problem

6

- **Survivors often have interacted with the criminal justice system:**
  - Survivors who acted in self-defense simply plead to charges.
  - Survivors who are limited English proficient may be unable to communicate with law enforcement.
  - Survivors commit criminal acts (i.e. prostitution, selling or taking drugs) under threats or coercion from their abusers.
- **Many housing providers adopt overly restrictive admission policies for criminal history.**
- **As a result, criminal history is frequently a barrier for survivors applying for housing.**

# Housing and Criminal History: Laws and Rules

7

**AN OVERVIEW OF THE HOUSING LAW  
POLICIES THAT AFFECT HOUSING  
APPLICANTS INTERACTING WITH THE  
CRIMINAL JUSTICE SYSTEM**

## Federal Housing Rules

8

- There are federal rules that apply to Public Housing Agencies (PHAs) and Owners of certain “Federally Assisted Housing.”
- The term “Federally Assisted Housing” is defined in the statute, includes the largest affordable housing programs (Public Housing, Section 8 Voucher and Project-based Section 8)
- But does not apply to all housing that is federally assisted
- Thus the following rules are not applicable to some federally assisted housing.

## “Federally Assisted Housing”: Restricted Programs

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### Public Housing Agency (PHA)-Administered Programs

Public housing  
 Section 8 voucher program  
 Section 8 moderate rehab

### Rural Development (RD) Programs

Section 514 and 515\* Rural Housing

### HUD-Assisted Programs

Project-based Section 8  
 Section 202 elderly housing  
 Section 811 supportive housing for people with disabilities  
 Section 221(d)(3) Below Market Interest Rate Program  
 Section 236 Rental Program

\*A federal statute extends the criminal history bars to Section 514 and 515 Rural Housing, but United States Department of Agriculture regulations do not make the bars mandatory.

## Federal Housing Programs Without Restrictions

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### NO Federal Restrictions

Low-Income Housing Tax Credit (LIHTC)  
 Shelter Plus Care (serves homeless persons with disabilities)  
 Supportive Housing Program for the Homeless  
 Housing Opportunities for Persons with AIDS (HOPWA)

## Federal Housing Rules

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- **PHAs and Owners must deny applicants for two types of criminal activity:**
  - PHAs and Owners must deny an applicant if any member of the family is a lifetime registered sex offender.
  - A PHA only must deny an applicant if any member was convicted of methamphetamine manufacture/production on the premise of “Federally Assisted Housing.”
- **PHAs and Owners must adopt policies to deny admission to current users of illegal drugs.**
  - Voucher landlords are responsible for screening tenants.

## Federal Housing Rules

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- **For other types of criminal activity, the PHA or Owner:**
  - May adopt rules to deny admission to the housing or the program for drug related, violent criminal activity or other criminal activity.
  - May consider mitigation; PHAs for public housing are required to consider time, place and seriousness of the activity.



## Local or Owner Adopted Admission Policies

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- **Most PHAs and Owners adopt local admission policies regarding applicants who have interacted with the criminal justice system.**
  - ACOP, Administrative Plan, Tenant Selection Policy
- **Restrictions re: those policies:**
  - Denial permitted only if engaged in criminal activity during a reasonable period of time before admission decision. 42 USC § 13661; *James v. Park Place*
  - Arrests alone may be insufficient to show that applicant was a threat to safety and welfare of the community. *Landers v. Chicago HA*, 936 NE2d 735 (2010)
  - Threaten the health, safety, or right to peaceful enjoyment of the premises by other residents

## HUD's Position

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- **Letters from HUD Secretary Donovan to all PHAs (6/17/2011) and to Owners (3/14/2012):**
  - Encourages PHAs and Owners to allow ex-offenders to rejoin their families in federally assisted housing, where appropriate
  - Says that PHAs and Owners should consider evidence of rehabilitation and evidence of the applicant's participation in social services
  - Notes the explicit bans on occupancy based on criminal history
- **Letters have been used in working with housing providers on their admissions policies.**

## “Federally Assisted Housing”: Denial Process

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- **A written notice of denial is required, stating:**
  - The reasons for the denial.
    - ✦ A simple statement that the “applicant did not meet the standards for admission” is not sufficient.
  - How and when the applicant can contest the decision.
  - That a person with a disability may request a reasonable accommodation.
- **Applicant file should be available for review upon request.**
- **Special rules if PHA obtains criminal record for PHA or Owner**

## “Federally Assisted Housing”: Informal Review

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- **An applicant is entitled by statute, regulations, and/or due process to a review of the decision.**
  - The nature of the review varies by program.
  - The review must provide the applicant a reasonable opportunity to contest the basis for the decision.
- **The PHA or Owner must provide a written decision within a reasonable period of time after the review/hearing stating the reasons supporting the decision and the evidence relied upon.**

## VAWA Rules Relating to Denial of Assistance

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## VAWA Admission Protections for DV Survivors

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- **Violence Against Women Act (VAWA) 2005 and 2013**
- **An applicant for housing under a “covered housing program” may not be denied admission to or denied assistance under the housing program on the basis that the applicant is or has been a victim of DV, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for admission**
- **42 USC § 14043e-11(b); 24 CFR § 5.2005(b)**

## VAWA Admission Protection for DV Survivors

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- **Applicant must qualify for admission or assistance**
  - Income eligible 50-80% of AMI
  - Targeted to ELI (30% of AMI)
  - One member is U.S. Citizen or w/ qualifying immigration status
  - Preferences? DV preference?
  - Hard units
    - ✦ For general occupancy or only elderly &/or disabled
    - ✦ BR sizes?
  - Waiting list (Open or Closed; How long? Priorities?)
- **VAWA applies to “covered housing programs”**
  - More expansive definition than “Federally Assisted Housing”

## VAWA 2005 & 2013: Covered Housing Programs

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Programs that were covered by VAWA 2005:	Programs added by VAWA 2013:
Public Housing	<b>Other HUD programs</b> <ul style="list-style-type: none"> <li>• § 236 Multifamily rental housing</li> <li>• § 221d3 BMIR (Below Market Interest Rate)</li> <li>• HOME</li> <li>• HOPWA (Hous. Opp. for Pple w/AIDS)</li> <li>• McKinney-Vento (Homelessness Programs)</li> </ul>
Section 8 vouchers	
Project-based Section 8	
Section 202 Supportive Housing for the Elderly*	
Section 811 Supportive Housing for People with Disabilities*	
*Originally added by HUD regulations. Now provided for in the VAWA 2013 statute.	<b>Department of Agriculture</b> <ul style="list-style-type: none"> <li>• Rural Development (RD) Multifamily</li> </ul>
	<b>Department of Treasury/IRS</b> <ul style="list-style-type: none"> <li>• Low-Income Hous. Tax Credit (LIHTC)</li> </ul>

## Poll

21

- Under VAWA, can landlords of “covered housing programs” deny housing to a DV survivor based on criminal history related to the violence against her?

## HUD’s Position on DV & Criminal History

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- HUD VAWA 2005 final regulations, 75 Fed. Reg. 66255, 24 C.F.R. § 982.553(e):
  - “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking ...”
    - ✦ Note that VAWA 2013 also protects survivors of sexual assault; final regulations for VAWA 2013 not yet issued

# Fair Housing Act

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## All Housing: Antidiscrimination Laws

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- **In general, a private landlord can deny an applicant on the basis of prior criminal activity.**
- **But, the Fair Housing Act offers some protection:**
  - A blanket rule against renting to individuals with a prior arrest or conviction could constitute race discrimination due to its disparate impact on people of color.
  - Applicants with criminal history related to a disability may seek an exception to an admissions policy (see next slide).
- **Local laws may also offer some protection:**
  - A few cities bar discrimination based on criminal history.



## All Housing: Fair Housing Act & Disability

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- **If a survivor’s criminal history is related to a disability, he/she may be able to seek an exception to an admissions policy as a “reasonable accommodation.”**
  - Past addiction can be a disability. A housing provider can be asked to disregard a survivor’s pre-rehabilitation convictions where the convictions arose from the survivor’s addiction.
  - May be successful if survivor can show that he/she hasn’t used substances for a period of time, criminal activity ceased once he/she entered rehab, and/or he/she is receiving supportive services.
  - Note: Current use of illegal substances is not a disability under the Fair Housing Act

## Examples of the Impact of Criminal Screening on Survivors

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## Barriers to Applying for Housing: Jan

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- Six years ago, at the advice of her attorney, Jan pleaded guilty to assaulting her abuser, even though she acted in self-defense.
- Jan submitted an application for housing at a project-based Section 8 development.
- The property manager at the project denied Jan's application, stating that she failed to meet the complex's criminal screening criteria.

## Tenant Selection Plan Language

### CRIMINAL CONVICTION CRITERIA

1. Upon receipt of the rental application and screening charge, landlord will conduct a search of public records to determine whether the applicant or any proposed tenant has been convicted of, or pled guilty to or no-contest to, any crime.
  - a) A conviction, guilty plea or no-contest plea for any felony ever involving serious injury, kidnapping, death, arson, rape, sex crimes and/or child sex crimes, extensive property damage or drug-related offenses (sale, manufacture, delivery or possession with intent to sell) class A/felony burglary or class A/felony robbery shall be grounds for denial of the rental application.
  - b) A conviction, guilty plea or no-contest plea for any other felony (other than listed above) where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.
  - c) A conviction, guilty plea or no-contest plea for any misdemeanor or gross misdemeanor involving assault, intimidation, sex related, drug related (sale, manufacture, delivery or possession with intent to sell) property damage, weapons charges, obscenity and related violations where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.

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## What Can Jan Do?

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- **Jan can request an informal meeting with the owner. Jan could:**
  - Explain circumstances surrounding the guilty plea. Include evidence of DV and note VAWA protections.
  - Argue that a policy of looking at a guilty plea entered 6 years ago is unreasonable since Jan had no other criminal history.
  - Submit letters of support from a DV agency and employer, and evidence of participation in social services programs.
  - Emphasize changed circumstances.

## Example: Excerpts from Advocacy Letter

### (b) Good behavior

Ms. F's prison record and her conduct after release have been exemplary. Ms. F does not merely stay out of trouble; she is actively involved in positive endeavors. Her activities include helping other battered women and educating the public about the effects of domestic violence.

### (c) Rehabilitation

Ms. F has undergone years of counseling and treatment for the psychological condition known as battered women's syndrome. While in prison, she took optional classes to learn more about many subjects, including spousal abuse and battered women's syndrome. As a result of her increased knowledge and counseling, she is not likely to involve herself in an abusive relationship again.

### (d) Changed circumstances

Ms. F's circumstances have changed drastically. She no longer lives in an abusive environment. This should alleviate any concerns you may have about the health and safety of other residents. Moreover, due to extensive counseling and education, it is implausible that Ms. F will get involved in another abusive relationship. Her focus today is on her children, her grandchildren, her volunteer work, her arts and crafts, and her health.

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## Barriers to Applying for Housing: Mina

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- **Mina applied for public housing and was asked to complete an application.**
  - Applicants were required to disclose “all criminal history.”
  - Mina was arrested twice for assault, both times because officers believed her abuser, whose English was superior to hers.
  - Mina disclosed the arrests on her application, but made a note that the charges were dropped in both cases.
- **The public housing agency (PHA) denied Mina’s application because of her “past criminal activity.”**

## What Can Mina Do?

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- **Mina can request an informal hearing with the PHA. Mina could argue:**
  - Arrests alone do not prove criminal activity.
  - Denying housing based solely on arrests is arbitrary, because arrests cannot indicate a tenant’s propensity for violence.
  - PHAs must consider mitigating circumstances in reviewing public housing applications.
  - Discrimination against DV survivors violates VAWA and fair housing laws.
  - Denying housing based solely on arrests has a disparate impact on people of color, violating fair housing laws.
- **Check whether state laws offer additional protections.**

## Discussion

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- How you would handle Jan or Mina's case?
- Use Questions Box to provide suggestions.

## Examples of Policies Adopted to Improve Criminal Screening for Survivors

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**ATTORNEYS AND ADVOCATES HAVE PLAYED  
A ROLE IN ASSISTING PHAs AND OWNERS TO  
ESTABLISH POLICIES THAT IMPROVE  
SURVIVORS OPPORTUNITIES TO OBTAIN  
AFFORDABLE HOUSING**

## Improvements to Local Policies

35

- Advocates have worked with housing providers to adopt reasonable policies on prior criminal activity, and with supportive housing providers to create model policies or plans.
- Plans include ACOP, Administrative Plan, Tenant Selection Plan, Consolidated Plan, and QAP.
  - Advocates have successfully changed PHA policies that considered arrests or that looked at all criminal convictions, regardless of how old.
  - Advocates have worked to create model policies for supportive housing providers.

## Lansing, Michigan

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- **The housing authority's policy provides:**
  - When screening reveals negative information, such as a prior arrest, inquiries will be made regarding the circumstances contributing to the negative reporting, to ascertain whether it was the consequence of DV against the applicant.
  - Any inquiries will make clear that applicants have a right to keep any history of DV against them confidential.
  - When inquiries reveal that the negative reporting was the consequence of DV, the applicant will not be denied housing.

## San Mateo County, California

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- **The housing authority's policy provides:**
  - The housing authority acknowledges that a victim of DV may have an “unfavorable history” that would warrant denial.
  - If the housing authority decides to deny admission to an applicant, it will include in its notice of denial a statement regarding VAWA's protections.
  - The housing authority will also offer the applicant an opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is a victim of DV.

## San Francisco

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- **The City of San Francisco applied a model policy to a local operating subsidy program (LOSP). Language is now included in the LOSP contract.**
  - No absolute bar for applicants who have a criminal record
  - Individual circumstances of each applicant must be considered
  - Cannot consider arrests that do not result in conviction
  - Cannot consider juvenile adjudications
  - Can only consider offenses that occurred in the prior 3 years (except in exceptional situations)
  - Always consider mitigating circumstances
  - Always consider impact of DV upon applicant's history



## Fair Chance Ordinance

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- **San Francisco's Board of Supervisors unanimously voted to pass the Fair Chance Ordinance on February 4, 2014. The Act applies to all city-funded affordable housing providers.**
  - A housing provider can only ask about criminal history after it has determined that the applicant is legally eligible and qualified to rent the housing unit.
  - Can only ask about certain criminal history (can never ask about arrests not leading to convictions, juvenile adjudications, others)
  - Must make individual assessments when considering criminal history of applicant (directly-related convictions only)
  - Notice requirements and enforcement

## Resources

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- **NHLP's guidebook, An Affordable Home on Reentry, <http://www.nhlp.org/guidebooks>**
- **NHLP's OVW grantees website, <http://nhlp.org/OVWgrantees>**
- **NHLP's Reentry website, <http://nhlp.org/resourcecenter?tid=86>**
- **HUD Housing Programs: Tenant Rights (NHLP)**

## Nuisance Ordinances: Their Impact On the Housing Security of Domestic Violence Victims and Potential Legal Challenges

Michaela Wallin, Equal Justice Works Fellow  
at The ACLU Women's Rights Project



### What Are Nuisance Ordinances?

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- Also known as crime free ordinances or disorderly house laws
- A growing national trend
- The types and forms of these ordinances vary by community
  - Common thread is they declare a property a “nuisance” where a certain number of calls for police service or alleged criminal activity at the residence
  - Once a property is cited, these ordinances impose penalties that may indirectly or directly require removal of tenant from residence or impose sanctions on the landlord
  - The vast majority do not have carve outs or exceptions for victims of crime or for residents who otherwise require police or emergency services at their home
- Have serious, negative effects on victims of domestic violence, persons with disabilities, and communities of color.

## Why Are These Ordinances Harmful to DV Victims...and Communities?

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- Force survivors to choose between housing security and immediate physical safety
- Undermine offender accountability
- Can become a powerful tool for abusers
- Chilling effect on enforcement of orders of protection & willingness to call police
- Force landlords to discriminate, running afoul of federal, state, and local anti-discrimination protections
- Harm victim's housing rental history and long-term housing security

## Federal Litigation Involving DV Victims & Nuisance Ordinances

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- **Briggs v. Borough of Norristown, et al., brought by ACLU Women's Rights Project**
  - Federal and constitutional claims
  - Settled with money damages, repeal of ordinance, and promise not to enact a similar ordinance in the future
  - HUD investigation and conciliation agreement
- **Additional litigation:**
  - Grape v. Town/Village of East Rochester, NY et al.
  - Peeso v. City of Hornell, New York, et al.



## Legal Concerns

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- FIRST AMENDMENT: RIGHT TO PETITION
- FOURTEENTH AMENDMENT: DUE PROCESS
- FOURTH AMENDMENT: SEARCH AND SEIZURE
- THE FEDERAL FAIR HOUSING ACT
- THE FEDERAL VIOLENCE AGAINST WOMEN ACT

## Violations of Constitutional Rights

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### **First Amendment: Right to Petition the Government**

- When nuisance ordinances penalize individuals on the basis of calls to the police, they may chill or burden domestic violence survivors' First Amendment Rights.

### **Fourteenth Amendment: Due Process**

- Many nuisance ordinances provide insufficient notice of cited nuisance activity and penalties, as well as insufficient opportunity to challenge a citation.

### **Fourth Amendment: Search and Seizure**

- Ordinances that require condemnation or periodic property inspections may violate the Fourth Amendment if they do not provide adequate notice or process to contest these actions.

## Violations of The Federal Fair Housing Act

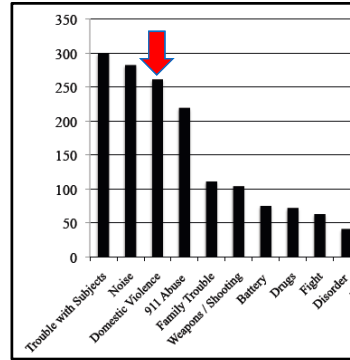
### Disparate Treatment

- Intentional discrimination against women, including gender stereotyping

### Disparate Impact

- Policies that disproportionately impact women.

Ten Most Documented Nuisance Activities under  
Milwaukee's Nuisance Ordinance\*



\* Mathew Desmond and Nicol Valdez, Unpolicing the Urban Poor: Consequences of Third Party Policing for Inner-City Women, 78 Am. Soc. Rev. 117, 131-132 (Feb. 2013).

## Violations of the Violence Against Women Act

VAWA's housing protections prohibit covered housing programs from evicting a tenant based on her status as a victim of gender based violence.

Yet many nuisance ordinances can require public housing authorities, Section 8 landlords, and other owners of federally subsidized housing to evict victims based on the violence they have experienced.

## **Examples of Legislative Advocacy**

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- Pennsylvania, Act 200: Enacted October, 2014
- Additional state-wide legislation

## **Is a Nuisance Ordinance at the Root of Your Client's Problem?**

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- COMMONLY ENCOUNTERED SCENARIOS
- CONSIDERATIONS FOR ATTORNEY AND ADVOCATES

## Scenarios: Formal and Informal Eviction

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- *A survivor receives an eviction notice that cites nuisance ordinance violations.*
- *A landlord asks a tenant to leave or refuses to renew her lease on the basis of her use of police services or violence committed against her.*



## Scenarios: Refusal to Call 911

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- *A victim of domestic violence or other crime refuses to call 911 for fear of losing her housing.*
- *A landlord instructs a tenant that she must stop calling the police or she may face eviction.*

## Considerations for Attorneys and Advocates

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- When encountering an individual facing eviction:
  - Was the eviction prompted by an abuser's activities such as violence, property damages, or noise, and/or police response to such activities?
  - Did the eviction notice cite an ordinance, warning, or police report?
- When encountering a domestic violence victim who is required to leave her housing or seeking to relocate:
  - Is this required because of violence or police response?
  - Is this an informal eviction or based on refusal to renew a lease?
- When encountering a domestic violence victim who is afraid to call the police:
  - Was the victim told by police, property owners, or anyone else that calling the police would result in her eviction?

## Contact Us!

Please contact Sandra Park at [spark@aclu.org](mailto:spark@aclu.org) and Michaela Wallin at [mwallin@aclu.org](mailto:mwallin@aclu.org).

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