

“CRIME FREE” HAS A PRICE:  
WHAT CALIFORNIA SHOULD DO ABOUT CRIME FREE ORDINANCES

A Policy Paper

By

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**Executive Summary**  
**Of**  
**“Crime Free” Has A Price:**  
**What California Should Do About Crime Free Ordinances**  
**By**  
**Thomas Su Nguyen**

**Introduction**

Despite being one of the most productive economies in the world, the State face a shortage of affordable housing. Contributing to the difficulty of a lack of affordable housing options are Crime Free Ordinances, which are local laws that aim to punish tenants or owners for alleged “nuisance” activities such as calls for emergency services or noise nuisances. As of April 2023, the State Legislature is considering the effective prohibition of Crime Free Ordinances through AB 1418. The purpose of this report is to provide background on these ordinances and offer critical recommendations on how the state should address their disparate effects.

**Literature Review**

To understand the context surrounding Crime Free Ordinances, I focused on three recurring themes: (1) the power of landlords in the tenant selection process, (2) the evidence of and long-standing history of discrimination in the housing market, and (3) structural racism in America, particularly in the over-policing of BIPOC communities.

**Findings and Primary Analysis**

I sought out interviews of professionals working on the ownership side and local regulation side of multifamily housing to garner more perspectives on the merits of Crime Free Ordinances.

These interviews brought essential information into the project from a Vice President of Local Affairs at the California Apartment Association, as well as two management level government officials who boast extensive experience in regulation of multifamily housing. I supplement these interviews by describing legal concerns with the municipal application of Crime Free Ordinances, specifically dealing with the Fourteenth Amendment and Fair Housing Act.

### **Policy Recommendations**

From my literature review and analysis, I offer the following recommendations for California to consider as it looks to address Crime Free Ordinances:

1. Approve legislation in the form of AB 1418 to prohibit Crime Free Ordinances.
2. Create a system of check and balance for local Crime Free Ordinances.
3. Recommend Amendments to AB 1418 to require due process in Crime Free Ordinance cases.

### **Conclusion**

California is aggressively trying to address its housing crisis. At the same time, many of its past policies have contributed to the difficult situation it finds itself in now. While Crime Free Ordinances are not in every municipality yet in California, they are becoming more and more prevalent, and their impacts can be disparate and harmful. It is important for California to exercise self-awareness in assessing its past mistakes and making choices that secure an equitable and sustainable future for housing all people in the state.

## **INTRODUCTION**

In recent years, local governments across the country have passed Crime-Free Housing Ordinances for private-market rental properties. These ordinances increase the risk of eviction for tenants by requiring or encouraging private-market landlords to evict tenants for low-level criminal activity, sometimes even a single arrest. Crime Free Ordinances are based on a federal law known as the one-strike policy which has been applied to public housing tenants since 1988 and upheld by the U.S. Supreme Court in 2002 (Ramsey, 2018). Unlike the one strike-policy, which applies only to federal public housing tenants, Crime Free Ordinances put an unprecedented number of private-market tenants across the country at significant risk of eviction and its repercussions, including homelessness, neighborhood instability, and higher incidences of poverty.

This report will discuss the common elements that characterize crime free nuisance ordinances. It will assess the intersectional origins of these ordinances, and some of the key problems created for tenants, landlords and entire communities when these ordinances are adopted and enforced. Finally, it will explore steps that California should take to address these issues and attempt to balance the prioritization of public safety with vital issues of fair housing, prevention of homelessness, preservation of affordable housing, and crime victim protection. Ultimately, the best way for communities to avoid the complex legal and human consequences that result from these ordinances is to avoid them entirely, and instead focus on other measures to affirmatively further fair housing and improve public safety.

### **What Method Is Used?**

The methodology of this policy paper includes analysis of results of several academic reviews surrounding the intersection of public policy, housing, systemic racism. Information

from some sources includes surveys and data from case studies of localities with Crime Free Nuisance Ordinances, and discussions on federal and state housing law. I sourced interviews from stakeholders in the rental housing industry and law enforcement advocates. Interviews of stakeholders from the rental housing industry and advocates of law enforcement provide an essential element of objectivity to the discussion. The combination of sources provides a well-rounded analysis of a topic that is profoundly intersectional.

### **What Are Crime Free Ordinances?**

Crime-Free Nuisance Ordinances, also sometimes referred to as Nuisance Property Ordinances or Crime Free Rental Housing Ordinances, are local laws that seek to penalize landlords and tenants for suspected criminal activity and/or calls for police service associated with rental properties. These laws are proliferating among local governments across the country, with more than 140 municipalities in the state of California alone having adopted ordinances. (See Appendix Figure 1 for a non-exhaustive list of California municipalities that have a crime free nuisance housing ordinance).

The ordinances that municipalities adopt can differ in terms of the approach they take to address perceived criminal activity in rental housing, however there are several common elements that tend to be consistent in these schemes (Werth, 2013). Ordinances frequently require landlords to get a business license, permit or registration to lawfully rent their residential properties. These licensing requirements often require passage of an inspection for compliance with property maintenance standards and landlord attendance in a crime free housing training offered by the municipal government. Typical topics of training include crime prevention through property design and maintenance, criminal background screening of potential tenants, and eviction of tenants for criminal activity. Some ordinances require landlords to perform

criminal background checks on prospective tenants typically without identifying the criteria that landlords should use in screening the criminal backgrounds of applicants. Most ordinances require that landlords use a “crime-free lease addendum” with all tenants: a written agreement that makes criminal (and sometimes other) activity by tenants, their household members, their guests, and other specified third parties a violation of the lease that can be the basis for an eviction. Often an ordinance will offer additional provisions to be included in a crime free lease: the sort of criminal or other conduct that violates the lease; where criminal or other conduct must occur in order to violate the lease; the responsibility of the tenant for conduct of third parties, regardless of the tenant’s knowledge of or ability to control that conduct; and/or the standard for proving that conduct violating the lease has occurred. Ordinances typically either require a landlord to evict the entire tenant household when criminal activity has allegedly occurred at a rental property including strong incentives for them to evict to avoid penalties. Eviction requirements sometimes even extend to alleged criminal activity engaged in by tenants or guests at other locations besides the rental property. Typically, ordinances do not require any conviction before the eviction requirement kicks in, and some ordinances even specify that an arrest or citation alone will trigger this requirement (Archer, 2019). Ordinances will also identify non-criminal conduct such as local ordinance violations, the creation of a nuisance, or conduct that endangers health, safety, or welfare as grounds for eviction of a household (Werth, 2013). Ordinances often either require eviction of a household that generates a threshold number of calls for emergency services (such as police or fire) or create incentives for landlords to evict these households through penalties on the landlord once a threshold number of police calls to the property is reached (Werth, 2013). Some ordinances specify a certain number of calls that must occur in a given period to necessitate eviction and/or penalties, while others focus enforcement

on properties that generate an “excessive” or “unreasonable” number of calls. Ordinances almost always impose penalties on landlords for violations, commonly in the forms of civil fines and injunctions against renting out their property. Ordinances involving landlord licensing schemes typically also impose suspension or revocation of a rental license as a penalty for violating the ordinance or other municipal code provisions.

The motivation for the adoption of these ordinances comes from the idea of public safety. The International Crime Free Association (ICFA), who created Crime Free Ordinances and trains localities on their use, explains that the inspiration of their ordinances is keeping public spaces “drug free”. They claim that instituting policies that keep schools, workplaces, and other shared spaces free of danger from drugs and their effects is in the best interest of all communities. The ICFA explains that following the Crime Free model, including eviction of families for “drug-related activity”, is both within the bounds of the law and constitution and in the best interests of law-abiding citizens as well as landlords (ICFA, 2023).

The spread of these ordinances throughout California and the nation is cause for great concern, as they lead to costly consequences not just for tenant families but also for entire communities. These ordinances silence crime victims and others who need to seek emergency aid or report crime, undermining public safety. They can increase housing instability and lead to homelessness for vulnerable tenants such as victims of domestic and sexual violence, and members of federally protected classes such as persons with disabilities. Their various barriers and injunctions to operation reduce the availability of desperately needed affordable rental housing. Finally, they can result in violations of tenants’ and landlords’ rights – including rights to be free from discrimination, to contact the government for assistance, and to receive due process – thereby exposing municipalities to legal liability.

## *Institutions*

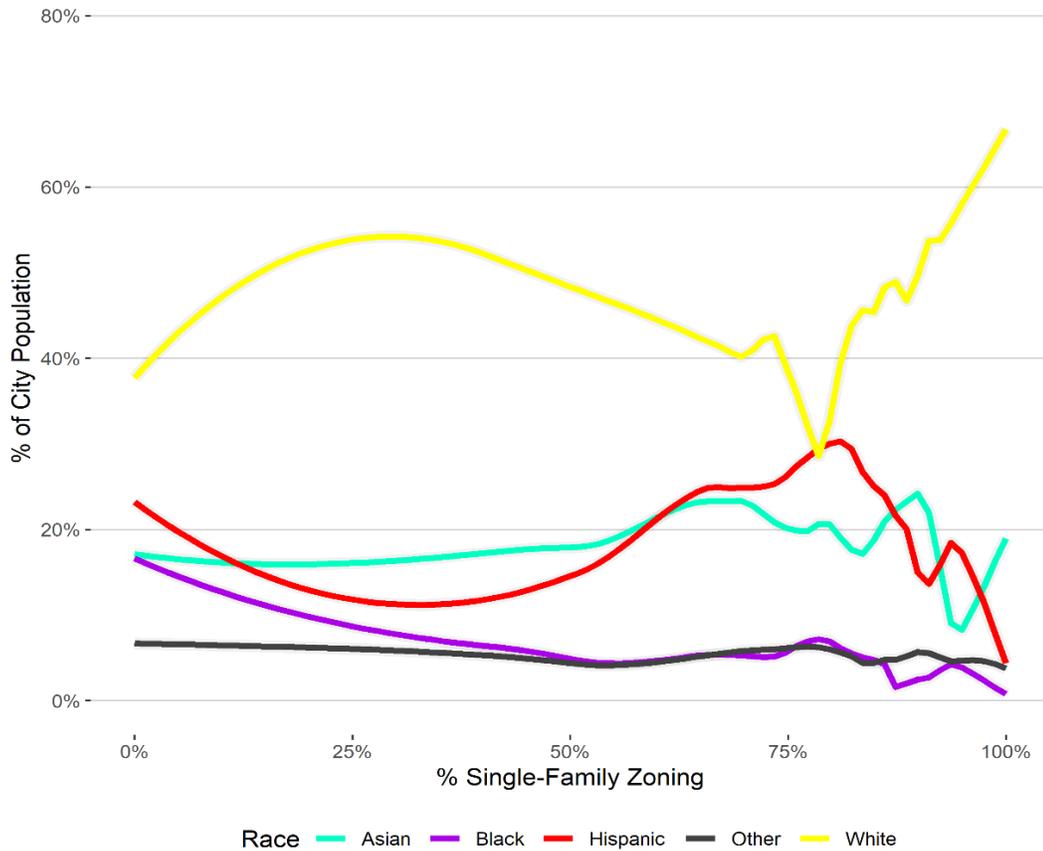
America has a long-standing history of discrimination in housing policy. From Alien Land Laws prohibiting minorities from owning land to federally approved discriminatory maps and policies creating barriers in access to public funds for redevelopment in Black and Brown neighborhoods, America has time and again made it harder for minorities to purchase, fund and even rent housing. Access to housing, or lack thereof, has long term implications for generational wealth and social equity. Homeownership rates for Black Americans, at 46.4%, are far lower than White Americans, at 75.8%, with the loss of potential equity for Black families cumulating approximately \$156 billion (Ray, Perry, Harshbarger, Elizondo, Gibbons 2021). Past public policies and practices undoubtedly continue to influence housing markets, patterns of segregation and shape social equity of communities and thus current policies deserve much more scrutiny. (Hernandez, 2009).

The early 1900's practices of redlining and racially restrictive covenants exemplify American de jure segregation. In this period, government homeownership programs offered government-insured mortgages for homeowners as a form of federal aid designed to stave off foreclosures in the wake of the Great Depression. However, as these programs evolved, the government added parameters for appraisal of properties and vetting of applicants who could apply. Not coincidentally the parameters, or neighborhood maps ranking "risk levels" for loans, consistently rated majority Black neighborhoods "red", or the riskiest for lending. The theory behind the redlining is that the presence of any Black residents is a precursor to property value decline, effectively barring Black home buyers from qualifying for secure mortgages. Beyond impeding access to housing funding from minorities, America held a tradition of denying even the purchase of a home in certain communities through racially restrictive covenants (Source). In

response to the Great Migration, white neighborhoods wrote in legally binding addendums to property deeds that prohibited the sale of those properties to Blacks. Again, records asserted that these policies were instituted with the belief that non-white neighbors would lead to lowered property values. While these de jure segregation are banned as part of the Fair Housing Act, their legacies and contributions to the racial wealth gap are undeniable.

Although we are technically rid of these de jure practices of exclusion and racial barriers, we still face examples of de facto segregation, specifically in NIMBYism and housing unaffordability. Berkeley, California was the first city in the country to establish single-family zoning laws. Single-family zoning directly limits the ability for affordable housing, in the form of apartments and duplexes, to be built. These forms of higher density housing are often the most accessible to people of color or immigrants and creating barriers to them deliberately pushes out communities of color. Studies show that single-family only zoning has a racially exclusionary appearance, meaning the more single-family only zoning, the whiter the jurisdiction, while the proportion of minority communities declines relative to the regional population (Menendian, Gambhir, Blum, 2022). Additionally, studies show that household incomes increase as the percentage of single-family only zoning rises in a jurisdiction, suggesting an economically exclusionary effect that excludes lower-income citizens from being able to afford housing in these jurisdictions. Crime Free Ordinances, disparately impacting protected classes, are a continuation of the tradition of de facto segregation methods and thus deserve further examination.

Race Composition of Bay Area Cities  
by Percentage of Restricted Single-Family Zoning



*Figure 1. Percentage of Single-Family Zoning and Impacts on City-Wide Racial Composition (Othering & Belonging Institute 2022).*

**History**

Crime-Free Ordinances have their roots in the law enforcement community and are historically police-sponsored programs. The first ordinances were created by the International Crime Free Association, an organization founded in 1992 by a member of the Mesa Police Department in Arizona (Archer, 2021). The stated goal of the ICFA and their Crime-Free Multi Housing Programs is to use “law enforcement-based crime prevention” to keep illegal activity off rental property. The ICFA has spread Crime-Free Ordinances to nearly 2,000 cities in 48 US States, 5 Canadian Provinces, England, Nigeria, and Puerto Rico, with at least 147 Crime Free

Ordinances present in California (Dillon, 2020). To date, the federal government has only challenged one of these ordinances in California, in the City of Hesperia, however ordinances in other cities including but not limited to Faribault (Minnesota), Bedford (Ohio), and Hemet and Adelanto (California) have seen successful legal challenges from the ACLU and other advocacy groups and forced changes to their Crime-Free Ordinances (Kanu, 2022).

In December 2022, the United States Justice Department (DOJ) secured a settlement agreement with the City of Hesperia, California and San Bernardino County Sheriff's Department requiring a complete end of its "crime-free" rental housing program which had been active since January 2016. Classified as a "race and national origin discrimination" lawsuit, the DOJ alleged that the City and Sheriff's Department engaged in a pattern of targeted discrimination against Black and Latinx communities in Hesperia through the adoption and enforcement of a Crime Free Ordinance, violating the Fair Housing Act and Title VI of the Civil Rights Act. The city officials' words make it clear that the ordinance was enacted with the purpose of target discrimination, as citizen complaints cited the mayor referring to the Crime Free Ordinance as an "extermination of roaches" in public session and the Sheriff's Department Captain stating a desire to accelerate the arrest and incarceration of communities living in low-income housing (Kanu, 2022). The program required all rental property owners to evict tenants upon notice by the Sheriff's Department that the tenants had engaged in any alleged "criminal activity" on or near the property – regardless of whether those allegations resulted in an arrest, charge, or conviction. It also encouraged housing providers to evict entire families when only one household member allegedly engaged in criminal activity, even evicting survivors of domestic violence. Landlords were required to screen potential tenants through the Sheriff's Department, which would notify landlords whether the applicant had "violated" the rules of the

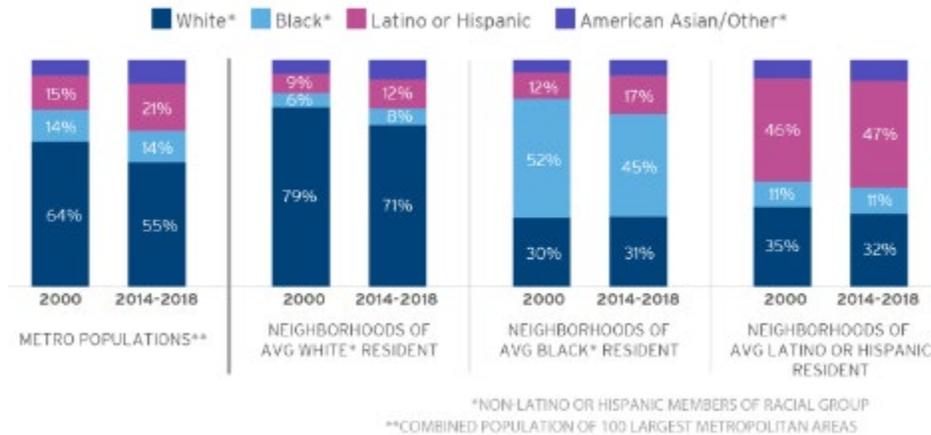
program in the past. Hesperia also passed an ordinance for rental housing business licenses that mandated registration in the Crime Free Program. Hesperia's crime-free ordinance had real and devastating impacts on families in the city. Per the US Department of Housing and Urban Development's investigation into the city, Black and Latinx renters were evicted at a vastly higher rate than white renters, and 96% of individuals evicted under the "crime-free" ordinance lived in majority-minority Census blocks, even though only 79% of rental households in Hesperia live in such blocks. As part of the resolution of this lawsuit, Hesperia and the Sheriff's Department repealed its Crime Free Ordinance, modified the rental housing business license ordinance, and agreed to stop enforcement of any Crime Free Program. Additionally, the City and Sheriff's Department will spend over \$1.7 million combined to remediate the harms of the Crime Free Program to individuals and businesses over the 5-year span it was active (DOJ, 2022).

While there is incremental momentum towards the reform of Crime Free Ordinances, advocates say that litigation will be necessary on a town by town, city by city basis, which presents heavy challenges (Archer, 2022). However, the settlement with Hesperia may provide a model for the type of litigation, prompting more cities to follow suit in repeal or reform of their programs. Additionally, Assemblymember McKinnor of Inglewood, California has introduced legislation, AB 1418, which would effectively prohibit local governments from operating Crime Free Ordinances throughout the state. As discussed later, this bill is receiving strong support from advocacy groups but also surprising support from stakeholders such as the California Apartment Association. As of March 2023, there are no public opposers of the bill, per McKinnor's spokesperson, suggesting an optimistic chance that the bill could be voted into law in this legislative cycle.

## Politics

The 2020 census showed us that America's population is more racially diverse than ever before, with population growth of Latinx, Asian Black and Native American populations combined increasing by 51%, compared to just a 1% increase in white population (Frey, 2020). However, comparison of neighborhood demographic data between 2000 and 2018 shows little to reflect the increase of non-white populations in neighborhoods during that time. A typical white person lives in a neighborhood that is 75 percent white and 8 percent African American, while a typical African American person lives in a neighborhood that is only 35 percent white and 45 percent African American (Greene, Turner, Gourevitch, 2017). More than a third of public-school students, approximately 19 million, attended a predominantly same-race school during the 2020-2021 school year, per the US Government Accountability Office. In the United States, a low-income African American person is more than three times more likely than a white person to live in a neighborhood with a poverty rate of at least 40 percent, and a low-income Latino person is more than twice as likely to live in such a neighborhood (Greene, Turner, Gourevitch, 2017). Figure 3 illustrates the static levels of racial integration for majority white neighborhoods in the last two decades.

**Race-ethnic makeups of metropolitan areas, and neighborhoods of different groups  
2000 and 2014-2018**



Source: William H Frey analysis of 2000 Census 2014-2018 multiyear American Community Survey

**B** Metropolitan Policy Program  
at BROOKINGS

*Figure 2. Illustration of neighborhood racial change over the last 2 decades (Brookings, 2023).*

Racial segregation leads to social and geographic isolation of racial groups. Low-Income Black and Brown home seekers can't access the capital or feeling of safety to move to white neighborhoods, and majority minority neighborhoods often lack the quality services and housing stock necessary to appeal to white home seekers, who often have other options outside of these areas (Cashin, 2004). As a result, people of color are locked into areas of highly concentrated poverty, while white neighborhoods grow and prosper more quickly (Roithmayr, 2004).

The law continues to play a significant role in creating and legitimizing patterns of racial segregation across America. Crime-Free Nuisance Ordinances are a major example of the law intersecting systematic racism leading to disparate outcomes for non-White communities. As people of color are at the same time both disproportionately renters and at a vastly greater risk of encountering law enforcement, these ordinances inherently have the potential to disproportionately impact them relative to their white counterparts. The potential impact of Crime-Free Ordinances in displacement of minority populations and exacerbating racial segregation is a matter of great public concern.

## **Economics**

Frequently, enforcement of these ordinances requires the eviction of an entire household based on the alleged criminal activity of a single household member, guest, or other person (HUD, 2022). Municipalities typically do not assess whether the other occupants had any involvement in or even knowledge of this activity. In fact, some ordinances specify their intent to penalize the entire household for criminal activity regardless of whether members were aware of the activity or able to control the participants in the activity.

However, eviction is a highly disruptive event that can have serious negative consequences for families. Displacing tenants who have neither engaged in nor permitted illegal activity without due process can needlessly and quickly worsen community problems such as educational instability for children and homelessness. Eviction is also severely costly to landlords, with costs from court fees, legal fees, lost rent, and time costs adding up to several thousands of dollars by the time an eviction is finalized. To force the hand of a landlord to evict a tenant can result in huge economic losses that landlords are not prepared for.

## **Why Should State Government Get Involved?**

Enforcement of Crime-Free Ordinances can negatively impact the supply of local rental housing for both tenants and landlords. Specifically, enforcement of these ordinances can create barriers to economic success for landlords, while displacing community members from housing, potentially exacerbating the profound homelessness population in the State, and violating their civil rights. An example of a barrier to economic success for landlords is a common requirement from localities that adopt Crime Free Programs – mandating landlords acquire licensing in relation to Crime Free Programs and forcing them to enforce crime free leases, or otherwise face injunctions against the use of property imposed as financial penalties (Werth, 2013).

Additionally, ordinances can require landlords to remove all the tenants from their properties if a license is lost, regardless of whether units are actually in a safe condition and the tenants are lease compliant, effectively removing several units of housing from the local rental market with little due process (Werth, 2013). Evictions take up time and space for all parties involved.

Focusing on rental housing as a problem in the community and imposing burdens on landlords can discourage anyone from providing rental housing in the first place. Advocates of rental housing operators argue that local jurisdictions often target and police multi-family housing for code violations at a much higher rate than single family residences, when the chance for code violations are equal at both types of housing (Stakeholder interview source, 2023). When these ordinances negatively impact the availability of rental housing in a municipality, this can disproportionately harm groups that are protected by fair housing laws – such as racial and ethnic minorities, female-headed households, and disabled households – because they are often more likely to live in rental housing (HUD, 2009). In addition, fair housing law is violated if a municipality in adopting or enforcing these ordinances is intentionally targeting the members of protected groups who live in rental housing, as found in the DOJ’s case against Hesperia. In such cases, municipalities can be liable for significant damages and required to provide financial reparations to victims of these violations (DOJ, 2022). Not only should local and statewide governments consider the issue of public safety in the context of these ordinances, but they should consider the economic and social equity consequences from the existence and enforcement of them.

## **LITERATURE REVIEW**

To understand the context of Crime-Free Nuisance Ordinances in housing I reviewed several academic studies, articles and law review articles on the following topics: landlord's decision making capabilities and their utilization of tenant screening technologies, the history and evidence of discrimination in the housing market, history and evidence of racial bias in law enforcement in America, and the history of Crime-Free Nuisance Ordinances, and their impacts on public health and downstream effects to communities of protected classes. While the issues of housing, racism in America and law enforcement are tremendously complex, I was able to parse out three valuable themes for examination in this report. I have organized the literature review in to the following three themes: (1) the landlord's discretion in tenant selection, (2) the evidence and history of discrimination in the rental market and the individual power of the landlord, and (3) the intersection of structural racism, over-policing of Black, Indigenous, and People of Color (BIPOC) communities and Crime-Free Nuisance Ordinances. I will use these three themes to illustrate the current impacts of Crime-Free Nuisance Ordinances in California in the housing market. I then conclude the literature review by summarizing the important findings and discuss how this research will inform the rest of this report.

### **Landlords' Decision-Making Process: From Tenant Screening to Eviction Filing**

The real estate industry, along with the rest of the world, is rapidly developing. Technology is playing a huge part in accommodating that development, particularly in the monitoring of tenants and automation of housing-related decisions. These developments are altering the traditional relationship between landlords and their tenants.

Landlords today often rely on tenant screening services to source information about individual tenants. These services utilize criminal records, eviction records and credit score

databases, amongst other things, to evaluate risk of entering rental agreements with prospective tenants. It's estimated over 2000 companies offer these screening services (Kirchner & Goldstein, 2020). However, researchers criticize tenant screening services for having high error rates and producing screening reports rarely accompanied by a clear explanation of their purpose (Kirchner, 2020c; Kirchner & Goldstein, 2020). Tenant reports also vary in their detail and presentation. Some services indicate a "disqualifying status" based on records of evictions without detail on whether the eviction only filed or fully executed, while others calculate risk scores based on criminal history, eviction records and credit scores. However, landlords often cite a need to insulate themselves from any "appearance of discretion" in their evaluations, thus they rely on commercial tenant screeners to take on that burden.

It is difficult to understate the power imbalance between a landlord and tenants or prospective tenants. For contemporary landlords in California and other states experiencing an acute housing shortage, the rental context is a "landlord's market" in which large pools of rental applicants must compete for a limited supply of private market housing opportunities, leaving applicants with fewer and fewer options. In this environment, landlord's practices, which remain largely unobserved, have severe downstream effects on applicant's lives (Desmond and Bell 2015).

### ***The Evidence and History of Discrimination in the Rental Market***

While continued research and evidence has found that housing discrimination is on the decline, it persists in de facto ways, or underground and not explicitly ordained by law (Turner 1992; Turner and Ross 2005; Turner et al. 2002). De jure forms of discrimination and segregation such as Jim Crow Laws of the 1800's no longer commonly exist in America, but players in the housing market still influence housing decisions with racial bias in de facto

methods. Sociological research increasingly illustrates that landlords play the role of gatekeeper to the housing market, as every renter who wants to live in a home must go through a landlord. Their behavior shapes patterns of urban disadvantage, precarity and inequality, especially important in an era of income inequality and housing affordability at an all-time low. In rental markets, landlords have been known to use racial stereotypes to screen potential renters and direct tenants to different properties (Desmond 2016; Rosen 2014). There is evidence that landlords discriminate both racially and behaviorally when it comes to voucher program participants (Rosen, 2014). The evolution of the housing market and introduction of tenant screening technologies and services begs further scrutiny for discriminatory practices.

Technologies like tenant screening services enable absentee landlords to minimize risk to their assets and to create sustainable financial returns from them. The number of private companies providing background check services has expanded a great deal with the availability of personal information such as credit scores, eviction scores and criminal records through internet sources (Dunn & Grabchuk, 2010). Through tenant screening, landlords look at housing court records when making a rental decision and use records such as eviction as an indicator for “riskier” tenants who will cause additional financial burdens on ownership such as late rent or eviction filing fees (Greif, 2018). While tenant screening services rely on data such as credit and eviction history to illustrate a tenant’s future, these future performances such as paying rent on time and not damaging property, are inherently unobservable and uncorrelated to past events, per scholars (Rosen et al., 2021). In addition, other scholars argue that these seemingly neutral data sets demonstrate disparate impacts because they rely on court records of the US criminal justice system, which disproportionately impacts Black and Hispanic men, whereas evictions disproportionately affect Black women (Desmond, 2012; Greenberg et al., 2016).

Some scholars have challenged such assumptions, arguing that “past evictions become virtually useless as a proxy for potential future evictions” because the specificity of individual evictions makes it extremely difficult to generalize (Kleysteuber, 2007, p. 1377). Gunn’s challenge of Robert Daines’ conclusions from examination of evictions in New Haven, Connecticut, illustrates this point (Gunn, 1995). Daines study of New Haven evictions in 1973 found that nearly all evictions (97%) were initiated because they failed to pay their rent, many of the tenants were recently evicted from other housing situations within the last two years, and these cases overwhelmingly were ruled in favor of the landlords (80%). A closer analysis of the methodology and data found flaws in Daines process: the data used in the study was gathered from housing court files at the New Haven Superior Court, which would have only contained information from matters litigated in court. Very few tenants who are represented by legal services in evictions end up being settled in court, rather they see their cases settled, dismissed, or withdrawn during pretrial (Gunn, 1995). Gunn’s study of 246 evictions in the same city between 1998-1994 found that a great percentage of nonpayment eviction cases involved serious living condition problems, and 67% of tenants had valid substantive defenses for nonpayment (Gunn, 1995). These findings indicate the evaluation of a risk of a tenant using eviction data is a flawed practice and virtually invalid as a proxy to determine future evictions, as court records do not paint a full picture of tenants who went to trial or settled, nor is it accurate in showing the full picture of why a tenant may have not paid their rent.

### ***Structural Racism, Disparate Impact to Protected Classes, Over-Policing of BIPOC***

#### ***Communities and Crime Free-Nuisance Ordinances***

The literature discusses the prevalence of structural racism in America, particularly highlighting the connection between Crime Free-Nuisance Ordinances in rental properties and

the over-policing of BIPOC communities. Following the tripling of Black population in Faribault Minnesota between 2000-2010 (made up almost entirely of Somali immigrants and refugees), the city passed a crime-free ordinance containing racially coded “dog whistle” language (Jones et al v. City of Faribault). Specifically, the Faribault crime-free ordinance was passed with the stated goal of getting rid of “problem tenants” living in downtown rental housing, where nearly all the racial and ethnic minority households in Faribault lived (Bohlen, 2013). Although native residents began complaining about an increase in crime during the first decade of the 2000s, the overall crime rates in the city did not increase dramatically. Moreover, the specific complaints of increased drug activity and theft in 2013 were unfounded, per the police department (Archer, 2019). The passed ordinance allows police to order all members of a household evicted if any member or guest engages in what police deem to be criminal activity. This policy disproportionately affects Black Minnesotans, who are far more likely to have criminal records than their white counterparts, due to systemic racism in the United States’ criminal justice system (ACLU, 2021).

The ICFA is a law enforcement driven organization that advertises that Crime-Free Nuisance Ordinances are based on the principles of policing and designed to keep illegal activity off rental property (ICFA, 2023). Crime Free Nuisance evictions can be ordered even without an arrest or prosecution, even if a person is found not guilty in a related criminal case. Per the ICFA and their Crime Free Multi Housing (CFMH) training manual, landlords are encouraged to establish relationships with police departments and to independently gather information in cases where the officer makes no arrest or formal report (Gore, 2007). ICFA influences localities and landlords to incorporate CFMH provisions in the form of lease addendums for tenants, while granting no guidance on whether actionable criminal activity is limited to convictions (Archer

2019). The CFMH lease addendum ambiguity opens the possibility that records of mere arrests – or even stops that result in neither arrest nor conviction – may suffice for termination of a lease.

CFMH trainings heavily promote that municipalities adopt ordinances requiring criminal background screening of tenants, even going so far as to convince municipalities to impose penalties on landlords if they don't perform these checks (Tran-Leung, 2011). Typically, ordinances do not lay out criminal standards for landlords in these screenings, which often leads to erring on the side of rejecting any prospecting tenant with a record, even if the person was never found guilty of alleged criminal activity or if the offenses are irrelevant to the person's ability to be a good tenant (Tran-Leung, 2011). This pattern of actions contributes to widespread violation of Fair Housing laws, as blanket policies screening out all prospective tenants with criminal records without regard to the outcome of arrests are likely to disproportionately impact minorities and/or persons with disabilities (Tran-Leung, 2011).

It is well documented that racial bias is ingrained in law enforcement and impacts members of racial minorities in far greater ways than White Americans (Jah, Simes, Cowger, Davis 2022). Literature finds that, after controlling for socioeconomic and other neighborhood-level factors, significant arrest differences still exist between Black and White populations, which researchers attribute to inequitable law enforcement practices (Kirk, 2008). In analyzing the state's "Stop and Frisk" program, the New York state attorney general's office found that Blacks were over six times more likely to be stopped than Whites, and Hispanics more than four times as likely (Gershman, 2000). It is also found that an increase in the number of white police increases the number of arrest of nonwhites but does not systematically affect the number of white arrests (Donohue III, Levitt, 2001). By creating a channel of influence for law enforcement

in access to housing, Crime Free Nuisance Ordinances contribute to the longstanding history of discrimination in housing in America.

Crime-Free Nuisance Ordinances reinforce narratives about formerly incarcerated people in their structure - in many cases requiring or encouraging landlords to perform criminal background checks on applicants. These actions contribute to social stigmas experienced by the formerly incarcerated returning home, namely an environment that is hostile to their inclusion and are generally assumptions of dangerousness, aggressiveness and untrustworthiness, and receive suspicion and hostility (Archer, 2019). By reinforcing these stigmas amongst the community and strengthening the barriers of access to housing on the basis of a racially biased law enforcement, these ordinances perpetuate the cycle of recidivism amongst minority communities. Crime-Free Nuisance Ordinances represent an intersection of systematic racism and the housing market, where inequitable law enforcement reactions can contribute to disparate outcomes for communities of color and marginalized communities.

Among the disparate outcomes for marginalized communities are the public health implications of evictions stemming from these Crime-Free Nuisance Ordinances (Moran-McCabe, Gutman, Burris, 2018). Local ordinances place responsibility on landlords for keeping abhorrent, disruptive or dangerous tenants off their properties. Many of these ordinances' descriptions of nuisances or "disorderly behavior" are broad, meaning a call for emergency services from a victim of domestic violence may count against a resident as a reported nuisance event (Moran-McCabe, Gutman, Burris, 2018). Landlords work in tandem with police or other municipal officials to keep track of reported problems, and at a certain threshold it is up to the landlord to abate the nuisance or be penalized. Researchers estimate over 2000 municipalities in America have active nuisance property ordinances of some kind as of 2017 (Walz, 2017).

Research highlights that the mere existence of these policies have grave consequences for victims of domestic violence, as ordinances essentially discourage them from making calls for emergency services in times of need, as their housing stability may be at risk by the threat of eviction from their landlord (Center for Public Health Law Research, 2017). An analysis of cities with nuisance ordinances and their language found that only six out of forty ordinances protected domestic violence victims from eviction for seeking help from emergency services (Moran-McCabe, Gutman, Burris, 2018). The lack of eviction protections of individuals at risk for domestic violence and the subsequent risks to their health through their curbed access to emergency services illustrates another significant negative consequence of Crime-Free Nuisance Ordinances.

### **Context and Summary of Findings**

As it stands, there are 147 known Crime-Free Nuisance Ordinances active in California (Dillon, 2023). The themes in this review provide a useful context to understanding how these ordinances function, impact our communities, and the roles different stakeholders play in the context.

It is necessary and essential to understand the landlord's decision-making capabilities and the power that they hold. As the gatekeepers to rental housing, they impact the lives of every tenant and prospective tenant. Their choice to use blanket tenant screening technologies or to analyze tenants on a case-by-case basis and the underlying implicit biases in either choice severely limits housing options for every tenant, but especially members of BIPOC communities. This is especially important in California, where housing access and affordability is a notorious issue.

The evidence and history of discrimination in housing across different transactions from purchasing, financing, and renting is abundant. It is essential to present this evidence, especially in the case of the landlord, to illustrate the negative consequences of unobserved and relatively unchecked power. Upon highlighting this evidence and history, the foundation is in place for introduction of the critical theme of this paper.

Crime-Free Nuisance Ordinances are a more modern incarnation of systemic racism. These ordinances represent an intersection of the over-policing of BIPOC communities, the struggle to obtain affordable and safe housing in California, and discrimination against protected classes in America. Addressing their history, impacts throughout the country and different responses to them will assist in formulating recommendations to mitigating their negative consequences.

## FINDINGS AND PRIMARY ANALYSIS

### *California Apartment Association*

In an interview with Debra Carlsen, a Local Affairs Vice President of the California Apartment Association (CAA), I presented the topic of Crime Free Nuisance Ordinances. Per their webpage, the California Apartment Association is a trade group that represents the interests of property owners, investors, developers, managers and suppliers of rental homes and apartment communities.

Per Carlsen, CAA opposes Crime Free Nuisance Ordinances, and has recommended support for AB 1418 in 2023, a bill that seeks to ban all these ordinances throughout the state. Their argument is that landlords are business owners trying to provide safe, well-maintained housing for their customers, and it doesn't make sense for the local government to involve itself and instruct landlords when to engage in an eviction. Evictions are lengthy – often taking six months to a year – and expensive for landlords as they aren't collecting rent on the unit while during an eviction. Carlsen cited the successful litigation against the City of Hesperia (United States of America c. City of Hesperia, et al.), where Hesperia was ordered to repeal its Crime Free Nuisance Ordinance, as an example of the issues with the ordinances and the direction the State should be pursuing. In Hesperia, it was found that the city and Sheriff's department acted in concert to enact a Crime Free Program to “address a demographic problem” according to one of the city's councilmembers (DOJ, 2022).

Cases of domestic violence are especially of concern when it comes to Crime Free Nuisance Ordinances, when victims' calls for emergency services can be counted against their tenant record and lead to their eviction. These cases deter citizens from access to emergency services everyone in the community should be able to use. Carlsen notes that in cases of

domestic violence, ordinances sometimes require landlords to perform an investigation or cite the tenant. Forcing landlords into this role puts them in a dangerous situation, which the CAA argues should be solely on the responsibility of the locality and its law enforcement.

When asked if there were any potential fixes to existing law that CAA recommends, Carlsen stated that it's more feasible to eliminate the existing laws and start again. Generally, she asserted that these laws also reinforce a trend of discriminatory policing on multifamily properties in comparison to single family housing when there is just as likely to be nuisance activities at both kinds of properties.

### **Rental Housing Inspection Stakeholders**

I also conducted interviews with local stakeholders Jose Gomez and Peter Lemos, both with extensive experience working professionally in the rental housing regulation field in Sacramento, to garner other perspectives on Crime Free Nuisance Ordinances.

Mendez, as a member of the Rental Housing Inspection (RHI) outfit at the County of Sacramento, states that a high proportion of multifamily rental housing was built in the 1940's and served a largely military population but since many have been poorly managed and are in a state of dilapidation. Much of the rental housing in Sacramento County saw code violation cases of mold, infestation and unsafe modifications that put tenants at risk. On top of these violations, properties often were operating without their required on-site manager, making it more difficult for residents to report and have issues taken care of. RHI and the Sheriff's Department often worked in tandem in cases where rental properties had high rates of calls for emergency services, and experiences showed that there was a strong correlation between the high rates of calls for emergency services and properties that were in states of dilapidation and violation of health and safety codes. Per Mendez, in jurisdictions with issues where much of the rental housing is in a

state of neglect, Crime Free Nuisance Ordinances can be strong tools to force absentee landlords to deal with health and safety violations and protect their tenants.

Peter Lemos offers perspective as a member of the Code Enforcement Division for the City of Stockton, California. In Stockton, participation in the Crime Free Program was voluntary – a key difference from how other municipalities operate Crime Free Ordinances. With approximately 20 rental properties consistently participating on a voluntary basis, Lemos highlighted very positive outcomes for these properties, including the tenants and owners. These properties enter a yearly training program that brings together owners, property managers, tenants, and emergency services staff (police, code enforcement and fire department), establishing a face-to-face relationship while facilitating learning about how to best achieve safe and healthy living communities. Tenants still enter agreements to be “Crime Free” as part of this program, but landlords are given the freedom to independently decide when to evict tenants for violations, rather than being told when to do so by the municipality. As a result of these key differences, Lemos cites very positive outcomes for the 20 or so properties that participate annually: low rates of crime, good relationships between tenants, owners and police officers, and properties in full compliance with local health and safety codes. Relationships are so positive that officers would regularly go out of their way to stop by participating rental properties to advise tenants or owners on any issues, such as granting extensions on parking violation payments. At the same time, Lemos recognizes that the voluntary nature of Stockton’s program is a significant reason why it was successful. Per Lemos, cities that have made Crime Free into mandatory ordinances face many more situations of discrimination and legal violations because of them. Counter to the ongoing movement against Crime Free Ordinances, such as momentum towards approval of AB 1418, it seems the City of Stockton’s model for operating Crime Free

could be a viable compromise for municipalities that may have interest in participating in them too.

### **Constitutional and Civil Rights Concerns about Crime Free Ordinances**

To date there have been relatively few legal challenges to Crime Free Ordinances, particularly considering the number of ordinances that exist in municipalities across the country. However, the cases that have been filed provide insight to how Crime Free Ordinances could be assessed in the context of the constitution.

### **Procedural Due Process**

At the heart of the Fourteenth Amendment of the Constitution is the protection of the right to procedural due process, which includes the right to notice and an opportunity to be heard. The Supreme Court has ruled that summary eviction proceedings, or streamlined legal proceedings, are sufficient to meet constitutional requirements due process (*Lindsey v. Normet*, 405 U.S. 56, 1972). However, the implementation of Crime Free Ordinances raises procedural due process concerns for both tenants and landlords and recent court rulings reinforce this argument.

In the California case *Cook v City of Buena Park*, a landlord was ordered by the city to evict both residents of an apartment when one roommate was cited for a drug offense, despite having completed a diversion program. The landlord challenged the ordinance based on Fourteenth Amendment violations to substantive and procedural due process. The court ruled that the ordinance violated the landlord's procedural due process rights for three reasons. First the City's notice to evict failed to require sufficient specificity to aid the landlord in the eviction action; secondly, the City's requirement that the landlord initiate the eviction against the tenants within ten days from receiving the notice was "onerous" because it didn't give the landlord

sufficient time to gather evidence to support any eviction claim; and finally, the ordinance “required” the landlord to prevail in any eviction action (Ramsey, 2018).

In the ACLU’s legal challenge of the City of Hesperia’s Crime Free Ordinance, their complaint included that Hesperia threatened to deprive plaintiffs of their interest in their leasehold by subjecting landlords to potential fines or revocation of their license and requiring and incentivizing their landlords to initiate eviction proceedings against them without adequate procedural protections (Ramsey, 2018). In addition to this procedural due process claim, complainants cited numerous examples of Hesperia City Council and other government officials publicly making statements that made it clear that the intent behind the Crime Free Ordinance was to uproot and exclude groups deemed undesirable, to preserve demographic profiles preferred by officials.

### **Substantive Due Process**

The Fourteenth Amendment also protects the notion that certain concepts are founded on personal interests derived from the Constitution. For a substantive due process complaint to be valid, plaintiffs must establish that they were deprived of a protected property interest and that the state chose and irrational means to deprive them of that interest.

In the case of *Briggs v. Borough of Norristown*, Lakisha Briggs brought a substantive due process claim against the town she lived in. Briggs, a victim of domestic violence from her significant other at the time, was threatened with eviction after making one call to the police for protection from her abusive partner. In response, Briggs filed her claim alleging the city created a danger to her because she was prohibited from calling the police during an emergency without risking eviction under the town’s Crime Free Ordinance. There was no official ruling on the issue, however, as the case settled between both parties with Norristown agreeing to pay nearly

\$500,000 in compensation to Ms. Briggs while repealing its ordinance and promising to never pass another law that would punish residents and landlords because of requests for emergency services.

### **Equal Protection**

The Fourteenth Amendment provides that no State shall deny to any person the equal protection of the laws. While no court decisions regarding Crime Free Ordinances have ruled on equal protection, ACLU raised the issue in their complaint against the City of Hesperia and a few other cases previously mentioned have included them in their complaints.

Hesperia's complaint alleges a violation of the 14<sup>th</sup> amendment equal protection clause because it discriminates against residential renters and their families, imposing eviction requirements on them but not people who own their homes. The complaint against Norristown also alleges an equal protection violation specifically related to domestic violence victims, as victims are provided less protection than to other victims of violence because domestic disturbances were specifically targeted as disorderly behavior that can result in the eviction of the victim. In *Cook v. City of Buena Park*, the concurring judge also wrote that one of the "constitutional infirmities" that the Crime Free Ordinance in the case presented was that it resulted in disparate treatment of property owners and renters because there was no evidence that the city attempted to abate nuisances in owner-occupied homes the same way it did in rental properties.

### **Fair Housing Act**

Crime Free Ordinances may give rise to claims of discrimination under the Fair Housing Act. When criminal history is used as a proxy for race or another protected class, complaints of

discrimination may be valid, even though people with criminal records or people who interact with the criminal justice system are not considered a protected class under the Fair Housing Act.

There is a movement towards recognizing that criminal history can be a proxy for race. In *Texas Department of Housing and Community Affairs v Inclusive Communities Project*, it was ruled that it is not necessary for a plaintiff to show discriminatory intent when alleging a violation of the Fair Housing Act, rather it is sufficient to show that there is a disparate impact on protected classes based on statistics to indicate a violation.

## **POLICY RECOMMENDATIONS/ALTERNATIVES TO CONSIDER**

As California grapples with its endeavor to provide safe affordable housing, and build equitable and sustainable communities, I offer some policy recommendations and alternatives to consider regarding Crime Free Ordinances.

### **Recommendation 1: Outright Prohibition: Landlords Maintain Independence**

The State could, through the legislative process, prohibit the effects of Crime Free Ordinances statewide. Assembly Bill 1418 authored by Assemblymember Tina McKinnor is currently under consideration by the State legislature, and would prohibit the penalty of any residents, tenants, landlords or other persons because of law enforcement or emergency assistance summoned by certain individuals including a victim of abuse or crime. Effectively, local jurisdictions could no longer compel landlords to evict tenants just for a tally of contacts with emergency services. This bill requires any local government with an existing ordinance of this nature to repeal or bring the ordinance into compliance with state law within one year. It also creates a private right of action that allows an individual citizen or a nonprofit to sue a local government in any event of a violation of this law. According to various legislative analyses, and contact with McKinnor's office, there is overwhelming support for this bill and no publicly registered opposition of this bill. As stated earlier in this project, even the California Apartment Association is in support of this legislation. As it stands, there is a significant amount of optimism for this legislation passing into law.

Given the history of government sponsored barriers of access to housing for persons of color and impoverished people and the disparate effects of policing on communities of color, support for this alternative makes a lot of sense for the State to support. It is vital to note that this

would not prevent landlords from evicting tenants that demonstrate that they are causes of nuisances or that they are dangers to neighbors or property. Landlords would still reserve their right to evict tenants under current landlord and tenant laws.

**Recommendation 2: System of Review For Localities Crime Free Ordinances**

Like how the State currently requires regular analysis of local policies related to housing through analysis of local jurisdiction's Housing Element, the State could consider reviewing a localities Crime Free Ordinance within the same review process. In their analysis, the State could require explicit description of any active Crime Free Ordinances that the jurisdiction has passed and for statistics on evictions stemming from them. Subsequently, the State could conduct a disparate impact analysis to see if the Crime Free Ordinances are having an outsized effect on protected classes living in the jurisdiction. If a disparate impact is evident, the State could require the jurisdiction to modify application of or abolish the Crime Free Ordinance.

This recommendation faces some potential issues and would only be a viable alternative in the case that AB 1418 was not passed. State Law only requires Housing Elements to be updated and certified by the State every eight years, while any Crime Free Ordinance could affect the lives of tenants within a matter of days or weeks. Additionally, there is the potential for negativity surrounding the expansion of State influence on local jurisdictions who's elected officials may be in favor of Crime Free Ordinances in the name of public safety. As mentioned in my discussions with Jose Mendez and Peter Lemos, there is some support in local government for Crime Free Ordinances as a tool for combating bad actors in multifamily housing and forcing landlords to invest in the safety and habitability of their units.

**Recommendation 3: Recommend Amendments to Pending Legislation to Require Due Process**

If for some reason AB 1418 was deemed insufficient through the legislative process, the State could recommend amendments to it to require jurisdictions to implement some sort of due process requirements in their Crime Free Ordinances. As discussed in my Findings and Primary Analysis, there are significant Fourteenth Amendment issues for Crime Free Ordinances regarding procedural and substantive due process. To protect localities from due process violations, the State could require modifications to localities' Crime Free Ordinances such as prohibiting the use of arrest records alone to form the basis of a violation of a Crime Free Ordinance, and instead requiring an arrest or citation be supported by admissible corroborating evidence that an activity in violation of the Ordinance has occurred. Alternatively, the State could create carve outs for victims of domestic violence in Crime Free Ordinances. This type of limiting language can help to prevent abuse of police discretion and limit the due process concerns of Crime Free Ordinances.

### **Conclusion**

California is in a unique period where the lack of housing affordability and supply is so shockingly apparent and desperate to the point where every citizen is familiar with it. In a 2020 survey by the Public Policy Institute of California, citizens rated homelessness as the most important issue for the governor and legislature to address in 2021 (Baldassare, Bonner, Lawler, Dykman, 2020). There is a lot of political will to do things to address it, and the State is dedicating a significant amount of resources to aggressively address it. During the necessary course of addressing housing as a whole, it is vital to consider the disparate impacts of policies such as Crime Free Ordinances and the impediments to progress they may be causing.

While prevention of crime is one of the basic functions of government at every level, that function must be balanced with the protection of every citizen's rights, particularly necessary and

important interests such as property rights, privacy rights and constitutional principles. Crime Free Ordinances debatably tip the scale too far towards the violation of these citizen rights and interests, especially in situations where evidence of crime is insubstantial at best.

As I started this project, I was unsure if there would be enough political will to address Crime Free Ordinances as part of this current housing movement. While they are prevalent throughout the State, a state where the need for Fair Housing access is very well known, there have been very few legal challenges to them at the local level. Considering the pending passing of AB 1418, legal settlements such as the case in Hesperia, and the growing media attention from major news outlets on Crime Free Ordinances and their disparate impacts, the State may be approaching a period of incremental progress for equity in housing.

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## Appendix

### *Appendix I. California cities and counties that approved crime-free housing policies (LA Times 2020)*

Adelanto	Hawaiian Gardens	Paramount
Alameda County	Hawthorne	Parlier
American Canyon	Hayward	Pasadena
Antioch	Hemet	Pittsburg
Apple Valley	Hesperia	Pomona
Atascadero	Highland	Poway
Bakersfield	Hughson	Rancho Cordova
Banning	Huntington Beach	Rancho Cucamonga
Bell	Huntington Park	Redlands
Bellflower	Imperial Beach	Rialto
Benicia	Indio	Richmond
Berkeley	Ione	Riverside
Blue Lake	Kerman	Rohnert Park
Canyon Lake	King City	Sacramento
Cathedral City	La Habra	Sacramento County
Ceres	La Mesa	San Benito County
Chula Vista	La Mirada	San Bernadino
Claremont	Lake Elsinore	San Bernadino County
Clovis	Lancaster	San Diego
Coalinga	Lawndale	San Diego County
Colma	Lemon Grove	San Jacinto
Colton	Lemoore	San Jose
Commerce	Livermore	San Leandro
Concord	Loma Linda	San Marcos
Contra Costa Countyh	Long Beach	San Ramon
Coronado	Los Angeles	Santa Paula
Costa Mesa	Los Angeles County	Solana Beach
Covina	Lynwood	South San Francisco

Davis	Manteca	St. Helena
Del Norte County	Maywood	Stockton
Diamond Bar	Menifee	Tehachapi
Duarte	Modesto	Temecula
Dublin	Montclair	Trinidad
Eastvale	Moreno Valley	Twentynine Palms
El Cajon	Murrieta	Union City
El Monte	National City	Upland
Escalon	Needles	Vacaville
Eureka	Nevada City	Vallejo
Fairfield	Newark	Victorville
Fontana	Newman	Visalia
Fortuna	Norco	Vista
Fowler	Novato	West Covina
Fremont	Oakland	West Sacramento
Fresno	Oceanside	Wildomar
Gardena	Ontario	Williams
Glendale	Orange	Woodland
Grand Terrace	Oroville	Yucaipa
Grass Valley	Palm Desert	Yucca Valley
Hanford	Palmdale	