

MEMORANDUM

TO: Catherine Ushka, Tacoma City Councilmember, and Vice-Chair, Community Vitality a& Safety Committee

FROM: Tacoma Human Rights Commission/Policy & Advocacy Committee (Commissioners Kim Tosch (chair), Jennifer Vasilez, Sarah Nuñez, Julie Tran, and Volunteer Rebecca Stith)

DATE: July 22, 2019

RE: Removal of “domestic violence” from TMC 8.30A, Chronic Public Nuisance

Based on the laws and information below, the Policy and Advocacy Committee, on behalf of the Tacoma Human Rights Commission, recommends removal of “domestic violence” from Chapter 8.30A, Chronic Public Nuisance, TMC 8.30A.020.F.11.

INTRODUCTION

The Tacoma Municipal Code currently categorizes “domestic violence” as a chronic public nuisance if it is reported three or more times within any 60-day period, four or more times within any 6-month period, and six or more times within any 12-month period. The City may serve notice on the landlord to correct or abate such a nuisance and, if no or insufficient action is taken, the City may file an enforcement action against the landlord. *See* TMC 8.30A.020.B.1-3. & F.11, 8.30A.030-.060.¹

As detailed below, federal law, state law, and Pierce County law all, in varying ways, protect victims of domestic violence from being deemed “nuisance” tenants and/or discriminated against in housing based on, or as a result of, their status as victims of domestic violence. This means, in our understanding of the applicable laws, such as Washington’s RCW 59.18.580, that landlords cannot lawfully refuse to rent to, or evict or threaten to evict, a tenant based on such person’s² status as a victim of domestic violence.

The following statistics from our community and throughout the country, among many, provide ample support for such protection:

- “[T]he rate of domestic violence offenses reported to the Tacoma Police Department has been an average of 200 percent higher than the average rate for the state.”³
- Nationally an estimated 80% of victims of domestic violence have been women.⁴
- Nuisance ordinances have been found to discourage both reporting domestic violence to law enforcement and seeking emergency medical and police assistance.⁵

¹ <https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title08-PublicSafety.PDF>, pp. 8-101,

² Washington law also protects a tenant’s household member who is a victim of domestic violence. *See* RCW 59.18.580.

³ www.cityoftacoma.org/government/city_departments/neighborhood_and_community_services/domestic_violence

⁴ <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>

⁵ Gretchen Arnold & Megan Slusser, “Silencing Women’s Voices: Nuisance Property Laws and Battered Women,” L.&SOC.INQ. 15-17 (2015), <http://nhlp.org/files/001.%20Silencing%20Women's%20Voices->

- In Milwaukee, 83% of landlords who had been issued nuisance citations based on domestic violence “either evicted those tenants or threatened to evict them.”⁶
- Approximately one in four homeless adults cites domestic violence as the cause of homelessness, and at least 50% of homeless women have suffered domestic abuse.⁷
- Tacoma’s March 2018 report, “Domestic Violence Needs Assessment,” recognized that “[m]any domestic violence victims . . . find themselves homeless,” but did not address the homelessness resulting from landlords’ evictions of, or refusals to rent to, victims of domestic violence who have been deemed a chronic public nuisance pursuant to the City’s current code.⁸

In light of the above information, the laws cited below, and the resulting adverse consequences disproportionately suffered by women, we recommend removal of “domestic violence” from the City’s Chapter 8.30A, Chronic Public Nuisance, 8.30A.020.F.11.

FEDERAL LAW

U.S. Constitution

“Courts have found that local nuisance ordinances **violate residents’ rights under the First Amendment and the Due Process Clause** of the Fourteenth Amendment because they punish people for reaching out to their governments, often without notice or an opportunity to challenge whether they should be considered a ‘nuisance.’”⁹ (Bold added.)

U.S. Violence Against Women Act, 42 USC § 12491¹⁰

Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking

(b) Prohibited basis for denial or termination of assistance or eviction

(1) In general

An applicant for or tenant of housing assisted under a covered housing program **may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.**¹¹ (Bold added.)

[%20Nuisance%20Property%20Laws%20and%20Battered%20Women%20-%20G%20Arnold%20and%20M%20Slusser.pdf](#)

⁶ See Rachel Louise Snyder, “No Visible Bruises: What We Don’t Know About Domestic Violence Can Kill Us,” (2019), pp. 227-28.

⁷ https://www.nlchp.org/Theres_No_Place_Like_Home (2012), p. 5.

⁸ https://cms.cityoftacoma.org/ncs/hsd/COT_2018_Domestic_Violence_Needs_Assessment.pdf, pp. 5, 10,

⁹ https://www.aclu.org/blog/womens-rights/violence-against-women/disturbing-number-missouri-towns-evict-residents-calling?fbclid=IwAR013D7btrDbBs-5NDZII5fqVUIXOQFZ2u3Y8vPxQFO_jAjDnIETrmA0ROM

¹⁰ Formerly codified at 42 USC § 14043e, *et seq.* See

<https://uscode.house.gov/view.xhtml;jsessionid=05C01D34CDF382550133B2A11D9E3268?req=granuleid%3AUSC-prelim-title34-chapter121-subchapter3-partL&saved=%7CMTAgVVND%7CdHJIZXNvcnQ%3D%7CdHJIZQ%3D%3D%7C14364%7Ctrue%7Cprelim&edition=prelim>. The Act is currently pending re-authorization by Congress. For more information on the pending bill, see <https://www.congress.gov/bill/116th-congress/house-bill/1585/all-actions?overview=closed#tabs>

¹¹ The Violence Against Women Act further provides:

U.S. Fair Housing Act, 42 USC §§ 3601-19¹²

Pursuant to this Act, it “**shall be unlawful [to] discriminate against any person** in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, **because of** race, color, religion, **sex**, familial status, or national origin.”¹³ The U.S. Department of Housing and Urban Development (HUD), which enforces this law, “has pointed out the serious Fair Housing Act problems with these ordinances because they threaten the rights of domestic violence and other crime victims. [Research has shown] the **devastating impact of nuisance ordinances on housing stability for low-income women.**”¹⁴ (Bold added.)

Potential violations of the Fair Housing Act include:

- **Disparate Impact Discrimination:** “... where a policy or practice that restricts the availability of housing on the basis of nuisance conduct has a disparate impact on individuals of a particular protected class [such as females], the policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the local government.”¹⁵
- **Disparate Treatment (Intentional) Discrimination:** “[A]n inference of intentional sex discrimination could arise directly from evidence that a housing provider seeks to evict female residents shortly after incidents of domestic violence.”¹⁶

“(2) ... An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

¹² <https://www.justice.gov/crt/fair-housing-act-2>; <https://civilrights.findlaw.com/discrimination/fair-housing-act.html>; see also 24 CFR § 100.65 (implementing regulation prohibiting intentional discrimination in housing) and § 100.500 (regulation prohibiting a discriminatory impact even if practice was not intended to discriminate) https://www.govregs.com/regulations/title24_chapterI_part100_subpartB_section100.65 and https://www.govregs.com/regulations/title24_chapterI_part100_subpartG_section100.500, respectively.

¹³ See 42 USC §§ 3604(b), <https://civilrights.findlaw.com/discrimination/fair-housing-act.html>

¹⁴ https://www.aclu.org/blog/womens-rights/violence-against-women/disturbing-number-missouri-towns-evict-residents-calling?fbclid=IwAR013D7btrDbBs-5NDZII5fqVUIXOQFZ2u3Y8vPxQFQ_jAjDnlETrmA0ROM

¹⁵ See 9/13/16 HUD, “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services,” p. 7. <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>

¹⁶ *Id.*, pp. 10-11; see also <https://www.aclu.org/other/housing-discrimination-and-domestic-violence?redirect=womens-rights/housing-discrimination-and-domestic-violence>, p. 2 (“**Discrimination** against women who have faced domestic violence is **often based on gender stereotypes** [including] that if a woman is experiencing domestic violence, it is her fault[.] When a landlord relies on such a gender stereotype to evict a victim of domestic violence, the landlord discriminates on the basis of sex”). (Bold added.)

WASHINGTON LAW

RCW 59.18.580¹⁷

Victim protection—Limitation on tenant screening service provider disclosures and landlord's rental decisions

(1) A tenant screening service provider may not (a) disclose a tenant's, applicant's, or household member's status as a victim of domestic violence, sexual assault, or stalking, or (b) knowingly disclose that a tenant, applicant, or household member has previously terminated a rental agreement under RCW 59.18.575.

(2) **A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence**, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

(3) A landlord who refuses to enter into a rental agreement in violation of subsection (2) of this section may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may also recover court costs and reasonable attorneys' fees.

(4) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of subsection (2) of this section.

(5) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge or prohibit volunteer disclosure by an applicant of any victim circumstances.

[2013¹⁸ c 54 § 1; 2004 c 17 § 4.] (Bold added.)

PIERCE COUNTY LAW

On June 4, 2019, Pierce County passed an ordinance proposed by former Tacoma Councilmember Marty Campbell which, among other things, incorporated by reference RCW 59.18.580 into its law regarding nuisance properties.¹⁹

CONCLUSION

The Committee recommends removal of “domestic violence” from the City’s nuisance code.

¹⁷ See <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.580>

¹⁸ The state law was amended in 2013 to include tenant-screening providers “to make sure a victim’s history of domestic violence could not be accessed by a landlord and used against them when applying for housing.” <https://www.solid-ground.org/tenant-tip-new-law-prevents-housing-discrimination-against-survivors-of-domestic-violence/>

¹⁹ See <https://online.co.pierce.wa.us/cfapps/council/model/otDocDownload.cfm?id=6037381&docType=legislativeMeetingDocument&fileName=0513%20Public%20Safety%20meeting%20packet.pdf>
<https://online.co.pierce.wa.us/cfapps/council/model/otDocDownload.cfm?id=6637823&fileName=2019-21%20Signed%20Final%20Ordinance%20with%20Exhibit.pdf>;