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City of Des Moines
Neighborhood Inspections
602 Robert D. Ray Dr.
Des Moines, IA 50309

RE: Rental code changes

Dear Ms. Donovan:

This letter is in response to the notice for public comment issued Thursday March 10, 2016, seeking input on possible changes to the City of Des Moines rental code, and the invitation at that meeting to submit additional written comments.

Iowa Legal Aid is a nonprofit organization that provides critical legal assistance to low-income and vulnerable Iowans who have nowhere else to turn, serving Iowa's 99 counties from offices in ten cities. Iowa Legal Aid and volunteer attorneys help the legal system to work for those who cannot afford an attorney. Typical cases involve problems with access to basic necessities, fundamental rights or safety. Our priorities include protecting victims of domestic violence, preventing illegal evictions and unsafe housing, securing income support such as SSI, Medicaid and disability benefits, and preventing consumer fraud and abusive debt collection practices.

In 2015, Iowa Legal Aid closed approximately 16,203 cases in which legal assistance was provided to low-income and older Iowans. Almost a quarter of those cases, 4,405 to be exact, were in the area of landlord-tenant law. Of these landlord-tenant law cases, 735 (over 16%) were closed in Polk County.

In general, Iowa Legal Aid supports the City's efforts to raise the general quality of rental stock, and to work more intensively with those landlords who do not maintain their properties within the reasonable standards of habitability and applicable building code.

However, these improvements should not come at the cost of depriving low-income Iowans of their residences without sufficient due process, should not inhibit the access of emergency services, and should not be tied to processes that have a disproportionate impact on housing opportunity for people of color. Iowa Legal Aid therefore wishes to submit the following suggestions to ensure that the City's goals are carried out without unduly impairing access to housing for our clients.

I. WHETHER A PROPERTY HAS BEEN DECLARED A SPECIFIED CRIME PROPERTY SHOULD NOT BE LINKED TO THE VALIDITY OF A RENTAL CERTIFICATE

Another topic that received an extensive amount of discussion on March 15, 2016, was the Multi-unit Crime Free Housing program. Although ostensibly a program of the City of Des Moines Police Department (DMPD), it was openly and enthusiastically endorsed during the meeting by the City.

At the subsequent meeting on April 28, 2016, another meeting was held. At this meeting, it was proposed that any new ordinance link the renewal of a rental certificate to whether a property had been designated as a “Specified Crime Property” under Des Moines Municipal Code Sec. 70-211.¹

It has generally been the experience of Iowa Legal Aid that, regardless of the intentions behind these policies, “crime free housing” programs and ordinances like the City’s Disorderly House and Specified Crime Property ordinances may have unintended and disproportionate consequences. Specifically, these programs have the capacity to negatively affect victims of domestic violence, low-income people, and people of color.

Linking Rental Certificates to the Specified Crime Property Ordinance Negatively Affects Access to Housing and is a Sanction for Criminal Activity Not Requiring a Conviction or Even Probable Cause

The Specified Crime Property ordinance allows the Chief of DMPD to “declare” that a property has or had some connection to certain enumerated crimes. Des Moines Municipal Code Sec. 70-214. After this declaration, DMPD sends a letter to the property owner of record, giving them 10 days to abate the issue. Des Moines Municipal Code Sec. 70-219. This generally means eviction if the house is occupied by tenants. If the issue has not been abated within 20 days, a fine and order of abatement shall issue. *Id.*

This ordinance does not require that anyone suspected of committing criminal activity actually be convicted, or tried, or even arrested. The ordinance does not require that the owner of record or the tenant occupants be aware of or have control of any alleged activity taking place on the premises. The “specified crime property” ordinance allows the DMPD to essentially effectuate the eviction of tenants without having to link any criminal activity to the tenants themselves, or indeed any particular person. The DMPD may simply “declare” specified crime property status without even having to show probable cause. All that is required is a “reasonable belief” that prohibited activity has occurred:

A reasonable belief that a structure is being used as specified crime property may be found from but is not limited to evidence of drug paraphernalia in or around the structure; an increase in vehicular or pedestrian traffic in or around the structure; observations of the exchange of money; verified citizen complaints of bootlegging; unauthorized delivery or manufacture of a controlled substance; illegal gambling, bootlegging, prostitution, pimping or pandering; police case investigation reports indicating activity of disorderly

¹ Even though participation in the Multifamily Crime Free Housing Program has not yet been proposed as a possible alternative condition for receipt or maintenance of a rental certificate, Iowa Legal Aid believes that the same concerns expressed in this section in regard to the Specified Crime Property ordinance also exist in regard to this program. The Multifamily Crime Free Housing Program is currently a voluntary program administered by the DMPD. To the extent that it involves the potential for similar pressure to be placed on housing opportunity for low-income people, people of color, and victims of domestic violence, the same concerns raised in regard to the specified crime property ordinance apply.

https://www.dmgov.org/Departments/Police/PDF/What%20is%20Crime%20Free%20Multi%20Housing_111315.pdf

house or crimes involving weapons; and any other activity which leads a police officer to reasonably believe violations of this division exist.

Des Moines Municipal Code Sec. 70-211. While the evidence listed in the statute may encompass activity that is serious enough to merit some intervention, if proven, what can constitute a reasonable belief is troublingly broad. It is difficult to imagine what level of evidence, however thin, that would not nevertheless justify the designation as a specified crime property under the standards set out in this ordinance.

In the case where DMPD alleges a “disorderly house,” even alleging that a crime occurred is not necessary. A property declared a “disorderly house” can also be declared a “specified crime property.” According to the ordinance:

For the purpose of this section, the term "disorderly house" shall mean and include any building, house, enclosure or place where riotous, noisy or disorderly conduct or loud or unusual noises or loud, profane or vulgar language or drunkenness, quarreling or fighting is engaged in or permitted; or to which prostitutes and vagrants resort.

Des Moines Municipal Code Sec. 70-35. Reading this ordinance together with the Specified Crime Property ordinance, a tenant may be evicted due simply to “unusual noises” or “vulgar language.” There is also a danger that the provision vaguely addressing “quarreling or fighting” could be construed so as to place victims of domestic abuse in danger of losing their housing. According to data provided by the DMPD, the following is an example of a situation where a property could be designated a specified crime property:

There was a gathering of approximately 30 people outside and 50 people inside at 3509 27th St. The noise and disturbance caused by the party resulted in the neighbors calling the police. Upon our arrival, several people were blocking the street. Additionally, several people were coming and going from the house. The noise from the party could clearly be heard from about one block away. The Def claimed ownership of the party when the group was asked who was the owner of the house. The Def went on to explain the house belonged to his sister's boyfriend but neither the Def's sister or the Def's sister's boyfriend were home at the time of the party.

In other words, even where there are no allegations of drugs, violence, prostitution, or other serious criminality, DMPD can and has designated properties as “specified crime properties.”

This is not a hypothetical or de minimis issue. According to data provided by the DMPD, the City has employed the specified crime property ordinance 635 times between January 2010 and September 2015. What’s more, this ordinance appears to be utilized more frequently in lower-income areas. One of the smallest levels of resolution for demographic data is the census tract. The City Des Moines covers all or part of approximately 61 different census tracts.² The census tracts with the highest utilization of the specified crime ordinance in the last five and a half years are 11, 12, 5, 46.02, and 50. Four of these five census tracts had more low-income residents than the City as a whole, many with a substantially greater amount:

² See Appendix A for a map of Des Moines’ census tracts.

UTILIZATION OF SPECIFIED CRIME PROPERTY ORDINANCE, JANUARY 2010 TO SEPTEMBER 2015, BY CENSUS TRACT (POVERTY RATE)³ – FIVE HIGHEST		
CENSUS TRACT	% Below Poverty	# Times ordinance used
11	46.2%	28
12	38.0%	27
5	22.2%	25
46.02	17.1%	23
50	33.7%	23
CITYWIDE	19.9	

Conversely, those areas that saw the lowest utilization of the ordinance were all considerably under the average poverty rate for the City at large.

UTILIZATION OF SPECIFIED CRIME PROPERTY ORDINANCE, JANUARY 2010 TO SEPTEMBER 2015, BY CENSUS TRACT (POVERTY RATE)⁴ – FIVE LOWEST		
CENSUS TRACT	% Below Poverty	# Times ordinance used
31	10.1%	2
30.01	7.4%	1
32	5.6%	1
107.06	6.7%	0
110.28	3.8%	0
CITYWIDE	19.9	

Finally, these ordinances do not take into account the fact that, even where an occupant can be proven under constitutional standards to have engaged in criminal activity that threatens the safety of others in their neighborhood, there may be members of the household who do not bear any culpability for those actions who will nevertheless risk losing their housing.

In consideration of all of these factors, we believe that is highly inadvisable for the City to tie the validity of a rental certificate to the Specified Crime Property ordinance.

³ Address data for use of ordinance provided by the DMPD in response to a request by Iowa Legal Aid. Use of ordinance addresses assigned to census tracts by geocoding, <https://geomap.ffiiec.gov/FFIECGeocMap/GeocodeMap1.aspx>. Demographic statistics drawn from the 2014 American Community Survey estimates. Available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&src=pt

⁴ Address data for use of ordinance provided by the DMPD in response to a request by Iowa Legal Aid. Use of ordinance addresses assigned to census tracts by geocoding, <https://geomap.ffiiec.gov/FFIECGeocMap/GeocodeMap1.aspx>. Demographic statistics drawn from the 2014 American Community Survey estimates. Available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&src=pt

Linking Rental Certificates to the Specified Crime Property Program May Have a Disparate Impact on Communities of Color

Moderation and caution in the use of “crime free lease” programs and ordinances like the specified crime property ordinance is a wise course of action for general principles of fairness and equity. It also mitigates potential liability under the federal Fair Housing Act, given the apparent disproportionate impact such programs may have on housing opportunity for people of color.

U.S. Bureau of Justice statistics estimated that as many as 100 million Americans have a criminal record of some kind in 2012.⁵ In 2014, African Americans were overrepresented by a factor of almost three to one in the prison population nationwide, accounting for about 36% of those incarcerated despite comprising only about 12% of the population.⁶

The disparities in criminal justice outcomes for people of color have been especially stark in Iowa. While Iowa’s 26.1% incarceration rate for African Americans⁷ from that same year may seem at first blush to be lower than the national average, when compared to Iowa’s total African American population of 3.5%⁸ shows a ratio of over seven to one. These numbers are more than twice the national average, and among the highest in the nation.

On April 4, 2016, the federal department of Housing and Urban Development issued guidance spelling out when an entity covered by the Fair Housing Act can use criminal history to create barriers to access to housing.⁹ Per the guidance, “[a] housing provider violates the Fair Housing Act when the provider’s policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.” The specified crime property ordinance, disorderly house ordinance, and related policies and programs go one step further than even utilizing criminal history to justify adverse housing decisions. As stated above, no conviction or even arrest is necessary to invoke these statutes, and the range of activity that may result in the application of these statutes is very broad.

Earlier guidance, issued by HUD in November 2015 guidance suggests that an arrest alone is insufficient information upon which to base adverse housing decisions in the context of federally assisted housing.¹⁰ As noted above, the specified crime property ordinance involves police determinations that do not necessarily even rise to the level of the probable cause that must be shown in order to make an arrest. By undertaking to do by way of rental code ordinance what it could not do in its capacity as a public housing authority, the City risks violating the Fair Housing Act.

⁵ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

⁶ See E. Ann Carson, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>; and U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014, available at <http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html>

⁷ Statistics provided by the Iowa Department of Corrections.

⁸ <http://www.census.gov/quickfacts/table/PST045214/1921000,19153#flag-js-X>

⁹ http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf

¹⁰ <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>; See also the subsequent FAQ at <http://portal.hud.gov/hudportal/documents/huddoc?id=faqexcludearrestrec33116.pdf>

What data is available shows that the ordinance is more heavily utilized in areas with a larger proportion of non-white residents than the City as a whole. Notably, the five census tracts within the boundaries of the City of Des Moines that have seen the highest use of the Specified Crime Property ordinance between January 2010 and September 2015 have a higher population of minority residents.

USE OF SPECIFIED CRIME PROPERTY, JANUARY 2010 TO SEPTEMBER 2015, BY CENSUS TRACT (WITH RACIAL DEMOGRAPHICS¹¹) – FIVE HIGHEST						
CENSUS TRACT	POP AFFECTED BY ORDINANCE					# times ordinance used
	% African American	% Latino	% Asian	% Other	% White non-Latino	
11	24.4%	21.3%	2.1%	4.80%	47.4%	28
12	39.7%	30.3%	9.3%	4.00%	16.7%	27
5	13.0%	17.2%	9.1%	3.50%	57.2%	25
46.02	11.8%	19.0%	4.2%	0.60%	64.4%	23
50	39.5%	25.9%	12.3%	4.50%	17.8%	23
CITYWIDE POP.	10.7%	12.3%	5.0%	3.1%	68.9%	

Conversely, in those census tracts with the five lowest utilization rates of the ordinance, we find a much lower distribution of minority residents:

USE OF SPECIFIED CRIME PROPERTY, JANUARY 2010 TO SEPTEMBER 2015, BY CENSUS TRACT (WITH DEMOGRAPHICS¹²) – FIVE LOWEST						
CENSUS TRACT	POP AFFECTED BY ORDINANCE					# times ordinance used
	% African American	% Latino	% Asian	% Other	% White non-Latino	
31	0.0%	1.3%	1.4%	2.2%	95.1%	2
30.1	4.5%	3.3%	0.5%	1.2%	90.5%	1
32	0.8%	2.5%	3.3%	0.8%	92.6%	1
107.06	0.6%	3.5%	1.0%	3.4%	91.5%	0
110.28	2.1%	6.3%	6.1%	1.8%	83.7%	0
CITYWIDE POP.	10.7%	12.3%	5.0%	3.1%	68.9%	

Even within the demographic distribution of these census tracts, there are disparities in how the ordinance is applied (see next page).

¹¹ Address data for use of ordinance provided by the DMPD in response to a request by Iowa Legal Aid. Use of ordinance addresses assigned to census tracts by geocoding, <https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>. Demographic statistics drawn from the 2014 American Community Survey estimates. Available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&src=pt

¹² Address data for use of ordinance provided by the DMPD in response to a request by Iowa Legal Aid. Use of ordinance addresses assigned to census tracts by geocoding, <https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>. Demographic statistics drawn from the 2014 American Community Survey estimates. Available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&src=pt

**USE OF SPECIFIED CRIME PROPERTY ORDINANCE,¹³ JAN. 2010 TO SEPT. 2015, WITHIN CENSUS TRACT
(WITH DEMOGRAPHICS)**

TRACT 11 - #1 IN USE OF ORDINANCE			
RACE	# USES	% of total	% Pop. in tract
Asian	0	0.00%	2.10%
African American	14	50.00%	24%
Latino	1	3.57%	21.30%
White non-Latino	6	21.43%	47.40%
Unknown	7	25.00%	-
TOTAL	28	100.00%	

TRACT 12 - #2 IN USE OF ORDINANCE			
RACE	# USES	% of total	% pop in tract
Asian	0	0.00%	9.30%
African American	21	77.78%	39.70%
Latino	0	0.00%	30.30%
White non-Latino	4	14.81%	16.70%
Unknown	2	7.41%	
TOTAL	27		

TRACT 5 - #3 IN USE OF ORDINANCE			
RACE	# USES	% of total	% pop in tract
Asian	1	4.00%	9.30%
African American	11	44.00%	13%
Latino	2	8.00%	17.20%
White non-Latino	9	36.00%	57.20%
Unknown	2	8.00%	
TOTAL	25		

TRACT 46.02 - #4 IN USE OF ORDINANCE			
RACE	# USES	% of total	% pop in tract
Asian	0	0.00%	4.20%
African American	4	17.39%	11.80%
Latino	1	4.35%	19.00%
White non-Latino	14	60.87%	64.40%
Unknown	4	17.39%	
TOTAL	23		

TRACT 50 - #5 IN USE OF ORDINANCE			
RACE	# USES	% of total	% pop in tract
Asian	1	4.00%	9.30%
African American	10	40.00%	13%
Latino	3	12.00%	17.20%
White non-Latino	6	24.00%	57.20%
Unknown	3	12.00%	
TOTAL	23		

As can be seen from the charts above, in every case minority residents as a whole are overrepresented as subjects of specified crime ordinance enforcement, a disparity which is especially stark for African Americans. Given HUD's recent guidance, and the potential and actual disparities caused by this ordinance, Iowa Legal Aid believes that it is highly inadvisable to tie validity of rental certificates to specified crime property status, or involvement in similar programs.

¹³ Race and address data for use of ordinance provided by the DMPD in response to a request by Iowa Legal Aid. Some cases did not identify race, and are thus marked "unknown." Use of ordinance addresses assigned to census tracts by geocoding, <https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>. Demographic statistics drawn from the 2014 American Community Survey estimates. Available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_DP05&src=pt

Linking Rental Certificates to the Specified Crime Property Program May Run Afoul of the Right to Assistance Act and Chill the Right of Domestic Violence Victims to Seek Emergency Services

As the City is aware, HF 493 (the “Right to Assistance Act”) has now been passed by both the Iowa House and Senate by a large margin, and has been signed by the Governor. A copy is attached to this letter. This new law places significant restrictions on how the City conducts its Crime Free Multifamily Housing program and Specified Housing Program. For example, no ordinance, rule, or regulation of a City may authorize a penalty against a tenant, landlord, or other property owner for a legitimate contact made with law enforcement or other emergency assistance. Any ordinance which does so is unenforceable under the bill, and subjects the City and landlords acting under such an ordinance to potential liability.

The vagueness of the specified crime property and disorderly house ordinances creates the possibility that the City will acquire liability under the Right to Assistance Act unless extreme caution is employed. One way that the City could reduce the possibility of running afoul of the Act is to decline to tie specified crime property status to rental certificate validity.

The Right to Assistance Act notwithstanding, Cities have always had some constraints as to their ability to use interference with housing opportunity as a law-enforcement tool. In the 2011 Iowa district court case of *Landlords of Linn County vs. Cedar Rapids*,¹⁴ the City of Cedar Rapids ‘crime free housing’ ordinance was struck down. In a ruling finding for the Plaintiffs after a motion for summary judgment (attached), the Court found that cities did not have the power to interfere with rights granted to landlords and tenants under IURLTA. While this district court decision offers no precedential value, its analysis should be used as a guide for what constitutes the boundaries a City must observe when enacting ordinances that potentially interfere with housing opportunity.

Thank you for taking the time to consider our opinions and research as you consider the final form of this ordinance.

Sincerely

ALEX KORNIA,
Assistant Litigation Director

¹⁴ Linn County EQCV069920.

APPENDIX A – MAP OF DES MOINES BY CENSUS TRACT

