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October 6, 2022

DeKalb City Council
Mayor Cohen Barnes
164 East Lincoln Highway
DeKalb, IL 60115
VIA EMAIL

Re: Dekalb's Crime-Free Housing Ordinances

Dear Councilmembers and Mayor Barnes:

We write to you from New York University School of Law's Civil Rights Clinic, Housing Action Illinois, Illinois REALTORS®, Chicago Lawyers' Committee for Civil Rights, National Housing Law Project, DuPage County NAACP, Shriver Center on Poverty Law, Chicago Area Fair Housing Alliance, HOPE Fair Housing Center, and the undersigned organizations because we have serious concerns about Dekalb's existing Crime-Free Housing Ordinances codified in Section 10.10 of the City Code, as well as the City's proposed revisions to Sections 10.10, 10.16, and 10.17 (collectively, "the Ordinances"). The Ordinances mandate

criminal history screening and require landlords to evict tenants based on mere suspicion of illegal activity by any person with a connection to the tenants' household.

Because Black and Latinx people are overrepresented in every stage of the criminal legal system, the Ordinances operate to disproportionately exclude people of color from renting in DeKalb in violation of the federal Fair Housing Act and contrary to the goals of the Illinois Human Rights Act. The vague and overbroad language of Section 10.10(c) invites discriminatory enforcement. Additionally, the Ordinances violate Section 603 of the Violence Against Women Act, which was reauthorized with crucial updates, which went into effect this month.

DeKalb should not adopt the proposed revisions and should immediately repeal its existing Crime-Free Housing Ordinances in order to avoid liability, the potential loss of federal funding, and continued risks of harm to tenants in Illinois.

I. The Ordinances Have a Disparate Impact on Black and Latinx Renters in Violation of the Fair Housing Act

Sections 804(a) and (b) of the Fair Housing Act ("FHA") prohibit discrimination in the sale or rental of housing, or the terms and conditions thereof, by denying or otherwise making housing unavailable on the basis of a person's race or national origin.¹ As laid out below, mandating criminal background checks in Sections 10.16 and 10.17 and the Crime-Free Lease Provision required by Section 10.10(c) ("the Provision"), operate to exclude those whose families have or are alleged to have had varying levels of contact with the criminal legal system from DeKalb's rental housing. Because people of color are overrepresented in the criminal legal system, the Ordinances will inevitably have a discriminatory effect on renters of color. The Ordinances impose this burden but advance no legitimate interests. As a result, we believe the Ordinances violate the FHA.

A. The Crime-Free Lease Provision Has a Predictable Disparate Impact Amounting to Discrimination on the Basis of Race and Invites Discriminatory Enforcement

Section 10.10(c) requires that all leases include the Crime-Free Lease Provision.² Landlords who fail to utilize the severe language mandated by the Provision will be fined \$1,000 per day per unit.³ Section 10.10(f) of the City Code provides that actions against a landlord under 10.10(e) may be stayed or dismissed if the landlord initiates eviction proceedings, however. Taken together, Sections 10.10(c), (e), and (f) encourage landlords to evict tenants for "violations" of the Provision, even though those same necessarily tenants had no notice or knowledge of the Provision's terms.

This Provision creates a one-strike policy that allows landlords to evict entire families for the alleged criminal activity of not only a tenant, but also "guest(s), and any

¹ 42 U.S.C. § 3604(a).

² DEKALB, ILL., CODE § 10.10(c)

³ DEKALB, ILL., CODE § 10.10(e).

person under the Tenant’s control.”⁴ Tenants are held “strictly and vicariously liable” for the actions of guests and members of their household, even if those people were not under the tenant’s control, and even if the tenant had *no knowledge* of the alleged “unlawful activity.”⁵ Additionally, Tenants are subject to eviction if they, their guests, or anyone “under [their] control...facilitate unlawful activity” or “permit the leased premises to be used...to facilitate, unlawful activity.”⁶ The Provision does not define the “facilitation” of unlawful activity. And, as noted below, a criminal conviction is not required to sustain an eviction.⁷

The Provision establishes that “proof of unlawful activity *shall not require criminal conviction*, but proof of an arrest or citation showing the occurrence of unlawful activity by a preponderance of the evidence shall be sufficient to establish a violation.”⁸ Although the preponderance of the evidence standard is used in housing court to determine whether a tenant should be evicted, DeKalb’s inclusion of that language in Section 10.10 effectively requires landlords to consider alleged or suspected criminal activity as proof of criminal wrongdoing.⁹ By attaching the label of criminality to a tenant before that person has gone through our criminal legal system, DeKalb’s ordinance compounds the problem of over-policing of people of color and risks evicting people who have not been involved in any harmful activity. Indeed, in other communities with similar crime-free housing ordinances, many people who were accused of a crime and evicted have since had the allegations or charges against them dropped. Despite their names being cleared, they were not able to return to their homes.

Once a violation of the Provision occurs, or is believed to have occurred, DeKalb uses fines to coerce landlords into evicting the accused tenants. Section 10.17 declares any “occurrence of unlawful activity on a rental property” a “criminal nuisance property violation.”¹⁰ In practice, this means any time police are called to a rental unit, even if the call does not lead to an arrest—much less a conviction—the City automatically begins nuisance abatement procedures.¹¹ “Abatement” measures include requiring a background checks and “prompt enforcement of the crime free housing lease provision,” or, in other words, evicting tenants.¹² Landlords can face severe consequences for violations, including fines of up to \$10,000 and closure of an entire rental property.¹³ As in Section 10.10, in Section 10.17, DeKalb threatens landlords with severe consequences and

⁴ DEKALB, ILL., CODE § 10.10(c) ¶ 1-3

⁵ DEKALB, ILL., CODE § 10.10(c) ¶ 4

⁶ DEKALB, ILL., CODE § 10.10(c) ¶ 1 and 2.

⁷ DEKALB, ILL., CODE § 10.10(c) ¶ 6.

⁸ DEKALB, ILL., CODE. § 10.10(c) ¶ 8 (emphasis added).

⁹ Arrests are an especially unreliable determinant of whether “unlawful activity” has occurred. The Supreme Court has established that arrests have little probative value in showing that an individual has actually engaged in any misconduct. *See Schware v. Board of Bar Exam’rs of New Mexico*, 353 U.S. 232, 241 (1957).

¹⁰ DEKALB, ILL., CODE § 10.17(d)

¹¹ DEKALB, ILL., CODE § 10.17(f)

¹² DEKALB, ILL., CODE § 10.17(g)(1)

¹³ DEKALB, ILL., CODE § 10.17(g)(2-4)

presents eviction of tenants as a first rather than last resort.¹⁴ Essentially, the city is criminalizing both landlord and tenant conduct to coerce landlords into evicting tenants.

All told, the Provision encourages landlords to evict tenants based on unfounded notions of criminality. In many communities in Illinois, Black and Latinx residents are arrested at disproportionately high rates relative to their share of the population and their actual level of participation in criminal activity.¹⁵ In DeKalb specifically, while Black residents comprise just 13% of DeKalb's population, the DeKalb Police Department reports that 37% of people stopped by officers in traffic stops in 2017 were Black.¹⁶ Because law enforcement officers arrest people of color at disproportionately high rates and, generally, white Americans "overestimate the proportion of crime committed by people of color," including "illegal drug sales," the Provision also allows racial bias to form the basis of an eviction.¹⁷ Taken together, the terms of the Provision define violative activity as broadly as possible. The Provision almost certainly has a disparate impact on Black tenants in DeKalb.

B. Mandating Background Checks Has a Predictable Disparate Impact Amounting to Discrimination on the Basis of Race

Section 10.16 of DeKalb's City Code mandates that all landlords, as part of a required annual registration, must submit a "security plan to prevent the occurrence of unlawful activity at the rental property." This Security Plan "may include... Landlord's criminal history/background investigation of Tenants by a reputable agency that uses a national database."¹⁸ For a landlord found guilty of a "criminal nuisance property violation" under Section 10.17, DeKalb can require background checks as part of its abatement order.¹⁹ Screening for criminal history has a predictably disparate impact on Black and Latinx individuals, who are arrested and incarcerated at disproportionately higher rates nationally and in Illinois.²⁰

¹⁴ See also DEKALB, ILL., CODE § 10.16(a), requiring landlords to submit a "Security Plan" as part of their annual registration. Section 10.16 suggests that such plans include "[l]andlord's prompt commencement of evictions for a single breach of the crime free housing lease provision."

¹⁵ See, e.g., EMILY WERTH, SARGENT SHRIVER NAT'L CTR. ON POVERTY L., THE COST OF BEING CRIME FREE 13 (2020) (citing ILL. DISPROPORTIONATE JUST. IMPACT STUDY COMM'N, FINAL REPORT 14, 29-30 (2010), http://www.centerforhealthandjustice.org/djis_fullreport_final.pdf).

¹⁶ *Racial Disparities in Illinois Traffic Stops*, ILLINOIS TRAFFIC STOPS, <https://illinoistraffictops.com/?agency=Dekalb%20Police> (last visited Oct. 1, 2022) (compiling public data submitted by Illinois law enforcement to comply with the Illinois Traffic and Pedestrian Stop Statistical Study Act).

¹⁷ See NAZGOL GHANDNOOSH, RACE AND PUNISHMENT: RACIAL PERCEPTIONS OF CRIME AND SUPPORT FOR PUNITIVE POLICIES, SENT'G PROJECT 3 (2014), <https://www.sentencingproject.org/publications/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies>.

¹⁸ DEKALB, ILL., CODE § 10.16(a)

¹⁹ DEKALB, ILL., CODE § 10.17(g)(1).

²⁰ Helen R. Kanovsky, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (April 4, 2016) at 3-4, https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (documenting national disparities in incarceration rates by race).

Indeed, the U.S. Department of Housing and Urban Development (“HUD”) has made clear that criminal-history-based housing restrictions often violate the FHA because they disproportionately impact people of color seeking housing.²¹ To be lawful, screening provisions should be tailored to take into account “the nature and severity of an individual’s conviction” and “the amount of time that has passed since the criminal conduct occurred.”²² There is no evidence of such tailoring in DeKalb’s Ordinances.

By encouraging and, in some instances, requiring landlords to conduct background checks, the Ordinances makes it less likely that DeKalb landlords will rent to Black and Latinx tenants.²³

C. The Ordinances Do Not Serve a Substantial, Legitimate, Nondiscriminatory Interest and Are Unnecessarily Burdensome

Under the FHA, “where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful... if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.”²⁴ The “substantial, legitimate, and nondiscriminatory interest” must be justified by evidence that is “non-hypothetical” and “non-speculative.”²⁵ The common claimed justification for Crime-Free Housing Ordinances is the unsupported assertion that they lower crime and make communities safer.²⁶ We are unaware of any studies or analysis by DeKalb establishing that its Crime-Free Housing Ordinances have improved safety or been linked to lower crime in the City. DeKalb has nuisance and criminal laws which it can enforce to promote public safety.²⁷

The Provision’s extremely broad definition of violative conduct makes many tenants who pose no threat to public safety subject to exclusion and eviction. In some instances, the Ordinances require the eviction of people who have never been convicted of a crime. The revised Ordinances’ emphasis on eviction, punitive fees, and background screenings will predictably increase rental housing costs, and landlords will pass these costs onto tenants by charging higher rent for all. Thus, the revised Ordinances exacerbate housing instability in DeKalb directly

²¹ Kanovsky, *supra* note 20, at 2.

²² 24 C.F.R. § 100.500(b)(2).

²³ *See, e.g., Hisps. United of DuPage Cty. v. Vill. of Addison*, 988 F. Supp. 1130 (N.D. Ill. 1997) (stating that a facially neutral policy has a discriminatory effect under the FHA if it “actually or predictably results in racial discrimination”).

²⁴ Kanovsky, *supra* note 20, at 2.

²⁵ 24 C.F.R. § 100.500(b)(2).

²⁶ *See, e.g. DEKALB, ILL., CODE § 10.17(b)(4)* (“The provisions of this Section are reasonably necessary to renew certain neighborhoods by increasing property values, preserving the tranquility of neighborhoods, and deterring certain rental property owners and managers from adopting inadequate management practices.”).

²⁷ *See generally* DEKALB, ILL., CODE Ch. 12 (Nuisances), Ch. 52 (Offenses Against Public Peace – Safety and Morals).

through eviction and indirectly by making rental housing unaffordable. In the long term, housing instability both makes the entire community less safe and will eventually necessitate greater spending on services for unhoused people.

The Ordinances will have a particularly pernicious effect on certain vulnerable groups. Persons with disabilities often require emergency services, or they may need help with medical issues. They also have disproportionate contact with the police and, like people of color, are overrepresented in the criminal legal system. Crime-free programs and nuisance property ordinances penalize individuals with disabilities, increase their contact with the criminal legal system, and destabilize their housing.

Furthermore, survivors of gender-based violence face numerous barriers when fleeing and recovering from violence and DeKalb's Crime Free Initiative creates additional barriers and systems for housing instability. Immigrant, refugee and asylee women, particularly undocumented survivors, who are fleeing gender-based violence already face immense hurdles in securing employment, continuing their education, language, and communication, not to mention fear of police and government authority. This proposed amendment would further contribute to the threat to their safety by limiting their ability to leave an abusive relationship. Immigrant, undocumented, and refugee survivors need to feel confident they can call the police to protect themselves and their children, without fear of losing their homes. This ordinance will inhibit them from seeking help and reinforce the threat from the abuser that asking for assistance is futile, that they are trapped in the situation, and that the risk losing everything, including their children, if they do not continue to live with the abuse.

Finally, for formerly incarcerated individuals, housing instability can frustrate their successful reentry into society. As HUD has recognized, “[w]hen individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.”²⁸ The inability to secure housing “deepen[s] the social stigma experienced by formerly incarcerated people returning home” and “contribute[s] to the cycle of recidivism.”²⁹

II. The Ordinances Are Inconsistent with Illinois Law

A. The Crime-Free Lease Provision Invites Violations of Illinois Law

The Illinois Human Rights Act makes it a civil rights violation for “any . . . person engaging in a real estate transaction” to, “alter the terms, conditions or privileges of a real estate transaction or . . . the furnishing of facilities or services in connection therewith” based on a renter’s “arrest record.”³⁰ The Act defines “arrest record” as: “(1) an arrest not leading to a

²⁸ Kanovsky, *supra* note 20, at 2.

²⁹ See DEBORAH ARCHER, YOU CAN’T GO HOME AGAIN: RACIAL EXCLUSION THROUGH CRIME-FREE HOUSING ORDINANCES, AM. CONST. SOC’Y (Nov. 2019), https://www.acslaw.org/issue_brief/briefs-landing/racial-exclusion-through-crime-free-housing-ordinances-2; See STEPHEN METRAUX ET AL., CTR. FOR EVIDENCED-BASED SOLUTIONS FOR HOMELESSNESS, CRIMINAL JUSTICE REENTRY AND HOMELESSNESS (Feb. 2020), http://www.evidenceonhomelessness.com/wp-content/uploads/2020/04/Reentry-and-Homelessness_Synthesis-of-the-Evidence.pdf.

³⁰ Illinois Human Rights Act, 775 ILL. COMP. STAT. ANN. 5/1-101–10-104 § 3-102(B) (West 2021).

conviction; (2) a juvenile record; or (3) criminal history record information ordered expunged, sealed, or impounded[.]”³¹

The Ordinances require landlords to evict tenants based on any lease violation.³² Lease violations, as noted above, can include involvement with the criminal legal system that does not ultimately result in a conviction, or even an arrest.³³ Thus, the Ordinances require landlords to consider a renter’s “arrest record” within the meaning of the Act.³⁴ By mandating that landlords consider arrests in the decision to evict, the Ordinances plainly violate the Act. Landlords who do not comply with the Ordinances face severe penalties.³⁵ DeKalb thus exposes landlords utilizing the mandatory Crime Free Lease Provision to potential liability under state law. Essentially, landlords must choose whether to violate the Ordinances and incur large fines from the City or violate the Act and face lawsuits from evicted tenants.

B. Mandating Background Checks is Inconsistent with Illinois Law

The Human Rights Act also forbids “any . . . person engaging in a real estate transaction” from refusing to engage in a transaction, transmit an offer, or negotiate based on a potential renter’s “arrest record.”³⁶ Therefore, it is a violation for a landlord to fail to rent to a potential renter because that person was arrested for, but not convicted of, a crime.³⁷ Sections 10.16 and 10.17 of DeKalb’ City Code open the door impermissibly wide to violations of Illinois’s Human Rights Act by encouraging, and in some cases requiring, landlords to conduct a criminal background check on all tenants.³⁸ A landlord making a good faith effort to comply the Ordinances may inadvertently deny a prospective tenant housing based on an arrest record in violation of Section 3-102 of the Illinois Human Rights Act.³⁹ By mandating background checks, the Ordinances create further liability for landlords attempting to comply with their terms and avoid penalties.

C. The Ordinances Are Not Exempt from the Illinois Human Rights Act

DeKalb’s City Attorney has argued that the Illinois Human Rights Act includes an exemption that allows municipalities to screen potential tenants and require evictions based on arrest records,⁴⁰ but this is inaccurate. The statutory provision in question says, “[t]he prohibition against the use of an arrest record under Section 3-102 shall not preclude an owner or any other person engaging in a real estate transaction . . . from prohibiting the tenant, a member of the tenant’s household, or a guest of the tenant from engaging in unlawful activity on the

³¹ *Id.* § 1-103 (B-5).

³² *See supra* § I-A.

³³ DEKALB, ILL., CODE § 10.10(c) ¶ 6; *see also supra* § I-A.

³⁴ Illinois Human Rights Act 775 ILL. COMP. STAT. ANN. 5/1-101–10-104 § 3-102, 1-103(B-5).

³⁵ DEKALB, ILL., CODE § 10.17(g)

³⁶ Illinois Human Rights Act 775 ILL. COMP. STAT. ANN. 5/1-101–10-104 § 3-102(A), (C), and (D).

³⁷ Illinois Human Rights Act 775 ILL. COMP. STAT. ANN. 5/1-101–10-104 § 3-102 (C).

³⁸ DeKalb, Ill., Code § 10.16, 10.17, *see also supra* § I-B.

³⁹ Illinois Human Rights Act, *supra* note 25, § 3-102 (C).

⁴⁰ City of DeKalb, City Council Meeting - 9/26/2022, YOUTUBE, at 59:28 (Sep. 26, 2022), <https://www.youtube.com/watch?v=806RrBFzb3w>.

premises.”⁴¹ By its terms, this “unlawful activity” exemption only allows for the consideration of an arrest record to prohibit tenants and their affiliates from breaking the law at the rental property where they live. For the reasons detailed below, the exemption created by Section 3-102.5 is not broad enough to provide cover for DeKalb’s Ordinances.

i. Evicting Tenants is Not Necessary to Prohibiting Unlawful Activity

By claiming that this exemption covers its Ordinances, the City is arguing that the drastic measure of eviction is *necessary* for landlords to prohibit unlawful activity. However, a landlord can prohibit unlawful activity on the premises, and give tenants notice of this prohibition in a lease agreement, without resorting to eviction. Indeed, there are many remedies a landlord can turn to that do not require removing entire families from their homes.

ii. Background Checks are Not Necessary to Prohibiting Unlawful Activity

Criminal background checks cannot possibly be necessary to prohibit unlawful activity because they only cover an individual’s past conduct. Refusing to rent to someone based on an “arrest record” can only be viewed as “prohibiting unlawful activity” if one believes that a person who was arrested in the past *will* commit crimes in the future. This view denies that anyone who has had the label of criminality attached to them has the capacity for change, which plainly contravenes the rationale behind prohibiting consideration of “arrest records” in the first place.

III. DeKalb Risks the Loss of Federal Funding Through Its Enforcement of the Ordinances, which Violate the 2022 Reauthorization of the Violence Against Women Act.

Section 603 of the 2022 Reauthorization of the Violence Against Women Act (VAWA) includes language protecting the “right to report crime and emergencies” in jurisdictions receiving funding from the Community Development Block Grant (CDBG) program.⁴² Governments in jurisdictions that receive CDBG funding are prohibited from penalizing landlords, tenants, and others based on requests for emergency assistance or based on criminal activity of which one is a victim or otherwise not at fault.⁴³ Section 603 requires any jurisdictions receiving this funding to report on policies that may interfere with the right to report and to certify that they are not interfering with the right to report, that they will take steps to come into

⁴¹ Illinois Human Rights Act 775 ILL. COMP. STAT. ANN. 5/1-101–10-104 § 3-102.5

⁴² Section 603 of Violence Against Women Act Reauthorization Act of 2022, Consolidated Appropriations Act, 2022, Div. W, P.L. 117-103 (2022); 34 U.S.C. § 12495.

⁴³ *Id.*

compliance, and that they will ensure subrecipients come into compliance.⁴⁴ Section 603 took effect on October 1, 2022.

The City of DeKalb receives CDBG funding from the U.S. Department of Housing and Urban Development on an annual basis.⁴⁵ In 2022, DeKalb received \$411,560 in CDBG funding.⁴⁶ While DeKalb's Ordinances contain exemptions for victims of or witness to domestic violence and disabled persons,⁴⁷ they nonetheless penalize tenants, landlords and members of a tenants' household for calls to police, crimes committed by others, and threatens to punish landlords and tenants for conduct where they are not at fault.⁴⁸ Thus, the Ordinances interfere with the "right to report" in violation of Section 603 of VAWA. By not only continuing to enforce but also bolstering its Crime-Free Housing Ordinances, DeKalb risks having the dubious distinction of being the first jurisdiction in the United States to lose its CDBG funding for failure to comply with Section 603.

IV. The Ordinances Violate Illinois Public Act 099-0441

Illinois Public Act 099-0441, enacted in 2015,⁴⁹ protects victims of domestic or sexual violence and individuals with disabilities from being penalized for contacting emergency services. Specifically, the law prohibits local governments from "enact[ing] or enforce[ing] an ordinance or regulation that penalizes tenants or landlords based on" contact made to emergency services concerning an incident of domestic or sexual violence or an individual's disability.⁵⁰ As set out above, the Ordinances contain only limited exemptions for victims of domestic violence, and no protections for individuals with disabilities who may need to contact the police related to their disabilities, they violate this Illinois state statute and risk continued harm to victims.

V. These Sections of the Code Should Be Immediately Repealed

DeKalb should not enact the proposed amendments to the Ordinances and should immediately repeal these existing portions of the City Code which comprise its Crime-Free Housing Program in order to comply with federal law and avoid violations of state law. We reserve the right to take all appropriate legal actions, but we would prefer a cooperative resolution that expeditiously addresses these issues.

⁴⁴ *Id.*

⁴⁵ Web Sites of CDGB Entities, U.S. Dep't of Hous. and Urb. Dev., <https://www.hud.gov/states/illinois/working/cities> (last visited Oct. 1, 2022).

⁴⁶ Grantee Summary, CPD Maps, U.S. Dep't of Hous. and Urb. Dev., <https://egis.hud.gov/cpdmaps/> (last visited Oct. 1, 2022).

⁴⁷ DEKALB, ILL., CODE § 10.10(c)(7).

⁴⁸ *See section I-A.*

⁴⁹ Note that this Act applies to all municipalities in Illinois as it expressly limits home rule authority. *See* 65 ILL. COMP. STAT. 5/1-2-1.5(d) (added by Pub. Act 99-441) ("This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution).

⁵⁰ 65 ILL. COMP. STAT. 5/1-2-1.5(b) (added by Pub. Act 99-441).

We look forward to hearing from you and working toward a just solution for the residents of DeKalb.

Sincerely,

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Cohen Barnes
Mayor
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Sent via email to cohen.barnes@cityofdekalb.com

Re: The DeKalb Crime-Free Initiative's Harmful, Unlawful and Discriminatory Effect on Survivors of Domestic and Sexual Violence

Dear Mayor Barnes,

The undersigned organizations are contacting you regarding the proposed amendments to DeKalb's Landlord-Tenant Regulations (commonly referred to as DeKalb's Crime Free Initiative), which is set to be implemented in Chapter 10 of DeKalb's Municipal Code. In working to create a "zero tolerance for criminal activity and vigorous adherence to and enforcement of" the Crime Free Initiative, Section 10.01, the amendments unfairly penalize and create an unsafe and hostile environment for survivors of domestic and sexual violence.

Our organizations are national, state, and local experts on domestic and sexual violence and the intersection of housing and economic insecurity experienced by victims of domestic and sexual violence. We specialize in or run projects devoted to advocating on behalf of victims of domestic and sexual violence, and have specific knowledge of how this violence can impact all aspects of a person's life, including their housing. Given our work with survivors, we understand the devastating effect that DeKalb's Crime Free Initiative will have on survivors and their families, and we strongly oppose the proposed amendments.

I. Survivors of gender-based violence face numerous barriers when fleeing and recovering from violence, and DeKalb's Crime Free Initiative creates additional barriers and systems for housing instability.

Immigrant, refugee and asylee women, particularly undocumented survivors, who are fleeing gender-based violence already often face immense hurdles in securing employment, continuing their education, and communicating with limited English proficiency, not to mention having fear of police and government authority. The proposed amendment to DeKalb's Crime Free Initiative would further contribute to the threat to their safety by limiting their ability to leave an abusive relationship. Immigrant, undocumented, and refugee survivors need to feel confident they can call the police to protect themselves and their children, without fear of losing their homes. This ordinance will inhibit them from seeking



help and reinforce the threat from the abuser that asking for assistance is futile, that they are trapped in the situation, and that they risk losing everything, including their children, if they do not continue to live with the abuse.

DeKalb's Crime Free Initiative also fails to consider the safety needs of survivors by requiring landlords to create a security plan intended to monitor evictions without any consideration of survivor needs or privacy. While a security plan implies that the action is intended to keep tenants safe, the language of the regulation is clear that the "security plan" is intended in part to track how efficiently landlords are evicting tenants for a single alleged breach of their lease. See Section 10.16 ("The Security Plan may include, but shall not be limited to, the following: Landlord's prompt commencement of evictions for a single breach of the crime free housing lease provision").

Safety planning is a commonly-used tool by survivors of domestic and sexual violence in order to reduce the risk of future harm and any information used in safety planning must be kept strictly confidential to be effective. A key element to safety planning is that the survivor be an active and primary participant in designing what safety measures are best suited to lower their risk of being harmed by a partner. However, while presented as a security feature at a property, this provision fails to address any processes by which tenants at the property, including survivors of violence, can contribute to the design of any actual safety measures put in place. Additionally, it is not currently safe for survivors to provide information regarding their safety needs because, although the security plan is required to be given to DeKalb and potentially used in administrative proceedings, there is no consideration of how private information disclosed by people that actually need additional safety support will be kept confidential.

II. DeKalb's Crime Free Initiative forces survivors to choose between their housing and their safety and has discriminatory effects on survivors.

The U.S. Department of Housing and Urban Development ("HUD") has recognized the harmful effect that crime-free housing ordinances have on survivors of gender-based violence. See *HUD's Guidance on the Application of Fair Housing Act Standards on 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* (Sept. 13, 2016). These ordinances disproportionately affect survivors, who often need to contact the police or emergency services for help when they are experiencing violence. Additionally, DeKalb's Crime Free Initiative imposes unreasonable and life threatening choices on survivors of domestic and sexual violence, the vast majority of whom are women – forcing them to choose between calling for emergency assistance or putting their housing at risk.



HUD has also recognized that crime-free programs with zero tolerance policies—as is proposed by DeKalb in these amendments—act as a vehicle to penalize survivors based on the acts of the people harming them. *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011) (“In many of these cases, adverse housing action punishes victims for the violence inflicted upon them.”). By punishing survivors for the acts of the people harming them through adverse housing decisions, DeKalb’s Crime Free Initiative will create double victimization for survivors who are already stabilizing or healing from the violence they have experienced.

Even when municipalities attempt to exempt survivors from crime-free initiatives like the one that DeKalb has proposed to implement, this fails to address the problems they create for survivors because those enforcing the ordinance fail to recognize domestic or sexual violence incidents and/or take a narrow view of what constitutes domestic or sexual violence. This is especially true for survivors of color, who are often both not believed to be a victim of domestic or sexual violence, and criminalized for acts related to the abuse or victimization. As a result, survivors are still targeted for eviction under these programs and laws for actions (i.e., noise, criminal damage to property, criminal trespass, or other criminal behavior of the perpetrator) that a jurisdiction considers not to be related to the underlying violence.

DeKalb has a history of using its Crime Free Initiative against survivors of domestic violence. In 2013 and 2014, there were numerous instances where the ordinance was triggered for incidents of domestic violence with related criminal charges of trespass, assault, and damage to property. Similar problematic records of enforcement against survivors were disclosed in a 2020 FOIA, with records dating back to 2017. For many of these survivors, DeKalb imposed adverse consequences of warnings, monetary fines, nonrenewal of their lease, or eviction.

Research has demonstrated that these laws and policies particularly (and often intentionally) harm people of color, as well as survivors of domestic violence and people with disabilities, endangering their housing and creating greater distrust of law enforcement. There is no evidence that these ordinances or programs reduce crime, and many residents, once learning that they could be evicted for seeking police or emergency assistance, stop calling 911 and therefore sacrifice access to services and protection. Instead, they teach community members that reporting crime results in punishment, thereby undermining relationships with law enforcement and creating barriers to law enforcement’s knowledge about crimes in their community. By chilling 911 calls, they also skew crime reports and the data that police departments rely on to understand community needs. Furthermore, these



laws and programs divert law enforcement resources to penalizing calls for service, police reports, and minor violations that could be devoted to investigation of serious crimes.

III. Illinois law and the Violence Against Women Act prohibit the penalties established by DeKalb's Crime Free Initiative.

DeKalb's nuisance ordinance penalizes landlords on the basis of a *single incident* of alleged unlawful activity (which is defined in Section 10.04 to include any offense that constitutes a felony or misdemeanor under the Illinois Criminal Code) occurring on rental properties, which, as discussed above, will include activity in which the tenant has been the victim of domestic or sexual violence. This violates Illinois protections for survivors of domestic and sexual violence and people with disabilities, which explicitly prohibits municipalities from penalizing tenants who contact the police or other emergency services, including charging fees, revoking a rental license, or terminating a residential lease agreement. 65 ILCS 5/1-2-1.5. DeKalb's Crime Free Initiative will subject it to legal liability, and will lead to harmful consequences for domestic and sexual violence victims.

DeKalb is home to numerous tenants who live in subsidized housing, which are covered properties under the Violence Against Women Act ("VAWA"), and survivors living in these buildings are entitled to additional housing protections. VAWA protects survivors of domestic and sexual violence, but, unlike DeKalb's ordinance, it also protects survivors of dating violence and stalking, in addition to affiliated individuals. See 34 U.S.C. 12491(a)(1)(A-B)(defining affiliated individuals to include "a spouse, parent, sibling, or child of that individual, or an individual to whom that individual stands in loco parentis" or "any individual, tenant, or lawful occupant living in the household of that individual"). Under these protections, covered housing providers are prohibited from evicting a tenant if the reason for eviction is based on criminal activity related to the violence they are experiencing and "the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking." 34 U.S.C. 12491(b)(3)(A). Because DeKalb's Crime Free Initiative limits protections for survivors, it contradicts and is preempted by VAWA.

Additionally, VAWA provides broad protections regardless of the basis for the request for emergency assistance, as research and experience have shown that penalties harm many different groups, including survivors of domestic violence, landlords, people with disabilities, and people of color, as discussed above. The latest reauthorization of the VAWA was passed by Congress and signed by President Biden in March, creating an explicit statutory protection to prevent and address the impacts of these types of punitive ordinances and programs. Section 603 of VAWA includes language protecting the "right to report crime and emergencies" in jurisdictions receiving funding from the Community



Development Block Grant (“CDBG”) program and prohibits those governments from penalizing landlords, tenants, and others based on requests for emergency assistance or based on criminal activity of which one is a victim or not at fault.¹

Section 603 went into effect on October 1, 2022, and as a CDBG recipient, DeKalb is required to comply with it. Section 603 requires these jurisdictions to report on policies that may interfere with the right to report and to certify that they are not interfering with the right to report, that they will take steps to come into compliance, and that they will ensure that subrecipients come into compliance.

IV. Conclusion

For all of these reasons, we strongly oppose the amendments to DeKalb’s Crime Free Initiative.

Sincerely,

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¹ Section 603 of Violence Against Women Act Reauthorization Act of 2022, Consolidated Appropriations Act, 2022, Div. W, P.L. 117-103 (2022) (to be codified at 34 U.S.C. § 41415).