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**VIA U.S. MAIL AND E-MAIL:**

[jane.castor@tampagov.net](mailto:jane.castor@tampagov.net)

[tampacitycouncil@tampagov.net](mailto:tampacitycouncil@tampagov.net)

Mayor Jane Castor  
Councilmember Joseph Citro  
Councilmember Charlie Miranda  
Councilmember John Dingfelder  
Councilmember Bill Carlson  
Councilmember Orlando Gudes  
Councilmember Guido Maniscalco  
Councilmember Luis Viera  
Tampa City Hall  
315 E. Kennedy Boulevard  
Tampa, Florida 33602

**RE: Tampa's Crime-Free Housing Program**

Dear Mayor Castor and City Council:

We write on behalf of the Hillsborough County Branch NAACP, the Greater Tampa Chapter of the ACLU, the NAACP, the NYU School of Law Civil Rights Clinic, the Lawyers' Committee for Civil Rights Under Law, the ACLU, and the ACLU of Florida to request that you immediately end Tampa's Crime-Free Multi Housing Program (the "Program"). As structured and enforced, we believe the Program violates federal law. We were disappointed to see Mayor Castor's letter on September 15 to the Hillsborough County NAACP. The letter sought to defend the Tampa Police Department's Program, and to minimize the devastating effects that it has had on families. The article provided the city with the opportunity to reconsider the Program after being confronted with evidence of its harm, but the letter suggests the Mayor does not intend to do so. Rather than trying to salvage its reputation, Tampa must end the Program.

Yesterday's reporting in the Tampa Bay Times lays out the destructive effects of Tampa's Program for tenants of color and their families. By training landlords to conduct unnecessary and overly broad criminal-history screenings of prospective tenants and pressuring

landlords to evict certain tenants, the Tampa Police Department perpetuates a program that disproportionately targets and excludes tenants of color and their families. By tightly weaving together housing policy and the criminal legal system, the Program compounds the over-policing of people of color in Tampa and causes catastrophic consequences for tenants of color: More than 90% of the 1,100 individuals implicated in the Program—and subject to eviction as a result of the Program—are Black.

We fervently believe that all people deserve to live in safe neighborhoods. But there is no credible evidence that broad housing exclusions like Tampa’s do anything to make communities safer.<sup>1</sup> Instead, the Program further entrenches the consequences of racial bias, further marginalizes people of color, and further compounds Tampa’s deep legacy of problematic housing and property policies. There are many tools to improve public safety, and this Program is not one of them. Tampa should immediately end the Program in its entirety.

### **I. The Program’s lease addendum and screening procedures likely violate the Fair Housing Act by creating a disparate impact on Black residents**

The Fair Housing Act, which “was enacted to eradicate discriminatory practices” within the housing sector, makes it unlawful to “refuse to sell or rent or otherwise make unavailable or deny, a dwelling to a person because of race or other protected characteristic.”<sup>2</sup> As the Supreme Court made clear in *Inclusive Communities*, the Act prohibits not only practices or policies that arise from a discriminatory intent, but also those that create a “disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.”<sup>3</sup>

At issue here are two of the central features of Tampa’s Program: (1) a mandatory lease addendum that, under the direction of the Tampa Police Department, has led almost exclusively to the eviction of Black tenants; and (2) the emphasis of the Police Department-led landlord training on screening prospective tenants for criminal history. We believe both violate the Fair Housing Act.<sup>4</sup>

#### *A. The Lease Addendum’s Disparate and Devastating Impact on People of Color*

To be certified under Tampa’s Program, participating properties must incorporate a lease addendum in all of their rental contracts. The addendum establishes a one-strike policy that

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<sup>1</sup> As the Tampa Bay Times’ reporting notes, the Tampa Police Department claims that, since 2013, there has been a 28% drop in reported crimes at properties participating in the Program. But that decrease is in keeping with the overall drop in crime in Tampa over that same time period, and the Tampa Police Department has not shown what effect, if any, the Program itself has had on crime rates. Though the Mayor provides anecdotal evidence of the Program’s benefits, she fails to engage with the many more examples of tenants and their families whose lives were ruined as a result of the Program.

<sup>2</sup> See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2511 (2015),

<sup>3</sup> *Id.* at 2513.

<sup>4</sup> The Program may also violate the Fair Housing Act because of the Tampa Police Department’s choices over where to promote the Program. According to the Tampa Bay Times article, the Police Department previously invited specific complexes to participate, and 75% percent of participating or previously participating apartment complexes are located in majority Black and Hispanic neighborhoods. By targeting or encouraging apartment complexes with higher numbers of Black and Hispanic tenants to participate in a program that contributes to eviction, the Tampa Police Department disparately burdened those renting or trying to rent in participating buildings.

enables landlords to evict tenants implicated in any way—either directly or through a family member or guest—in alleged criminal conduct. The addendum provides that “Resident, any member of Resident’s household, or a guest or other person under the Resident’s control shall not engage in criminal activity, including drug-related criminal activity, on, near or within sight of the rental premises.” Under the addendum, tenants and “members of the household” are prohibited from using, transporting, or selling drugs “at any location, whether on, near or within sight of the premises or otherwise.” Just as troublingly, the addendum explicitly permits a landlord to evict tenants *before* those tenants have their day in court<sup>5</sup>—and the Tampa Police Department attempts to ensure that landlords follow through on evicting tenants implicated in the broad array of activity covered by the addendum.<sup>6</sup>

Among the criminal activities listed in the addendum are offenses, such as battery, assault, sexual crime, stalking, and violations of domestic violence injunction orders, of which tenants are likely to be the victims. Yet, the lease addendum offers no protection to tenants in those situations. Instead, as the article outlines, the Program has been enforced to punish tenants for calling the police and in situations involving domestic violence. So, rather than keeping these tenants safer, the Program merely discourages them from contacting the police. Numerous courts and HUD have repeatedly concluded that such enforcement can violate the First Amendment as well as the Fair Housing Act.<sup>7</sup>

The unnecessarily broad and biased reach of the Program’s enforcement of the addendum is readily apparent. For example, nearly half of all adults report dealing with substance issues in their families. Under the Program, if a tenant’s family member ever uses any illicit drugs, the Tampa Police Department would have grounds to notify the tenant’s landlord and encourage the landlord to evict the tenant under the addendum—even if the drug use occurred far from the tenant’s premises. The same is true even if the family member did not actually use drugs or engage in any illicit activity, but instead was merely suspected by police officers of having done so. Variations of this exact situation have occurred. Darryle Jackson, for example, was evicted from a participating property after his brother was arrested following a traffic stop in which police claimed to have found a small amount of marijuana. Mr. Jackson’s brother had not lived

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<sup>5</sup> By rejecting the principle of innocent until proven guilty and instead enabling a tenant to be evicted when they or a family member are merely accused of a crime, the addendum may violate a tenant’s associational rights. *See Brumit v. City of Granite City*, No. 19-CV-1090-SMY, 2021 U.S. Dist. LEXIS 24316, at \*14 (S.D. Ill. Feb. 9, 2021) (concluding that a similar crime free housing ordinance’s burdens on freedom of association may violate the First Amendment). What’s more, arrests are an especially unreliable determinant of whether “criminal activity” has actually occurred. In light of this fact, 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 Examiners of State of N.M.*, 77 S. Ct. 752, 757 (1957).

<sup>6</sup> The Tampa Police Department does so by alerting landlords when a tenant or a tenant’s relative has been arrested and then often recommending that the landlords evict the tenant.

<sup>7</sup> *See, e.g.*, U.S. Dep’t of Hous. & Urb. Dev., 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 (2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGNCE.PDF>; *Watson v. City of Maplewood, Missouri*, No. 4:17CV1268 JCH, 2017 WL 4758960 (E.D. Mo. Oct. 20, 2017); *Bd. of Trustees of Vill. of Groton v. Pirro*, 152 A.D.3d 149 (N.Y. App. Div. June 15, 2017).

in Mr. Jackson’s apartment for more than six months, and he was arrested miles from Mr. Jackson’s property; ultimately, the State’s Attorney’s office dropped the charges against him.<sup>8</sup>

Unsurprisingly, the addendum and the Tampa Police Department’s efforts to enforce it have caused the eviction of a disproportionately high number of tenants of color. The Tampa Police Department has historically overpoliced communities of color. Although only around 25% of Tampa’s population is Black, more than 50% of those arrested in Tampa are Black.<sup>9</sup> The Program’s statistics are even more staggering—again, 90% of all tenants flagged as a part of the Program and subject to eviction under the Program are Black.

The Program’s use of the lease addendum doesn’t simply, in the phrasing of *Inclusive Communities*, have “a disproportionately adverse effect on minorities”—it has an adverse effect that nearly exclusively falls on tenants of color.

### *B. The Screening Training’s Likely Disparate Impact*

Tampa’s Program also likely has a disparate impact at the front end of the rental cycle—the decision over whom to rent to. To be certified as a “Crime-Free” property, landlords must attend a Tampa Police Department-run training. A central element of the training is explaining to landlords the need to conduct broad screenings of the criminal histories of prospective tenants and avoid renting to those with prior criminal legal system involvement.

But, as Department of Housing and Urban Development (HUD) guidance explains, criminal history-based housing practices that have a disparate impact on the basis of race are almost certainly unlawful.<sup>10</sup> Because of Tampa’s racialized policing, residents of color in Tampa are more likely to have a previous arrest or conviction on their record. So, the Program likely

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<sup>8</sup> As these examples make clear, the Program’s emphasis on enforcing the addendum also likely violates the FHA because of its disparate impact on people with disabilities—and especially people of color with disabilities—and probably runs afoul of Title II of the ADA, which protects individuals with disabilities from “[being] excluded from participation in or [being] denied the benefits of the services, programs, or activities of a public entity, or [being] subjected to discrimination by any such entity...by reason of their disability.” 42 U.S.C. § 12132. People with disabilities are more likely to suffer from substance use disorder, such that the addendum’s targeting of illicit drug use will have a disparate harm on people with disabilities. And the lease addendum may discourage people with disabilities, especially those suffering from substance use, from calling for emergency services, acting as a constructive denial of services. *See Logan v. Matveevskii*, 57 F. Supp. 3d 234, 260 (S.D.N.Y. 2014).

<sup>9</sup> The Police Department’s over-policing of Black Tampa residents extends to all facets of interactions with law enforcement. In 2015, for example, a *Tampa Bay Times* report concluded that the Tampa Police Department issued 79% of all bike tickets to Black bike riders. *See How riding your bike can land you in trouble with the cops — if you're black*, TAMPA BAY TIMES (Apr. 18, 2015), <https://www.tampabay.com/news/publicsafety/how-riding-your-bike-can-land-you-in-trouble-with-the-cops---if-youre-black/2225966/>.

<sup>10</sup> 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 (2016) at 2, [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF); *see also Sams v. GA West Gate, LLC*, No. CV415-282, 2017 U.S. Dist., at 14 (S.D. Ga 2017) (concluding that an apartment complex’s bar of anyone with a criminal history could give rise to a disparate impact claim because of disproportionate rates of incarceration); *Jones v. City of Faribault*, No. 18-1643, 2021 U.S. Dist., at 53 (D. Minn. 2021) (acknowledging HUD guidance and noting that “requiring a far-reaching criminal background check could itself be an unlawful barrier” under the FHA).

disproportionately makes it harder for prospective tenants of color to rent a participating property than their white counterparts.<sup>11</sup>

## II. Tampa Must End the Program

Tampa should immediately repeal the Program to ensure compliance with federal law. The Program's lease addendum and screening process create a significant disparate impact for residents of color in Tampa, making these residents more vulnerable to eviction and limiting their housing options. Even if Tampa had a substantial, legitimate, nondiscriminatory interest in the Program's enforcement of the addendum or the use of the screening process<sup>12</sup>—a prospect that seems unlikely, given that the city appears never actually to have determined the real efficacy of the Program—the city can employ narrower and far less destructive means to achieve whatever those nondiscriminatory ends may be.

We have successfully negotiated resolutions with the governing bodies of other cities and counties with similar programs. One jurisdiction, for example, entirely halted the enforcement of its crime-free ordinance. Another is in the process of rewriting its ordinance to limit the eviction of individuals who are arrested and has stopped encouraging landlords to screen for criminal histories. A third jurisdiction has revised its ordinance to ensure that any landlord screening within the jurisdiction is narrowly tailored so as to comply with the Fair Housing Act and limit the screening's effects on historically excluded communities. And in response to suits brought by the ACLU, cities have repealed similar ordinances that incentivized eviction of tenants based on alleged criminal activity or police response to a property.<sup>13</sup> Based on the data released in today's Tampa Bay Times, Tampa's Program has a more severe disparate impact than any of those jurisdictions' programs.

Put simply, the Program does far more harm than good, and that harm is borne almost exclusively by Black people. Whatever good intentions there might have been in instituting this horrific program are irrelevant now. Tampa's current Mayor and Council Members now have the opportunity to protect the rights of all of Tampa's residents. Rather than defending a needless program that hurts people, just end it.

We reserve the right to take all appropriate legal action necessary to ensure that the Program is ended. But, because we are willing to work toward a cooperative resolution that expeditiously addresses this injustice, we are available to discuss this matter further by phone or video conference. Please feel free to contact us by email at [aashton@naacpnet.org](mailto:aashton@naacpnet.org) to set up a time to speak. We look forward to hearing from you and working toward a just solution for current and future residents of Tampa.

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<sup>11</sup> This is also true of people with disabilities. See Jennifer Laszlo Mizrahi et al., *Disability and Criminal Justice Reform: Keys to Success*, RespectAbility at 2 (May 2017), [respectability.org/wp-content/uploads/2017/05/Disability-and-Criminal-Justice-Reform-White-Paper.pdf](https://respectability.org/wp-content/uploads/2017/05/Disability-and-Criminal-Justice-Reform-White-Paper.pdf) (“Broad inequities in health care and education, including diagnostic and therapeutic services, track with racial and class divisions in ways that make individuals who are poor, have disabilities and are people of color, especially at risk.”).

<sup>12</sup> See 24 C.F.R. § 100.500(b)(2).

<sup>13</sup> See, e.g., *Somai v. City of Bedford, Ohio*, No. 19-cv-00373 (N.D. Ohio); *Markham v. City of Surprise*, No. 15-cv-01696 (D. Az.); *Briggs v. Borough of Norristown*, No. 13-cv-02191 (E.D. Pa.).

Sincerely,

*Anthony P. Ashton*

Anthony P. Ashton,  
*Director of Affirmative Litigation*  
Joseph R. Schottenfeld,  
*Assistant General Counsel*  
Martina Tiku,  
*Equal Justice Works Fellow*  
NAACP



Deborah N. Archer,  
*Professor and Supervising Attorney*  
Justin McCarroll  
Nathan Lee  
*Law Student Interns*  
New York University School of Law  
Civil Rights Clinic



David Simanoff,  
*President*  
Greater Tampa Chapter of the ACLU of  
Florida



Yvette Lewis,  
*President*  
Hillsborough County Branch NAACP

*Thomas Silverstein*

Thomas Silverstein,  
*Fair Housing and Community  
Development Counsel*  
Lawyers' Committee for Civil Rights  
Under Law



Sandra S. Park  
*Senior Staff Attorney*  
ACLU Women's Rights Project



Alejandro A. Ortiz  
*Senior Staff Attorney*  
ACLU Racial Justice Program