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CITY COUNCIL

NOTICE OF MEETING

Joe Frank
President
Sara Continenza
Chanell Elston
Jane Goodman
Ruth Gray
Susan Hardy
Justin Tisdale

MEETING OF: **LEGISLATIVE COMMITTEE**
CALLED BY: SUSAN HARDY, CHAIR
DATE: **MARCH 8, 2021**
LOCATION: VIRTUAL MEETING
TIME: 5:30 P.M.
RE: ORD. 01-21 PAY-TO-STAY
LEGISLATION

COMMITTEE/COUNCIL MEMBERS:

JOE FRANK
CHANELL ELSTON

MEMBERS OF COUNCIL:

SARA CONTINENZA
JANE GOODMAN
RUTH GRAY
JUSTIN TISDALE

ADMINISTRATION:

SALLY MARTIN, HOUSING DIRECTOR
KEITH BENJAMIN, DIRECTOR OF COMMUNITY SERVICES

THE CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 01-21
INTRODUCED BY: Frank
REQUESTED BY: Mayor

January 25, 2021

AN ORDINANCE

CREATING NEW CHAPTER 1415 “APPROVING THE RIGHT OF CITY RENTERS TO PAY-TO-STAY” OF PART FOURTEEN “HOUSING CODE” OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, international, national, state, and local governments and health authorities are responding to an outbreak of a disease caused by the novel coronavirus referred to as COVID-19; and

WHEREAS, the State of Ohio, the County of Cuyahoga, and the City of South Euclid are experiencing a public health crisis from the COVID-19 pandemic that will have lasting impacts on residents and the economy; and

WHEREAS, on March 9, 2020, the Governor of the State of Ohio declared a State of Emergency to exist in Ohio as result of the threat of COVID-19 and at the date this Ordinance was approved by second reading the State of Emergency continues to exist; and

WHEREAS, the Centers for Disease Control and Prevention, the Ohio Department of Health, and the Cuyahoga County Department of Public Health have all issued recommendations including, but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, as a result of the public health emergency and the precautions recommended by health authorities, many residents and businesses in the City of South Euclid have experienced or expect soon to experience sudden and unexpected income loss; and

WHEREAS, the Governor of the State of Ohio has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks; and

WHEREAS, further economic impacts are anticipated, leaving residential tenants vulnerable to eviction; and

WHEREAS, during this local emergency and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement to protect the Village’s affordable housing stock and to prevent housed individuals from falling into homelessness; and

WHEREAS, housing displacement and homelessness place the City’s residents at a higher risk of COVID-19 infections; and

WHEREAS, unemployment compensation, rental assistance and other dollars are being made available to Ohioans so they can meet their basic needs but these dollars have been slow to make their way into people’s bank accounts;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1. That Chapter 1415 “Approving the Right of City Renters to Pay-to-Stay” of Part Fourteen “Housing Code” of the Codified Ordinances of the City of South Euclid, Ohio is hereby created to read as follows:

1415.01 Definition

For the purposes of this Chapter, "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

For the purposes of this Chapter, "Tender" means an offer of payment.

1415.02 Tenant's right to pay to stay prior to the filing of an eviction action for non-payment of rent (Complaint for Forcible Entry and Detainer):

(a) At any time prior to the filing of an action under Ohio Revised Code 1923 for nonpayment of rent by a landlord, a tenant shall have the right to pay the landlord all past due rent with reasonable late fees to avoid the filing of such action for the restitution of the lands or tenements.

If the tenant tenders all accrued rent and reasonable late fees to the landlord, the landlord shall accept the tendered payment and allow the tenant to maintain the tenancy.

(b) If the tenant tenders all past due rent with reasonable late fees to the landlord prior to the filing of an action under Ohio Revised Code 1923 and the landlord refuses the tender, the tenant's tender of all past due rent with reasonable late fees shall be an affirmative defense to any action filed by the landlord against the tenant for nonpayment of rent.

1415.03 Tenant's right to pay to stay prior to an eviction judgment for non-payment of rent (Entry of Restitution):

(a) After the filing of an action under Ohio Revised Code 1923 for nonpayment of rent but prior to a judgment, the tenant shall have the right to pay the landlord all past due rent, reasonable late fees and court costs so that the tenant may maintain the tenancy. If the tenant tenders all past due rent amounts, including late fees and court costs, the landlord must accept the payment. Upon receipt of the payment, the landlord shall dismiss the action against the tenant.

(b) If the tenant tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses the tender, the tenant's tender of all past due rent, reasonable late fees and court costs shall be an affirmative defense to the eviction action filed by the landlord against the tenant for nonpayment of rent.

1415.04 Tenant's right to pay to stay prior to the execution of the eviction judgment for non-payment of rent (Writ of Restitution):

(a) After the filing of an action under Ohio Revised Code 1923 for nonpayment of rent but prior to the execution of the eviction judgment through a writ of restitution, the tenant shall have the right to pay the landlord all past due rent, reasonable late fees and court costs, including the cost of obtaining the writ, so that the tenant may maintain the tenancy. If the tenant tenders all past due rent amounts, including reasonable late fees and court costs, the landlord must accept the payment. Upon receipt of the payment, the landlord shall notify the court who shall vacate the eviction judgment and dismiss the eviction action against the tenant.

(b) If the tenant tenders all past due rent with reasonable late fees and court costs to the landlord prior to the execution of the eviction judgment through a writ of restitution and the landlord refuses the tender, the bailiff shall not enforce the eviction judgment until the court instructs the bailiff to do so after an emergency hearing on the tenant's right to pay and stay at the premises. If the court finds during the emergency hearing that the tenant tendered all past due rent,

reasonable late fees and court costs, the court shall vacate the eviction judgment and dismiss the eviction action against the tenant.

1415.05 Rent receipt required

The landlord shall provide the Tenant with a signed receipt for the security deposit and all rental payments except for payments made by personal check of the Tenant, at the time the security deposit or rental payments are made.

1415.06 Other Causes for Eviction

This Chapter in no way limits the ability of a landlord to initiate an eviction action for reasons other than solely for non-payment of rent.

1415.07 Reasonable Late Fees

No landlord may charge a tenant late fees that are not reasonable late fees. If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, to be considered "reasonable late fees" the total amount of that late payment fee for any month may not exceed the larger of: (i) twenty-five dollars (\$25.00); or (ii) five percent (5%) of the monthly contract rent.

1415.08 Severability

If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. South Euclid City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Ordinance shall take effect and be enforced from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2021.

Joseph Frank, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law



The Voice of Real Estate in Northeast Ohio

February 16, 2021

The Honorable Georgine Welo
Mayor, City of South Euclid
1349 S. Green Rd.
South Euclid, OH 44121

Dear Mayor Welo,

On behalf of the Akron Cleveland Association of REALTORS® (ACAR), thank you for the opportunity to comment on proposed Ordinance 01-21, creating Chapter 1415, which would enact a policy commonly referred to as "Pay to Stay."

As you know, REALTORS® support policies that encourage housing opportunities, while protecting the quality of life that has made northeast Ohio a desirable place to live.

We subscribe to the policy of Fair Housing and are committed to the proposition that it is illegal to discriminate in the sale or rental of housing on the basis of race, color, religion, sex, familial status, ancestry, military status, disability, or national origin. In fact, the REALTOR® Code of Ethics goes a step further stating, "REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity." People are entitled to exercise and enjoy the benefits of ownership without undue encroachment or intrusion by government or individuals.

Either by choice or other circumstance, some persons may not want to or be able to purchase a home. Rental property owners offer a valued service to provide housing to those individuals and families.

Pay To Stay ordinances enable tenants to avoid eviction for nonpayment of rent, giving them the opportunity to pay past due rent with reasonable late fees and court costs. This is an interesting policy in that, on the surface, it appears to be a win-win situation for all involved. The housing provider receives owed rent and presumably avoids a vacancy, and the tenant remains in the home.

However, ACAR believes there are a few areas for concern that the City should carefully consider before enacting such an ordinance.

- First, the City may be opening itself to potential lawsuits from property owners claiming the ordinance is not a valid exercise of home rule authority. We encourage the City to review this, as well as assessing the costs associated with defending the ordinance.
- Next, there is concern that this ordinance is unjustified interference with a private, contractual relationship. Specifically, if the ordinance does not exempt pre-existing rental agreements, the City may again be exposing itself to legal challenges by affected housing providers. **ACAR recommends the City revise Ordinance 01-21 to apply only to those rental agreements entered into after its effective date.**

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- The proposed cap on tenant late fees arguably is arbitrary and would reduce a significant incentive for tenants to pay their rent on time. This particular provision appears to impose a cap on tenant late fees in all residential rental agreements. The amounts set forth in the ordinance may not compensate the housing provider for actual damages incurred due to late rent payments. **ACAR encourages the City provide evidence supporting the proposed limitations on late fees, demonstrating how it relates to the damages and costs that the housing provider would incur because of late payment.**
- Regarding section 1415.04, **ACAR encourages the City to amend the ordinance to define “court costs” and require tenants exercising their right to pay-to-stay to pay reasonable attorney’s fee incurred by the housing provider.** In Ohio, attorney’s fees are not generally included in court costs.

We must remember that housing providers are a crucial part of our communities and offer a much-needed service – housing – to those that may not want to or be able to purchase a home. Finally, it is important to note, in general, this type of policy is enacted at a state level due to its impact on eviction law. As such, ACAR encourages our city leaders to refer this to the Ohio General Assembly for action, which would ensure fairness across the state and eliminate layers of confusion at the local level.

Thank you for your attention to this matter and the opportunity to comment. Please know that ACAR is a resource for South Euclid on this and any other real estate related topics. If you have any questions, please contact our Vice President of Government Affairs, Jamie McMillen, at jmcmillen@AkronClevelandRealtors.com or (216) 525-4834.

Sincerely,

A handwritten signature in black ink that reads "Beth Rodgers". The signature is written in a cursive, flowing style.

Beth Rodgers
President, Akron Cleveland Association of REALTORS®

CC: South Euclid City Councilmembers, Clerk of Council

March 4, 2021

The Honorable Georgine Welo
Mayor, City of South Euclid
1349 South Green Road
South Euclid, OH 44121



Dear Mayor Welo,

On behalf of the Northeast Ohio Coalition for the Homeless (NEOCH), thank you for the opportunity to comment on proposed Ordinance 01-21, which would expand rental rights within the City of South Euclid for renters to “Pay to Stay.”

NEOCH’s mission is to eliminate the root causes of homelessness while loving our diverse community through organizing, advocacy, education, and street outreach. In the dozens of calls we get at NEOCH each day, we hear from renters whose homes are at risk through no fault of their own. NEOCH would like to offer the following considerations to the City as you examine a Pay to Stay ordinance:

- **The City of South Euclid has an interest in promoting rental housing stability for families:** Around 1 in 4 households in South Euclid are renters, and 1 in 3 households include a child under the age of 18. Numerous studies indicate that involuntary displacement adversely affects children’s educational achievement¹. It is also important to note that locally, 80 percent of evictions include black, single-mothers with children in the home². Renter protections such as Pay to Stay are a tangible policy action that local elected officials can take to ensure housing and community stability.
- **Under the current eviction law, Ohio offers renters very little protection in the event of a missed rental payment:** Ohio is only 1 of 5 states in the country where landlords can file an eviction action against renters who are just one day late on rent. Even if the renter offered to pay the missed rent the day after it became late, the landlord can choose not to accept the late payment. One day in default alone can be enough to evict a renter at an eviction hearing. A local ordinance that requires landlords to accept a late payment made in full together with applicable late fees would permit the renter to settle the claim without a court filing.
- **Under a Pay to Stay ordinance, landlords receive the money owed to them and renters can remain stably housed:** The purpose of Pay to Stay is to unclog courts by disincentivizing the filing of evictions by landlords who refuse an offer of reconciliation from a renter. Pay to Stay allows renters to raise an existing defense if they can come up with the money in time to prevent displacement. Nothing under a Pay to Stay ordinance would hinder a landlord's ability to bring an eviction action for default of rent, it just creates a procedure for the resolution of non-payment cases. If a nonpayment of rent case gets to the point of a hearing, it is because the landlord and renter have not been able to make an equitable arrangement within the terms of the rental agreement.
 - **Therefore, NEOCH recommends that the ordinance excludes attorney fees for landlords, while leaving renters responsible for all rent, late fees, and court costs.** To do otherwise is unfair, as it essentially would fine a renter for raising an available defense. NEOCH supports the analysis made by staff for Advocates for Basic Legal Equity regarding attorney’s fees³.

¹ Center for Housing Policy, 2014

² Center on Urban Poverty and Community Development at Case Western Reserve University, 2019

³ First, Ohio law prohibits a landlord from including a provision in their lease requiring the tenant to pay their attorney fees. Second, the right to recover attorney fees is limited to situations where there was some bad action on the part of either the landlord or tenant, which does not include nonpayment of rent. Third, a Pay to Stay ordinance would in effect codify an equity defense as it relates to nonpayment of rent. Those defenses are raised regularly and when the tenant prevails, she is not required to pay attorney fees (ABLE, 2021).

- **Finally, despite the concerns that some business interests might have, NEOCH urges municipalities to exercise their home-rule power given to them under the Ohio Constitution and to adopt a Pay to Stay ordinance:** Passing a Pay to Stay ordinance is a minor reform. Based on analysis provided by NEOCH's legal counsel, a Pay to Stay ordinance would not conflict with Ohio's existing legal framework. While it codifies an equitable defense against eviction, under *Berhle v. Bream* courts in Ohio are required already to consider equitable defenses against evictions. There is no exhaustive list of defenses a tenant can raise under the Revised Code. And in fact, R.C. 1923.061(A) permits renters to raise "any defense" against an eviction action. As a result, it follows that a municipality has the power to codify available defenses. **Therefore, NEOCH urges South Euclid to honor the long history of Ohio municipalities acting as laboratories for democracy by affording the right to Pay to Stay.**

Thank you for the opportunity to provide these comments and for considering legislation that seeks to address homelessness at its roots. NEOCH welcomes any questions that you or members of City Council may have.

Respectfully,



Molly Martin
She/Her/Hers
Director of Strategic Initiatives
Northeast Ohio Coalition for the Homeless
Office: (216) 432-0540 | Cell: (440) 666-8549 | MollyMartin@neoch.org

cc: South Euclid Legislative Committee, South Euclid City Councilmembers, Clerk of Council
