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Affordable Housing Alliance of Central Ohio  
Coalition on Homelessness and Housing in Ohio

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STATEWIDE EDITION  
**PAY TO STAY**  
**TECHNICAL**  
**GUIDE**

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# PAY TO STAY

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# PAY TO STAY EXECUTIVE SUMMARY



## WHAT IT ADDRESSES

Under Ohio law, a landlord has no duty to accept a late payment, which means a tenant can be evicted for being just one day late or one dollar short on rent. Ohio is one of only five states where this remains allowable. [For more on the P2S purpose, see page 4.](#)

When COVID-19 struck, many tenants lost income and fell behind on rent before federal relief arrived. Now that Ohio has the resources to pay back-rent, the lack of Pay to Stay protections prevent relief agencies from distributing aid. In March 2022, over 438,000 Ohioans remained unsure how they were going to pay rent next month. [For P2S hypotheticals, see page 6.](#)

## HOW P2S WORKS IN OHIO

Pay to Stay codifies and standardizes an existing defense to eviction actions by allowing tenants to pay everything that is owed to avoid eviction. [For more on P2S legal underpinnings, see page 5.](#)

Under Pay to Stay rules, a landlord is made whole for all lost rent and expenses. In fact, landlords save money by avoiding legal fees and "turn costs" associated with re-renting a property following an eviction. [For more FAQ, see page 10.](#)

Pay to Stay is a valid exercise of home rule authority that has already been invoked by at least twelve Ohio communities and covers approximately 1-in-10 Ohioans. [For more on Home Rule, see page 16.](#)

Pay to Stay approximates some of the protections already afforded to homeowners, which provide a right to cure mortgage delinquencies. [For more on legislative options, see page 9.](#)

## WHY NOW

Each eviction costs Ohio \$6,815. Pay to Stay is a municipal cost-control measure that reduces public expenses like shelter, medical, law enforcement, and education.

[For more on the cost of eviction, see page 13.](#)

Many Ohio communities are facing a severe housing shortage and high housing cost inflation. Eviction prevention strategies like Pay to Stay preserve leases and existing affordability and are one tool designed to address the affordability challenge.

[For more on the affordable housing landscape, see page 15.](#)

# INTRODUCTION: PAY TO STAY 101

Unlike homeowners, renters do not have a right to cure a late payment. Pay to Stay ordinances allow tenants to avoid eviction by submitting their rent payment, any fees, and legal costs.

Ohio is just one of five remaining states where renters can still be evicted immediately after falling behind on rent [1]. If a tenant is just one day late on their rent, the status quo allows landlords to refuse all future payments and send a "three-day notice" requiring the tenants to leave voluntarily or face a formal eviction action; during this time, tenants have no right to repay a late- or short-payment. This is in sharp contrast to the rules applicable to homeowners who are provided legal rights to cure or reinstate a mortgage default prior to the confirmation of a foreclosure auction.

COVID-19 revealed how this system leads to regional vulnerabilities that prolong economic instability and exaggerate public health concerns. Up to 400,000 [2] Ohio renters are at risk of eviction or housing displacement because of the economic hardship posed by COVID-19. In response to this urgent need, Congress allocated over \$1.3 billion dollars [3] to Ohio for emergency rent assistance. Unfortunately, some landlords are refusing to permit tenants to repay missed payments, preferring instead to proceed with an eviction.

Pay to Stay ordinances close this legal loophole by allowing tenants to cure nonpayment of rent by tendering the full amount owed, including all reasonable fees and legal expenses, prior to being evicted.

Pay to Stay (sometimes called P2S) also:

- Helps families maintain education stability for students at risk of eviction; [4]
- Reduces the transmission of COVID-19 by reducing courthouse contacts and the overcrowded housing conditions that often follow an eviction; [5]
- Promotes healthy birth outcomes for infants and pregnant women; [6] and
- Avoids overwhelming the human safety net, like the homeless shelter system, with preventable evictions. [7]

Pay to Stay operates by codifying and standardizing an existing affirmative defense to eviction. Because eviction is an equitable action (see sidebar), a tenant can affirmatively raise the defense of "equity" and ask the judge to deny the eviction because it would be unfair in the circumstances. But what is considered "fair" is not consistently applied throughout the state and is often based on a judge's individual interpretation of legal rules.

Pay to Stay sets clear and unambiguous rules about what "fair" means when a tenant has the money to pay rent, including all outstanding fees and costs. It allows legislative bodies to increase transparency and predictability in the eviction process. By doing so, Pay to Stay also ensures that the extraordinary remedy of dispossession is reserved for only the most pressing situations where other solutions are insufficient to restore the parties to their original positions.

Pay to Stay can take a variety of different forms depending on how the legislature believes that fairness can best be achieved. As is detailed later in this guide, cities can limit the timing and frequency of the Pay to Stay defense while also shaping the legal rules around related issues, like how large a late fee can be before it becomes unreasonable.

Because Pay to Stay formalizes an existing eviction defense, it helps to know the legal principles behind eviction actions. Evictions happen in two parts. Part One returns legal possession to the owner. Part Two decides whether the tenant owes money for missed rent or property damages. Pay to Stay focuses on Part One by allowing a tenant to retain possession of the property if they pay what's due.

Part One is considered an "equitable" claim. Because of this, legal principles help guide a judge's decision on whether repossession (aka "forfeiture") is appropriate. One of those rules is that **Equity Abhors a Forfeiture**. Case law repeatedly holds that repossession is only proper if the lease breach was willful, malicious, or compensation cannot be made through other means. *Zanetos v. Sparks* (1984), 13 Ohio App.3d 242. [\[8\]](#)

Another consideration that judges must weigh is whether the landlord has **Clean Hands** because "to get equity, you must do equity". The court must consider whether the landlord bears fault for the breach. For example, if the landlord refuses to accept payment.

Overall, judges must **Balance the Equities**. They may deny an eviction if the tenant did not willfully break the lease, attempted to tender payment, or the facts would otherwise lead to an unjust outcome.

Although this equity defense is already provided in existing law, whether eviction is "equitable" in any particular situation is a matter of judicial interpretation. This leads to uneven application of the law and makes it hard for the parties to predict the legal outcome. Pay to Stay standardizes this process by defining what "equitable" means when a tenant has the money to pay rent but the landlord refuses to accept it.

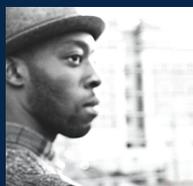
# PAY TO STAY IN ACTION

Hypotheticals illuminate the scenarios in which P2S is often triggered.



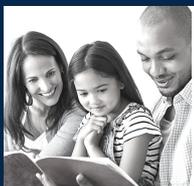
## Delayed COVID Relief Threatens housing

"Judy" is a working mom who clocks 60 hours a week working as a home health aid for \$14 an hour. Money has always been tight, but she was able to make ends meet until recently. Her longtime clients all live in different parts of town, so the rising price of gasoline and rising food prices all ate into the income she needed to pay rent. She reached out to a nonprofit to get rent assistance, and was pre-approved for arrears and three months of prospective rent. However, her landlord, is refusing to accept the assistance because he knows that if they evict Judy, they can raise the rent by hundreds of dollars in her trendy apartment.



## Small Business Slows Risks personal eviction

"Aaden" works full time as an auto mechanic, but his boss has been forced to cut his hours at work as the ongoing auto parts supply chain shortages reduced the the number of jobs the shop can handle each month. Joe took on a second job as soon as he could, but he missed a rent payment while waiting for the first paycheck from his new job. The property management company has a strict non-payment policy and does not make exceptions. Aaden received a three-day notice to vacate the premises.



## A Medical or Financial Emergency Eats the Rent Payment The social safety net lacks needed flexibility to respond

"Terrence, Janelle, and first-grader Lily" are a young family that was barely making ends meet despite having two full-time jobs. When COVID hit and Lily's school closed, Janelle was forced to quit her job to care for the family. They were not able to survive on one income alone and soon fell behind on their rent. The family applied for emergency rent aid and was quickly approved, but the landlord refused to accept the payment. The landlord believes the family is using the pandemic to dodge their responsibilities. Now that school is reopened, Janelle is back to work and the family can afford their housing payment moving forward.

# IS MY CITY ALREADY COVERED?

Ohio cities that recently adopted a Source of Income ordinance are not likely covered by Pay to Stay protections

There are three different ordinances that Ohio communities are increasingly adopting to stabilize housing. But each operates at different stages of the housing process and usually does not have any overlapping protections. Below is a brief description of these ordinances and how they relate to each other.

**Source of Income (aka SOI).** Source of income laws prohibit landlords from denying tenants or refusing rent payments because of how a renter earns lawful income. SOI rules generally require that (1) the tenant has not breached the lease by failing to tender payment on time and (2) that the tenant is making their payments directly to the landlord.

Protect past-due renters?
No
Allow third party help?
No

**Third-Party Pay.** In times of hardship, many renters turn to a church, nonprofit, or government agency for help paying rent. Some landlords refuse to accept these payments from a third party. Third-Party Pay requires landlords to accept checks, ACH payments, cash, or other reasonable payment methods from entities that are acting on behalf of the tenant. Unlike SOI, Third-Party Pay rules do not require the tenant to issue payment directly, however, they do require the tenant to be in good standing with their lease.

Protect past-due renters?
No
Allow third party help?
Yes

**Pay to Stay.** Pay to Stay allows tenants to avoid eviction by paying their rent and all past-due fees and costs to the landlord before an eviction is completed. By design, Pay to Stay does not require the tenant to be current in their rent, like SOI does. However, unless specifically stated in the ordinance, Pay to Stay does not authorize third-party payments. For this reason, at least three Ohio cities have combined Pay to Stay and Third Party Pay rules into one ordinance.

Protect past-due renters?
Yes
Allow third party help?
No

# MAPPING PROTECTIONS

As of June 2022, at least twelve Ohio cities had enacted Pay to Stay ordinances, covering over 1.1 million Ohioans or nearly 1-in-10 residents.



# PAY TO STAY SNAPSHOT

A side-by-side look at Ohio P2S protections

	Citation	When Permitted	Limits on Use	Tenant pays landlord's attorney fees	Late Fee Limits?	Escrow Allowed?	Survives COVID?	Third Party Pay?
AKRON	<a href="#">Akron Code of Ordinances Title 15, Chapter 150, Section 150.51</a>	Prior to an eviction judgement	May only use once per calendar year	No	Yes	Yes	Yes	Yes
CINCINNATI	<a href="#">Cincinnati Municipal Code Title VIII, Chapter 871, Section 871-9</a>	At or before the eviction hearing	None stated	Yes, up to \$125.00	No	Not stated	Yes	Yes
CLEVELAND HEIGHTS	<a href="#">Cleveland Heights City Council Ordinance 79-2021</a>	Prior to an eviction judgement	None stated	No	Yes	Not stated	No, expires Dec. 31, 2022	Not Stated
DAYTON	<a href="#">Dayton Revised Code of General Ordinances Section 93.71-74</a>	Prior to an eviction judgement	May only use once per calendar year	No	No	Yes	Yes	Yes
EUCLID	<a href="#">Ch. 1765, Building &amp; Housing Code of the Codified Ordinances of the City of Euclid</a>	Prior to the execution of a writ of restitution	May only use once per property/owner	No	Yes	Not stated	No, expires Dec. 31, 2022	Not Stated
LAKWOOD	<a href="#">Lakewood City Council Ordinance 12-2021</a>	Prior to the execution of a writ of restitution	None stated	No	Yes	Not stated	No, only applies during State of Emergency	Not stated
REYNOLDSBURG	<a href="#">Codified Ordinances, of the City of Reynoldsburg, Section 701.07</a>	Prior to an eviction judgement	May only use once in 12 months	Pay reasonable "costs" if in lease	Yes	Not stated	Yes	Not stated
SOUTH EUCLID	<a href="#">Codified Ordinances of the City of South Euclid, Part Fourteen, Chapter 1415</a>	Prior to the execution of a writ of restitution	None stated	No	No	Not stated	Yes	Not stated
TOLEDO	<a href="#">Toledo Municipal Code Chapter 1770</a>	Prior to an eviction judgement	None stated	No	Yes	Not stated	Yes	Not stated
YELLOW SPRINGS	<a href="#">Yellow Springs City Council Ordinance 2020-07</a>	Prior to the execution of a writ of restitution	None stated	No	No	Not stated	No, only applies during State of Emergency	Not stated

Note: the Village of Newburgh Heights, Ohio, adopted a [Pay to Stay ordinance](#) on October 5, 2021, that is similar to the one adopted by Toledo. The City of Maple Heights appears to have adopted a [Pay to Stay ordinance](#) in its August 2021 session, but final minutes are not available at this time and the codified ordinances do not yet reflect this legislation.

# PAY TO STAY Q&A

## Answering municipalities most common Pay to Stay questions

### Does Pay to Stay make it harder to remove a problem renter that poses dangers to the community?

No, Pay to Stay is only a defense to an eviction for non-payment of rent. It does not shield renters who violate other tenant duties, like those relating to the health and safety of the premises, criminal activity, or drug offenses.

### Does applying Pay to Stay to existing leases change the terms the parties thought they were agreeing to when they entered the lease agreement?

No. Pay to Stay codifies an existing equity defense to an eviction action. Instead of changing the terms, it merely provides predictability and even enforcement of the existing law.

### Do landlords lose money through Pay to Stay?

No, they don't have to. Most jurisdictions require tenants to pay all past-due rent, plus all late fees and legal fees, to ensure that the landlord is made whole before the protection will apply.

### Can municipalities prevent tenants from abusing this protection by using it multiple times?

Yes. Some jurisdictions limit the number of times the Pay to Stay right can be evoked to prevent repeated use. In Ohio, Akron, Dayton, and Reynoldsburg each limit the affirmative defense to one use per calendar year.

### Do municipalities prevent landlords from abusing this protection by extracting unfair late fees and expenses that are out of line with the market?

Yes. Some jurisdictions, like Toledo and Cleveland Heights, define what they consider to be reasonable late fees that the tenant must pay.

### What is the penalty for noncompliance and who monitors for that?

There is no penalty and no municipal enforcement required. Pay to Stay codifies an affirmative defense to an eviction, meaning that tenants must raise it in court to protect their rights. Expanding access to free legal services, including through a right to counsel, can further promote the equal protection of laws in Ohio.

# PAY TO STAY Q&A CONTINUED

## What other clauses are common within Ohio Pay to Stay ordinances?

Some Ohio ordinances define the term "**reasonable late fee**". In Akron, Cleveland Heights, Lakewood, and Toledo a late fee is deemed reasonable if it is less than \$25.00 per month or 5% of the rental contract. Other ordinances, like Cincinnati and Dayton, include elements of "**Third Party Pay**" protections that require landlords to accept payments made on a tenant's behalf by a third party like a nonprofit, church, or payment processing service. Cleveland Heights, Lakewood, South Euclid, and Toledo's ordinances also require landlords to provide a **signed receipt** for any security deposit or rent payment not made by personal check. Generally, city ordinances often include "**severability**" clauses that allow the majority of the ordinance to remain in force even if one section is later found to be unenforceable.

## Why would cities choose not to include attorney fees for landlords' counsel?

Cities likely have different reasons for making this determination. Arguments in favor of excluding attorney fees are that it incentivizes a "rush to the courthouse" instead of good faith attempts to avoid litigation and that it diverts federal relief funds from landlords and tenants to attorneys. Excluding attorney fees may be an attempt to conserve judicial resources and reduce eviction filings caused that can permanently impact a renter's credit. Arguments in favor of allowing attorney fees are that it supports professional services that can help facilitate a mutually beneficial outcome to the parties and that it ensures the landlord is made whole for out-of-pocket expenses incurred as a result of the lease violation.

## Why didn't the eviction moratorium address these issues?

When it was enforced, the moratorium was interpreted differently by courts across the country, leading to varying levels of coverage for tenants and landlords. The moratorium never relieved the tenant's duty to pay, it merely paused parts of the eviction process. A major critique of the moratorium was that it was not accompanied by relief funds, which did not come until later in the pandemic. One early reason cities adopted Pay to Stay is to bridge those two initiatives together, allowing parties who were subject to a moratorium to access emergency aid and maintain a landlord-tenant relationship.

# PAY TO STAY Q&A CONTINUED

## Why would landlords refuse to accept rent?

Attorneys frequently advise landlords to refuse late rent to preserve the right to pursue an eviction action, with the Ohio Landlord Law website, operated by two Columbus-based attorneys, advising "[i]f you are a landlord and you receive partial/late rent after you have filed an eviction action, your best course of action is to send a correspondence to the tenant indicating that you are not accepting the payment and that you are proceeding with the eviction." [\[9\]](#)

In over-heated housing markets where housing demand exceeds supply, landlords may also seek to terminate a lease agreement prior to its natural expiration date if they perceive a market opportunity to increase rents.

## Do Pay to Stay ordinances require the landlord to renew a lease after it ends?

No.



# THE COST OF EVICTION TO CITIES

What is the price of evictions for our community? The "Cost of Eviction Calculator" operated by the University of Arizona's James E. Rogers College of Law provides insight [10]. In Franklin County, for example, the calculator estimates the government accrues **\$124,168,388** per year in public and institutional costs as a result of evictions, or approximately \$6,815 per eviction. Unless a local data source is noted in the chart below, national data is provided by the James E. Rogers College of Law.

BASIC INFO	Location: Franklin County, Ohio Number of 2019 Evictions: 18,219 [11] Average Household Size: 2.47 [12]	
SHELTER	% of Evictions Resulting in Shelter Need: 25% Daily shelter cost per individual: \$68.50 Average days requiring shelter: 52 [13]	▶ \$40 MIL
IN-PATIENT	% of people experiencing homelessness that use in-patient hospital services: 23% % who would not use in-patient if not homeless: 80% Average in-patient visit cost per night: \$2,942 [14] Average nights using in-patient services per year: 7	▶ \$42.6 MIL
EMERGENCY	% of people experiencing homelessness that use emergency room services: 32% % who would not use E.R. if not homeless: 75% Average E.R. visit cost per night: \$1,435 [15] Average nights using in-patient services per year: 4	▶ \$15.4 MIL
FOSTER CARE	% of Households that are families with children: 36.9% Average number of children per family: 1.87 [16] % of families experiencing homeless that receive foster care services: 16% Average monthly foster care cost: \$2,150 Average months of stay in foster care: 15 [17]	▶ \$16.2 MIL
DELINQUENCY	% of children between 12 - 17: 34.4% % of children who are first arrested after becoming homeless: 25% Daily cost of Juvenile Detention: \$508 [18] Average days in detention: 71	▶ \$9.7 MIL

Evictions have additional monetary and societal costs. Analysis from the Urban Institute [19] concluded that the end of the national eviction moratorium would result in \$6.6 billion in lost earnings and \$5 billion in increased debt for tenants; landlords are similarly projected to incur up to \$4.6 billion in legal costs related to eviction and as much as \$50 billion in lost rent and repair costs. A different study by eviction researcher Matthew Desmond further found that "each eviction filing translates into approximately \$180 in fines and fees for the typical renter household, raising their monthly housing cost by 20%." [20]

# DE&I + EVICTION PREVENTION

Because of demographic eviction disparities, P2S acts as a check on unintentional bias and promotes diversity, equity, and inclusion

Research conclusively shows that eviction is a greater risk for women, renters of color, LGBTQIA+ individuals, children [21], and other historically marginalized populations. Pay to Stay tools promote fairness and complement efforts to advance diversity, equity, inclusion, and justice. The following facts highlight this challenge and the opportunities present in a strategic anti-eviction platform.

- For example, in Franklin County, 47% of eviction defense clients represented by the Legal Aid Society of Columbus identified as African American, despite only composing 24% of Franklin County's population. [22]
- In a national study of eviction records from 39 states, researchers found that Black individuals made up 19.9% of all adult renters in the counties analyzed, but accounted for 32.7% of all eviction filing defendants. [23]
- That same study estimated that approximately 16% more women were evicted annually than men.
- In the last year, older Black renters (aged 65 and above) were on average twice as likely to be behind on rent compared to older white households. [24]
- African-Americans represent 12.4% of the state's total population, but comprised 48.4% of all Ohioans needing homeless services in 2018.
- Black Ohioans are nearly three times more likely to live in poverty than white Ohioans (29% versus 11%).
- The 2018 median household income for a white head of household in Ohio was \$60,783, nearly twice the median income for a Black head of household (\$33,590).



In Ohio, 1-in-5 households with children were not currently caught up on rent payments in January 2022. [25]

# BIG PICTURE: A HOUSING CRISIS

Pay to Stay helps families avoid eviction and retain housing that they can afford. Statistics on Ohio's housing landscape and facts about the barriers renters face in finding housing that is affordable illuminate how housing policies that reduce evictions benefit our community as a whole.

80K+

## OVER 80,000 EVICTIONS WERE FILED DURING 2021

In 2021, 80,427 eviction cases were filed in Ohio's courts. Despite unprecedented emergency measures, like relief funds and eviction moratoria, that is only 25% fewer evictions than the year before COVID. [\[1\]](#)

\$16.64

## OHIO'S STATEWIDE 2BR "HOUSING WAGE" IS \$16.64

Because of a severe regional housing shortage, the "housing wage" that a renter must earn to afford a modest two-bedroom apartment is was \$16.64/hour before COVID. [\[27\]](#) However, only four of Ohio's 10 most common jobs pay more than the 2BR housing wage. [\[28\]](#)

367K

## 367K OHIOANS SPEND OVER HALF THEIR INCOME ON HOUSING

Before COVID-19, over 367,187 Ohio renters paid over half their income on housing costs. [\[29\]](#) These families have little left for food, medicine, transportation, healthcare, childcare, education and other necessities.

28%

## OVER 1-IN-4 RENTERS UNSURE THEY COULD PAY RENT

Over 438,000 Ohio households in March 2022 had little or no confidence in their ability to pay the next month's rent. [\[25\]](#) The risk was higher for renters of color, those with a disability, divorced individuals, or those with children in the home.

43

## THERE ARE 43 AFFORDABLE HOMES FOR EVERY 100 ELI RENTERS

There only 189,172 affordable homes available for 443,717 extremely low income renter households in Ohio. This equates to only 43 affordable units available for every 100 ELI households. [\[30\]](#)

# PAY TO STAY & HOME RULE

## Ohio Municipalities Can Use Home Rule Power to Enact Pay To Stay Legislation to Keep Residents in Homes During & Beyond COVID Crisis.

Many areas of Ohio are now facing an eviction crisis because of the ongoing pandemic and the continuing economic impact on low-income families. However, significant rental assistance has been budgeted and distributed to the states and local governments to help tenants and landlords weather this storm and avoid an eviction catastrophe. But despite the appropriated Emergency Rental Assistance (“ERA”) funding, the rental assistance is, in some areas, slow in being distributed.

Often renters find themselves approved for ERA, but unable to get the funds before their eviction proceeds to judgment and they are set out.

Pay to Stay legislation provides local governments, such as those in Central Ohio, with a tool to prevent largescale evictions and provide overdue rental payments to hard hit landlords. The concept behind Pay to Stay legislation is to allow a tenant to avoid eviction by tendering payment or providing security for the payment of all past due rent, plus a reasonable late fee. Pay to Stay legislation can codify equitable authority that eviction courts currently possess and can exercise.

But do municipal corporations<sup>1</sup> in Ohio have the power under the Home Rule Clause to adopt a Pay to Stay ordinance recognizing such an affirmative defense in a forcible entry and detainer proceeding?

And would such an ordinance conflict with any provisions in the Revised Code, such that a Pay to Stay ordinance would be rendered unenforceable?

For the reasons set out below, the authors conclude that a Pay-To-Stay ordinance would not likely conflict with any provision in the Revised Code and therefore should be upheld as a lawful exercise of a municipal corporation’s police powers.

### I.Home Rule In Ohio

Article 18, Section 3 of the Ohio Constitution (the “Home Rule Clause”) provides: Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

The Home Rule Clause was added to the Ohio Constitution in 1912. Prior to 1912, Ohio followed Dillon’s Rule, whereby municipal corporations only had such powers as were specifically granted to them by the General Assembly. The adoption of the Home Rule Clause in 1912 accomplished several things. First, it created a core of municipal power – local self-government – where municipal law is supreme. Second, it created a broader area of municipal power – the police power – where municipalities have authority to legislate without the need for authorization by the General

The Supreme Court colorfully described this history in 1923:

Prior to 1912 there was no express delegation of power to municipalities in the Ohio Constitution. Under the decisions of our courts, it had been held again and again, ...that municipal power was delegated only by virtue of a statute. Therefore municipalities of the state, especially the larger ones, were continually at the door of Ohio's General Assembly asking for additional political power for municipalities, or modifications in some form of previous delegations of such power. Such power, being legislative only, could be withdrawn from the municipalities, or amended, at any session of the Legislature.

Municipalities were, therefore, largely a political football for each succeeding Legislature, and there was neither stability of law, touching municipal power, nor sufficient elasticity of law to meet changed and changing municipal conditions. To the sovereign people of Ohio the municipalities appealed in the constitutional convention of 1912, and the Eighteenth Amendment, then known as the 'Home Rule' Amendment, was for the first time adopted as a part of the Constitution of Ohio, wherein the sovereign people of the state expressly delegated to the sovereign people of the municipalities of the state full and complete political power in all matters of 'local self-government.'

*Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 255 (1923).

#### A.The Home Rule Clause Grants Legislative Power To Municipal Corporations And is Self-Executing

The Home Rule Clause "is self-executing, in the sense that no legislative action is necessary in order to make it available to the municipality." *Id.*, paragraph 3 of the syllabus; see also *Village of West Jefferson v. Robinson*, 1 Ohio St.2d 113 (1965) ("The power of any Ohio municipality to enact local police regulations is no longer dependent upon any legislative grant thereof, as it was prior to the adoption in 1912 of the foregoing constitutional provisions. That power is now derived directly from those constitutional provisions.").

#### B.The Home Rule Clause Grants Two Distinct Powers

The Home Rule Clause contemplates two distinct powers: the power of local self-government, where municipal laws trump even contrary state laws, and the police power, which allows a municipality to adopt ordinances providing for the health, safety and welfare of its residents, provided that it is not in conflict with general laws adopted by the General Assembly. The difference is that in an area of local self-government, a municipal ordinance takes precedence over a conflicting state law, whereas an exercise of the municipal police power must yield to a conflicting state general law. *Wesloski v. Broadview Heights Planning Comm'n*, 158 Ohio St.3d 58, 2019-Ohio-3713, ¶ 17.

## II.Home Rule – Three-Step Analysis

When analyzing a Home Rule issue, the analysis must proceed in three steps. First, one must decide whether the

municipal ordinance is an exercise of the power of local self-government or the police power. If it is a power of local self-government the analysis stops because the municipal corporation may exercise its powers of local self-government even in the face of a directly conflicting state statute. *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043. If it is an exercise of the police power, then the second step is to determine whether the state law is a general law, for an exercise of the municipal police power must yield only to a conflicting general law passed by the state. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270. Finally, if the municipal ordinance is an exercise of the police power, and the state statute is a general law, then one must determine whether the ordinance and statute are in conflict. *Id.*

#### A. Step One: Power of Local Self-Government vs. Police Power

The power of local self-government has been narrowly construed. It relates “solely to the government and administration of the internal affairs of the municipality.” *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St.3d 553, 2008-Ohio-92. The power of local self-government includes the internal organization of city government, local elections, salaries of local officials and employees, and similar matters, whereas an exercise of the police power regulates conduct of the city’s citizens for the general welfare of the public. *Wesolowski v. Broadview Heights Planning Comm’n*, 158 Ohio St.3d 58, 2019-Ohio-3713 (subdivision planning ordinance was exercise of police power because it regulated the conduct of the city’s citizens for the general welfare of the public by restricting the division of land). As a result, most ordinances restricting or regulating

conduct by a party or that grant a party a right to do something will be found to exercise the police power. Under this formulation, a Pay To Stay Ordinance would be an exercise of the police power.

Courts have generally declined to define the precise scope of “police power,” but they have recognized its breadth: “The police power is not subject to definite limitations but is coextensive with the safeguards of public interest. It encompasses regulations designed to promote public convenience or the general prosperity or welfare.” *City of Columbus v. Teater*, 53 Ohio St.2d 253, n. 2 (1978). Further, absent a conflict with a general law of the state, municipal police regulations are valid unless it clearly appears that they bear no real and substantial relation to public health, safety, morals or general welfare of the public, or are unreasonable or arbitrary. *Wilson v. City of Cincinnati*, 46 Ohio St.2d 138 (1976). Municipalities are presumed to be familiar with local conditions and needs of the community, and courts are not to substitute their judgment for legislative discretion unless there has been a clear and palpable abuse of power. *Id.* (holding that local ordinance requiring inspection of residential housing prior to sale had a substantial relation to preservation of the city’s existing housing stock and therefore had a substantial relation to public health, safety, morals and general welfare); *Downing v. Cook*, 69 Ohio St.2d 149 (1982) (regulation limiting number of dogs that could be kept in a house unless the lot size exceeded 4,000 square feet per dog did not exceed the legitimate range of the police power).

#### B. Step Two: Whether the State Law Is A General Law

Not every state law is a “general law” for purposes of the Home Rule Clause – and only a general law is superior to an exercise of the municipal police power. In *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, the Supreme Court created a four-part test to evaluate whether a state law is a general law: the court held:

that to constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

*Id.* at ¶ 21. In *Canton*, the court considered a city ordinance that prohibited manufactured homes by including them within the definition of “mobile homes,” which were prohibited within the city as principal or accessory structures for residential use. The ordinance was asserted to conflict with a state statute dealing with manufactured homes which established construction and safety standards, prohibited political subdivisions from prohibiting or restricting them in any zoning district where single-family homes were permitted, and allowed private landowners to adopt and enforce restrictive covenants prohibiting manufactured homes. The court synthesized holdings of prior cases to articulate the test set forth above for when a state law is a general law. The court found that the state law in that case failed all four aspects of the test.

The court held that there was no statewide and comprehensive legislative enactment because the state did not have a comprehensive zoning plan. The statute did not operate uniformly throughout the state because the exception for private restrictive covenants meant that the statute would effectively apply only in older areas of the state that no longer had effective deed restrictions or active homeowner associations. The provision regarding local regulation did not set forth police, sanitary or similar regulations but only purported to limit the legislative power of a municipal corporation to adopt police, sanitary, or similar regulations. Finally, it did not prescribe a rule of conduct on citizens generally because it only limited the conduct of municipal legislative bodies. *Id.*, 95 Ohio St.3d 149, ¶ 22-35. Because the statute was not a general law, the municipal ordinance was enforceable, even though it was an exercise of the municipal police power and conflicted with state law.

In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, the court applied this test to an Akron ordinance that provided for an automated speed limit enforcement system that was alleged to conflict with R.C. 4511.21, which as a whole regulates speeding on streets and highways in Ohio. The court clarified that no part of a statute should be reviewed in isolation to determine whether a law is a general law. Rather, in *Mendenhall* the court looked at all of Section 4511.21 to hold that the state law was a general law. The court found that Ohio’s speeding statute was a statewide and comprehensive enactment that applied equally in all parts of the state and operated uniformly throughout the state, that it set forth police regulations and did not only purport to limit municipal power

to regulate, and because it provided that “no person shall operate a motor vehicle...,” it prescribed a rule of conduct upon citizens generally.

### C. Step Three: Whether There Is A Conflict Between The State Law and the Municipal Ordinance

Whether there is a conflict is determined by whether the state law makes legal that which the local ordinance declares to be illegal, or vice versa. *Struthers v. Sokol*, 108 Ohio St. 263, 267 (1923). *Struthers* found no conflict between a municipal ordinance that regulated certain aspects of liquor sales and a state statute that regulated other aspects. Since the city ordinance did not make legal that which the state statute made illegal or make illegal that which the state had made legal, it found no conflict.

The modern formulation of this inquiry is that the courts are to examine whether the statute and the ordinance create “contrary directives.” *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 29 (finding no conflict in automatic traffic enforcement system that used civil, rather than criminal process to enforce citations; state had legislated extensively on criminal enforcement but not on civil enforcement so there was no conflict).<sup>2</sup>

*Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, found a conflict between a state law providing that a licensed handgun owner could carry a concealed handgun anywhere in the state (with certain exceptions, none of which applied to a city park<sup>3</sup>) and a city ordinance that prohibited possession of any deadly weapon in any city park. Because the city had prohibited what the state had expressly and affirmatively licensed, there was a conflict.

One issue that the court has struggled with is how to determine whether a state statute that (for example) sets speed limits implicitly authorizes all conduct it does not prohibit or whether it leaves further room for political subdivisions to regulate. *Am. Fin. Services* recognized a so-called implied conflict between a state statute and city ordinance that both attempted to regulate high-interest home loans. The city ordinance in that case made illegal loans at a lower interest rate than did the state statute. The Supreme Court held that there was a conflict state statute impliedly authorized lenders to make any loan it did not specifically prohibit and therefore the city could not prohibit any loan with an interest rate that the state statute permitted. 112 Ohio St.3d 170, ¶ 41.

The exact contours of this test are uncertain and have required the court to attempt clarifying it several times. In *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, decided just months after *Am. Fin.*, the court considered a state statute that prohibited semiautomatic firearms that could hold more than 31 rounds without reloading and a city ordinance that prohibited such weapons if they could fire more than 11 rounds without reloading. The court indicated that there was nothing in the state statute indicating that lower-capacity weapons were affirmatively authorized by the state.

### D. Ohio Does Not Recognize Preemption Of Municipal Authority In The Absence Of A Conflict

The Supreme Court has repeatedly declined to recognize preemption by the General Assembly as a basis to negate municipal regulation on a subject in the absence of a conflict with a general law of

the state under the above analysis. *Mendenhall*, 117 Ohio St.3d 33, ¶ 38. Indeed, in at least four separate cases, the Court has held that explicit statements of preemption by the General Assembly in a statute are to be disregarded, such that whether a municipal ordinance may stand is to be determined by the conflict analysis set forth above. Any other holding, the Court has explained, would permit the General Assembly by statute to override the Home Rule powers granted to municipalities by the Constitution.

*In Am Fin. Servs. Assn.*, 112 Ohio St.3d 170, 2006-Ohio-6043, the court considered H.B. 386, which regulated high-interest loans and contained a statement that the legislature intended to regulate high-interest loans exclusively and preempt any municipal regulation:

A statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent and may be considered to determine whether a matter presents an issue of statewide concern,<sup>4</sup> but does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws. As discussed in *Fondessy Ents., Inc. v. Oregon*, 23 Ohio St.3d at 216, 23 OBR 372, 492 N.E.2d 797, the constitutional authority of municipalities to enact local police regulations emanates from the Constitution and “cannot be extinguished by a legislative provision.” In accordance with the approach followed in *Fondessy*, we reaffirm that the conflict analysis as mandated by the Constitution should be used in resolving home-rule cases.

*Id.* at ¶ 31.5

The Court again reaffirmed this rule in 2014, once again holding that a statement in a statute that municipal corporations may not regulate a certain subject matter is ineffective, standing alone, to divest municipal corporations of their constitutional police powers, and that courts must apply conflict analysis in order to determine whether the municipal ordinance is effective. *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86. Indeed, in that case, the Court held that the second sentence of the version of R.C. 4921.25 before it was unconstitutional, in that it purported to preempt municipal regulation on towing regulation (the subject of the statute) in the absence of a conflict.<sup>6</sup>

### III. Application of Home Rule Tests To Pay-To-Stay

There are two Chapters of the Revised Code that appear to be implicated by a Pay-To-Stay ordinance – Chapter 1923, which governs forcible entry and detainer actions, and Chapter 5321, which contains Ohio’s Landlord-Tenant Act. Each will be examined in turn.

#### A. Chapter 1923

As noted above, a Pay-to-Stay ordinance would almost certainly be viewed as an exercise of the police power. As such, the analysis would require consideration of whether Chapter 1923 is a general law and whether there is any conflict.

#### 1. Chapter 1923 Is A General Law

It seems apparent, taken as a whole,<sup>7</sup> that Chapter 1923 is a general law:

- The law is comprehensive in its scope, as it governs how, when, and where a Forcible Entry and Detainer action may be brought.
- The statute has applicability statewide. It provides uniformity for how, when, and where the action may be brought.
- The law sets out police regulations by establishing the procedure for a forcible entry and detainer action. It does not merely purport to limit a municipality's legislative power to regulate. Indeed, nothing in the text of R.C. Chapter 1923 explicitly addresses a municipality's power in this area; and
- The statute prescribes a rule of conduct upon citizens generally. It sets out the rules for how, when, and where eviction actions may occur.

## 2. There Is No Conflict Between Chapter 1923 And A Pay-To-Stay Ordinance

However, there is no basis to find that there are any conflicts between Pay-to-Stay and the provisions of Chapter 1923, either directly or by implication. Pay-to-Stay simply codifies a court's existing equitable authority to prevent a forfeiture and relieve a tenant who can fully compensate the landlord of the consequences of a late rent payment that otherwise would warrant eviction. Section 1923.061(A) explicitly permits the tenant to present "any defense" at trial of a forcible entry and detainer action, but it does not purport to set out an exhaustive list of such defenses nor to preclude a municipal corporation from codifying such defenses. Likewise, nothing in Chapter 1923 states that a judge lacks authority to dismiss a forcible entry and detainer action when the tenant tenders full payment of outstanding rent, late fees, and interest. To the contrary, courts have recognized the

court's equitable authority to take such action where warranted by the facts. Pay to Stay thus would not prohibit anything permitted by Chapter 1923, nor would it allow anything that Chapter 1923 prohibits.

### B. Chapter 5321

It likewise appears that Chapter 5321 sets forth a general law:

- The law is comprehensive in scope. It outlines a landlord's duties to a tenant and vice-versa, and it states what terms are forbidden from rental agreements.
- The statute has applicability statewide. All Ohio tenant and landlords are obligated to abide by its terms.
- The law sets out police regulations. By limiting landlord and tenant conduct it promotes the health and safety of rented dwellings and the fairness of rental agreements. Although Section 5321.19 does purport to preempt certain municipal regulations, that is only one provision in Chapter 5321, and the Supreme Court has, as noted above, required that the General Law analysis consider the statute as a whole.
- The statute provides a rule of conduct upon citizens generally. All citizens of Ohio are obligated to abide by the terms of the Act.

As with Chapter 1923, there are no specific provisions in Chapter 5321 that would conflict, directly or by implication, with Pay-to-Stay. O.R.C. 5321.03(A)(1) permits a landlord to bring an action under Chapter 1923 if the tenant is in default for the payment of rent, but Pay to Stay would not prevent the landlord from filing such an action, nor would it prevent the action from proceeding under Chapter 1923. It would only codify an existing affirmative

defense. Accordingly, there do not appear to be any conflicts, either directly or by implication, with Chapter 5321. While O.R.C. 5321.02 does create the affirmative defense of landlord retaliation, it does not purport to limit or otherwise establish what defenses may be available in an eviction action.

### C. A Court will likely not enforce 5321.19's Preemption Provision

Although there do not appear to be any direct conflicts or implied conflicts between a Pay-to-Stay ordinance and any provisions of Chapter 1923 or 5321, there is a potential preemption issue raised by Section 5321.19 of the Revised Code:

No municipal corporation may adopt or continue in existence any ordinance and no township may adopt or continue in existence any resolution that is in conflict with this chapter, or that regulates the rights and obligations of parties to a rental agreement that are regulated by this chapter. This chapter does not preempt any housing, building, health, or safety code, or any ordinance as described in division (A)(9) of section 5321.04 of the Revised Code, of any municipal corporation or township.

There are several reasons why this provision would likely not bar a Pay-to-Stay ordinance. First, it is far from clear that Pay to Stay is a regulation of the "rights and obligations of parties to a rental agreement that are regulated by this chapter" because the rights and obligations of landlords and tenants following a rent payment default are not regulated by Chapter 5321, other than the statement in Section 5321.03(A)(1) that the landlord may bring an action under Chapter 1923 if the tenant is in

default in the payment of rent. Such a default allows the landlord to bring an action under Chapter 1923, but how that proceeding will be handled is not regulated by Chapter 5321. In addition, while Chapter 5321 does regulate the termination of a rental agreement, that is a different question from whether the tenant may be evicted, which is governed by Chapter 1923. Moreover, a Pay to Stay ordinance would appear to be permissible under the exceptions to preemption permitted by Section 5321.19 as part of a municipal housing code. Even if Section 5321.19 were found to apply to a Pay-to-Stay ordinance, Section 1923.19 is quite similar to the preemption provisions discussed above which the Supreme Court has repeatedly refused to enforce. See Section III.D., *supra* p. 5.

Based upon this line of cases, it is likely that a court would likewise disregard the portion of 5321.19 that purports to preempt municipal regulation of the rights and obligations of the parties to a rental agreement that are regulated by Chapter 5321 and rather would focus on whether there is any conflict between something Chapter 1923 or 5321 permits but a Pay to Stay ordinance prohibits, or vice versa. And as set forth above, there does not appear to be any conflict.

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# PAY TO STAY COUNTERPOINTS

## Who has expressed hesitancy over Pay to Stay and why?

In Ohio cities that have considered Pay to Stay provisions, the ordinance has passed the council unanimously, evincing little out-right opposition to these rules. However, crafting an ordinance that is tailored to local needs and achieves the right balance between stakeholders remains vital to success. The following counterpoints may help inform the debate.

**Con: Stop Gap Measure.** In an interview with News 5 Cleveland [\[31\]](#), Ralph McGreevy, with the Northern Ohio Apartment Association called Pay to Stay a "stop gap, not a solution" to renters' long-term affordability needs.

**Pro: Diversification Necessary.** Not all tenants are struggling with long-term affordability, some experienced a temporary hardship triggered by COVID-19 or another short-term financial barrier. Pay to Stay allows that subset of renters facing transitory instability to avoid an eviction. Instead of looking for silver bullet solutions to the housing crisis, cities can adopt customized and targeted solutions to the unique challenges their residents face.

**Con: Small Biz Impact.** In that same interview, McGreevy advised that Pay to Stay could interfere with landlords' business models and the ability for small owners to make ends meet.

**Pro: Restoring the Parties.** Well-crafted Pay to Stay ordinances are designed to restore the parties by requiring the tenants to pay all past-due rent, fees, and court costs. Housing policies that reduce evictions can also save landlords' legal costs and attorney fees, as well as "turn costs" that they incur in preparing the unit for the next renter.

**Con: 11th Hour.** In a different interview with Ideastream Public Media [\[32\]](#), McGreevy, called Pay to Stay an 11th-hour intervention that forces landlords to keep unreliable tenants.

**Pro: Extreme Circumstances.** Cities can prohibit repeated use of the Pay to Stay defense to ensure it is limited to singular events. As a codification of an existing eviction defense, it does not alter the existing rights of property owners, it merely provides consistency and predictability.

# SAMPLE ORDINANCES

Read details on how different jurisdictions around Ohio interpreted the Pay to Stay challenge and crafted legislative responses

Dayton, Ohio. Ordinance 31875-21. Passed unanimously March 24, 2021.

Features: Defense allowable until judgment, use is limited to once per year.

WHEREAS, On March 9, 2020, the Governor of the State of Ohio declared a State of Emergency to exist in Ohio as a result of the threat of COVID-19; and,

WHEREAS, On March 12, 2020, the Mayor of Dayton declared a local emergency based on the COVID-19 pandemic; and,

WHEREAS, The Centers for Disease Control and Prevention, the Ohio Department of Health, and the Montgomery 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 Dayton 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; 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 City's affordable housing stock and to prevent housed individuals from falling into homelessness; and,

WHEREAS, The Commission wishes to expand the Dayton Revised Code of General Ordinances ("R.C.G.O.") to provide tenant's an opportunity to pay back rent to stay in their residence; and,

WHEREAS, This Commission finds it in the best interest of the City to enact Sections 93.71, 93.72, 93.73, and 93.74 of the R.C.G.O.; and,

WHEREAS, To ensure that this amendment is timely implemented and to provide for the immediate preservation of the public peace, property, health and safety, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

**BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:**

**Section 1.** That Section 93.71 of the R.C.G.O. be, and hereby is, enacted to read as follows:

Sec. 93.71 - Tenant's affirmative defense after tendering rent prior to the filing of an eviction action

If a tenant, or an agency or individual on their behalf, 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 to accept such tender, the tenant's attempted 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.

**Section 2.** That Section 93.72 of the R.C.G.O. be, and hereby is, enacted to read as follows:

Sec. 93.72 - Tenant's affirmative defense after tendering rent prior to an eviction judgment

If the tenant, or an agency or individual on their behalf, tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses to accept such tender, the tenant's attempted tender of all past due rent, reasonable late fees and court costs shall be a defense to the eviction action filed by the landlord against the tenant for nonpayment of rent.

**Section 3.** That Section 93.73 of the R.C.G.O. be, and hereby is, enacted to read as follows:

Sec. 93. 73 - Limitation of affirmative defense under Sections 93. 71 and 93. 72

Tenant's right to utilize the affirmative defenses under either Section 93.71 or Section 93. 72 shall be limited to one (1) use per calendar year. Nothing in this Section 93. 73 shall limit the rights of tenant to raise any other defenses and the Dayton Municipal Court's consideration of those defenses more than once in a calendar year.

**Section 4.** That Section 93.74 of the R.C.G.O. be, and hereby is, enacted to read as follows:

Sec. 93. 7 4 - Other Causes for Eviction

Sections 93. 71-. 74 in no way limit the ability of a landlord to initiate an eviction action for reasons other than solely for non-payment of rent.

**Section 5.** For the reasons stated in the preamble hereof, the Commission declares this Ordinance to be an emergency measure which shall take effect immediately upon its adoption.

## Akron, Ohio. Ordinance 111-2021. Passed unanimously April 30, 2021.

Features: Allows combination with escrow and defines reasonable late fees.

ORDINANCE NO. \_\_\_\_ -2021 amending and/or supplementing Title 15 "Land Usage," Chapter 150 "Environmental Health Housing Code" to add Sections 150.51 and 150.52 to create legal defenses in an eviction matter for tenants who attempt to tender all past due rental payments to a landlord and capping the amount of reasonable late fees that a landlord may impose on a tenant; and declaring an emergency.

**WHEREAS**, as a result of the ongoing public health emergency related to COVID-19, many residents and businesses in the City of Akron have experienced or expect soon to experience sudden and unexpected income loss; and

**WHEREAS**, America's ongoing housing crisis has been exacerbated by the COVID-19 pandemic; and

**WHEREAS**, COVID-19 has caused financial strain on many individuals, leaving residential tenants vulnerable to eviction after the State of Ohio and the Federal Government have lifted their stays on evictions; and

**WHEREAS**, enabling tenants to defend against evictions on the basis that they can make payment in full ensures housing stability for households, while landlords receive the money necessary to operate without loss of income through an eviction and re-rental process.

**NOW, THEREFORE, BE IT ENACTED** by the Council of the City of Akron:

Section 1. That Title 15 "Land Usage," Chapter 150 "Environmental Health Housing Code," Section 150.51 "Tenant's affirmative defense after attempting to tender rent" of the Code of Ordinances of the City of Akron be and is hereby enacted and reads as follows:

Section 150.51 - Tenant's affirmative defense after attempting to tender rent

*A. Prior to the filing of all eviction action.* If a tenant of a residential premise, or someone or an agency on their behalf, tenders all past due rent with reasonable late fees to the landlord prior to the filing of an action pursuant to Ohio Revised Code Chapter 1923 and the landlord refuses to accept such tender, the tenant's attempted 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.

*B. Prior to an eviction judgment.* If a tenant of a residential premise, or someone or an agency on their behalf, tenders all past due rent with reasonable late fees and court costs to the landlord prior to a judgment and the landlord refuses to accept such tender, the tenant's attempted 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.

1. For purposes of this section, a tenant's tender after an action under Ohio Revised Code Chapter 1923 is filed may be satisfied if tenant places a payment in full, including all past due rent with reasonable late fees, court costs, and applicable escrow fees, in escrow with the Akron Municipal Court prior to the date of trial. Tenant shall not be responsible for landlord's attorney's fees.

*C. Limitation of affirmative defense.* Tenant's right to utilize the affirmative defenses under either paragraph A or B of this section shall be limited to one (1) use per calendar year. Nothing in this section shall limit the rights of a tenant to raise any other defenses and the Akron Municipal Court's consideration of those defenses more than once in a calendar year. The affirmative defenses set forth in paragraphs A and B shall be available to tenants of residential premises only.

*D. Other Causes for Eviction.* This section in no way limits the ability of a landlord to initiate an eviction action for reasons other than solely for non-payment of rent.

Section 2. That Title 15 "Land Usage," Chapter 150 "Environmental Health Housing Code," Section 150.52 "Reasonable fees for late payment of rent" of the Code of Ordinances of the City of Akron be and is hereby enacted and reads as follows:

## Section 150.52- Reasonable fees for late payment of rent

If a rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, 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 ( $5\%/41$ ) of the monthly contract rent.

Section 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that it is immediately necessary to limit unnecessary housing displacement, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

## South Euclid. Ordinance 01-21. Passed unanimously January 25, 2021.

Features: Allowable to writ of execution with rent receipt and severability.

**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, 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.



## ABOUT THE AFFORDABLE HOUSING ALLIANCE OF CENTRAL OHIO

AHACO is a nonprofit organization with twenty-eight members representing the continuum of housing experts including homeless service providers, landlords and property managers, homeownership proponents, lenders, developers, and the philanthropic community. We engage research, education, facilitation, project design, technical assistance, and advocacy to help Central Ohio leaders close the affordable housing gap.

To learn more about our work or explore how we can support your community's housing strategy, visit us online at [www.AHACO.org](http://www.AHACO.org) or message us at [admin@ahaco.org](mailto:admin@ahaco.org).

## ABOUT THE COALITION ON HOMELESSNESS AND HOUSING IN OHIO

COHHIO is a coalition of organizations and individuals committed to ending homelessness and to promoting decent, safe, fair, affordable housing for all, with a focus on assisting low-income and special needs populations. COHHIO advocates for better public policy and adequate funding to make home a reality for everyone living in Ohio.

COHHIO appreciates AHACO for helping to draft and share the Statewide Edition of the Pay to Stay Technical Guide and wishes to thank the National Low Income Housing Coalition for its expertise and support for local tenant protection reform.

# RENTAL AID FOR OHIO LANDLORDS AND TENANTS

No one should lose their home or their rental income because of COVID-19. Renters and landlords can now receive up to 18 months of relief from the federal Emergency Rent Assistance program.

In Franklin County, residents can visit [www.Rentful614.com](http://www.Rentful614.com) to learn more and connect with a nonprofit provider.

Other counties can locate a directory of assistance providers from the Coalition on Homelessness and Housing in Ohio at [www.COHHIO.org](http://www.COHHIO.org).

## End Notes for "PAY TO STAY & HOME RULE" Article

[1] A municipal corporation is either a city or village. A city is a municipal corporation with a population of 5,000 or more as of the last census. All other municipal corporations are villages. O.R.C. 703.01. "Municipal corporation" and "municipality" are used interchangeably in this memorandum.

[2] In the Landlord-Tenant context, at least one court has gone so far as to say that the municipal ordinance and state statute must be "utterly inconsistent" with each other. *Mariemont Apt. Assn. v. Village of Mariemont*, 1st Dist. Hamilton No. C-050986, 2007-Ohio-173, ¶ 12-13.

[3] The statute prohibited carrying a gun in a building owned by the state or a political subdivision, but not on other governmental property.

[4] The "statewide concern" doctrine has engendered a fair amount of confusion, but the court in that case clarified that it is one of the tests concerning whether a municipal ordinance is an exercise of the power of local self-government. *Id.*, ¶ 29.

[5] In *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, the Supreme Court considered a provision in Ohio's handgun law that stated that no municipal corporation could adopt an ordinance attempting to restrict places where a person licensed to carry a handgun by the state could carry it. The 6th District had held that this language preempted local regulation without considering whether there was an actual conflict between the state law and the local ordinance, but the Supreme Court declined to uphold the ruling on that basis. Rather, the Court held that the Home Rule Clause means that the municipal ordinance must yield only if there was an actual conflict. *Id.* at ¶ 29. Because the state law said that the holder of a concealed carry permit could carry a concealed handgun anywhere in the state, subject to limited exceptions, none of which concerned municipal parks, and the village ordinance prohibited concealed carry in city parks, the Court found a conflict and held that the ordinance must yield.

[6] See also *Ohioans for Concealed Carry, Inc. v. Oberlin*, 9th Dist. Lorain, No 15CA010781, 2017-Ohio-36, ¶ 19-20 (holding language in R.C. 9.68(A) stating that the General Assembly intended to occupy the field of handgun possession in Ohio and preempt any local regulation could not preclude local regulation, so long as the local regulation did not conflict with state law, and holding that because the local law prohibited only "unlawful" handgun possession in city parks, it did not conflict with state law), *Buckeye Firearms Foundation Inc. v. Cincinnati*, 1st Dist. Hamilton No. C 190569, 2020-Ohio-5422, ¶ 27 (noting that the Supreme Court had held that a statement of preemption is insufficient to overcome a municipal police regulation in the absence of a conflict, but finding that the city ordinance prohibited "trigger activators" in conflict with O.R.C. 9.68, which explicitly authorized the possession of firearm components) and *Ohioans for Concealed Carry, Inc. v. Cleveland*, 8th Dist. Cuyahoga No. 104970, 2017-Ohio-1560, ¶ 20 ("Despite the General Assembly's intent to occupy the field of handgun possession in Ohio, municipalities retain home rule authority to enact local legislation that is not in conflict with general laws." The court found that some challenged provisions conflicted with state law but that others did not.).

[7] The entire statute must be examined to determine if the statute is a general law. *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, ¶4; *N. Olmstead*, 65 Ohio St.3d at 245 (looking at all of Chapter 4749 to determine whether the "statute" provided for uniform statewide regulation of security personnel).

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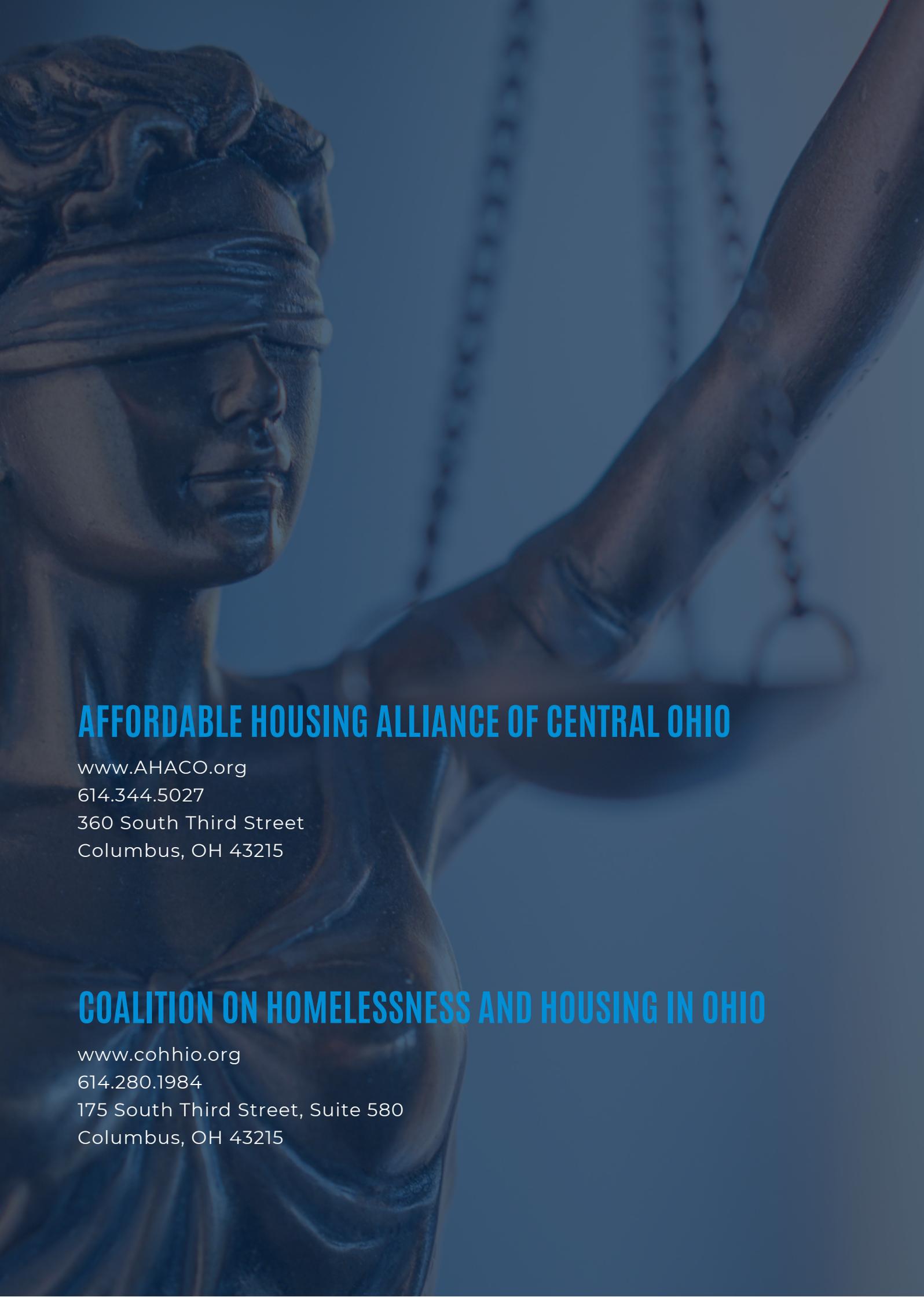
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