

**ORDINANCE RECORD**  
**VILLAGE OF NEWBURGH HEIGHTS, OHIO**  
**ORDINANCE NO. 2021-31**

INTRODUCED BY: Councilwoman Gigi Traore

**AN ORDINANCE ENACTING CHAPTER 727 OF THE CODIFIED ORDINANCES ENTITLED "TENANT'S RIGHT TO PAY TO STAY" AND DECLARING AN EMERGENCY**

WHEREAS, local, state and national governments as well as health authorities are experiencing and responding to an ongoing COVID-19 health crisis, which will have lasting impact on residents and the economy; and

WHEREAS, on March 9, 2020, Ohio's Governor declared a State of Emergency as a result of COVID-19; and the Centers for Disease Control and Prevention, Ohio Department of Health, and Cuyahoga County Department of Public Health have issued recommendations including, but not limited to social distancing, mask wearing, use of personal protection equipment, quarantine if / when sick, cancelation and or postponement of 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 Newburgh Heights have experienced or expect to experience sudden and unexpected loss of wages; and

WHEREAS, individuals exposed as well as impacted by COVID-19 are subject to be temporarily unable to report to work due to illness or quarantine or caring for family members resulting in a potential loss of income, housing, and the ability to provide the basic necessities, thereby placing increased demands on strained local and regional community resources, including shelters and food banks; and

WHEREAS, additional local and state wage as well as economic impacts are anticipated, leaving renters vulnerable to housing displacement, eviction and homelessness thereby making Village residents more susceptible to COVID-19 infections; and

WHEREAS, a federal eviction moratorium is in place and rental assistance as well as other dollars have been allocated and made available to Ohioans to assist with lapse of rental payment caused by COVID-19 and aiding residents until able to return to their places of employment; and

WHEREAS, a stable housing environment is often linked directly to health and safety outcomes;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE VILLAGE OF NEWBURGH HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1: That Chapter 727 of the Codified Ordinances of the Village of Newburgh Heights, OH entitled "Tenant's Right to Pay to Stay" is hereby enacted to read as follows:

**CHAPTER 727**  
**Tenant's Right to Pay to Stay**

**727.01 Definitions**

**727.02 Tenant's Affirmative Defense After Tendering Rent Prior to the Filing of an Eviction Action**

**727.03 Tenant's Affirmative Defense After Tendering Rent Prior to Entry of an Eviction Judgment for Nonpayment of Rent**

**727.04 Tenant's Affirmative Defense After Tendering Rent Prior to Execution of an Eviction Judgment**

**727.05 Rent Receipt Required**

**727.06 Other Causes for Eviction**

**727.07 Reasonable Late Fees**

**727.99 Severability**

**727.01 Definition**

- (a) 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.
- (b) For the purposes of this Chapter, "Tender" means an offer of payment.

**727.02 Tenant's Affirmative Defense After Tendering Rent Prior to the Filing Of an Eviction Action**

- (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 and reasonable late fees to avoid the filing of such action for the restitution of the lands or tenements.
- (b) 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.
- (c) 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.

### **727.03 Tenant's Affirmative Defense After Tendering Rent Prior to the Filing Of an Eviction Action for Nonpayment of Rent**

- (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.

### **727.04 Tenant's Affirmative Defense After Tendering Rent Prior to Execution of an Eviction Judgment**

- (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 rental 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.

### **727.05 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.

### **727.06 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 nonpayment of rent.

### **727.07 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.

### **727.99 Severability**

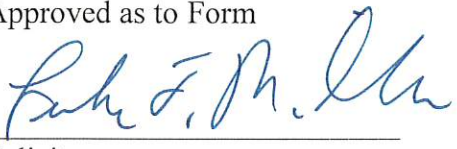
If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The Village of Newburgh Heights 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 found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in such formal action occurred in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

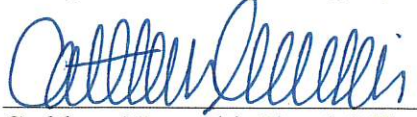
Section 3: This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health and safety of the inhabitants of the Village of Newburgh Heights, such emergency being the necessary need for Council to protect the rights of its residents, the Village's housing stock and to provide adequate opportunity to maintain economic support for landlords, especially during the public health crisis due to COVID-19; wherefore, provided it receives the affirmative vote of four (4) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

PASSED: October 5, 2021

Approved as to Form

  
Solicitor

  
Trevor Elkins, Mayor  
Village of Newburgh Heights, Ohio

  
Cathleen Nagorski, Fiscal Officer  
Village of Newburgh Heights, Ohio

1<sup>ST</sup> Reading: 9/21/21  
2<sup>ND</sup> Reading: 10/5/21  
3<sup>RD</sup> Reading: 10/5/21