CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

DATE: August 17, 2005

OPINION #05-004

TO: **Ald. Verveer, District 4**

FROM: Michael P. May, City Attorney
Steven C. Brist, Assistant City Attorney

SUBJECT: **MGO, Chapter 32 - Security Deposits and Check-In and Check-Out Forms**

You have asked the Office of the City Attorney for an Opinion on two sections of Chapter 32, relating to security deposits and check in and check out forms for landlords and tenants. You have asked two questions.

First, Sec. 32.07(7)(b), MGO, provides that when a landlord does not refund a security deposit in full, the landlord must send "applicable receipts and estimates" in addition to an itemized statement of the specific claims made against the security deposit. The phrase "applicable receipts and estimates" is not contained in Wis. Adm. Code Sec. ATCP 134.06, the similar provision in the landlord tenant code promulgated by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). You asked about the meaning of "applicable receipts and estimates."

Second, you ask whether, under Sec. 32.07(5)(a), MGO, a landlord may provide a tenant with a single sheet that combines the check-in and check-out form into a single document, and the landlord provides such form at the start of the tenancy.

As a preliminary comment, we note that this Office is not aware of any appellate decisions that interpret these ordinances. We have found limited legislative history records for these sections. The Madison City Council does not prepare a transcript of its proceedings, nor are transcripts typically kept for city boards and committees.

1. Applicable Receipts and Estimates. You ask first about the meaning of the phrase "applicable receipts and estimates", which is included in Sec. 32.07(7)(b), MGO, and is not contained in ATCP 134.06. Under both the city ordinance and the state administrative rule, a landlord must provide an itemized statement of claims made against the security deposit, but under city ordinance the landlord has the additional requirement to provide "applicable receipts and estimates". It is important to note the interrelationship between ATCP 134 and Chap 32, Madison General Ordinances. Some of Madison's Chapter 32 predates the state administrative rules and were used by the state in drafting its original rules. In addition, the City of Madison has updated its own Chapter 32 to reflect changes in the state administrative code. Many sections of the two laws are virtually identical.

However, in the section you cite, Section 32.07(5)(a), MGO, the city added the additional requirement that "applicable receipts and estimates" must be provided, over and above the requirements of the state administrative rule. It is a rule of statutory construction that "a statute

or rule is construed, if possible, to give effect to its entire text.". Sutherland, *Stat. Const.* Sec 46.06 (5th ed. 1992). *State v. Martin*, 162 Wis.2d 883, 470 N.W.2d 900 (1991). The additional words in the City's Ordinance must therefore be given effect and meaning. It is also significant that Madison's ordinance contains language not found in the state administrative code, because the City Council must have intended to add a requirement in addition to the code requirements. The additional words add additional responsibility for the landlord.

A receipt is "a written acknowledgment of the receipt of money…" *Black's Law Dictionary*. Because a receipt is an acknowledgment of payment, it means that the landlord has paid someone else for something. It is more than an itemized statement prepared by the landlord; it is evidence that someone else has been paid for repairs to a rental unit. The language of the ordinance requires that a receipt be provided, if the receipt is applicable. It implies that the receipt will come from a third party, whether that third party is a contractor or a vendor.

An estimate is "a valuing or rating by the mind, without actually measuring, weighing or the like, a rough or approximate calculation only…". *Black's Law Dictionary*. Unlike the definition of a receipt, the definition of an estimate does not imply that a third party has made the estimate. But, given the rule of statutory construction, an estimate must still be more than an itemized statement of claims. The definition indicates that an estimate is a rough or approximate calculation. It is common in the construction industry for a contractor to make an estimate of the costs of repairs, such an estimate is not a binding contract, but an approximate calculation. Such an estimate has a reasonable basis for its value. It shows the cost of materials to be used in completing a task, an estimate of the number of hours needed for labor to complete the task, the cost of labor per hour and any other anticipated expenses. It is reasonable to expect that under, Section 32.07(5)(a), MGO, that a landlord will not provide an arbitrary figure but will provide an estimate based on factors reasonably related to actual costs. For example, a broken storm window may occur at a rental unit. The landlord can estimate the cost of glass, based on a market price from a supplier and calculate the approximate time it will take to compete the repair. If the landlord can obtain an estimate from a contractor giving the approximate amount of the repair, this would certainly meet the requirement of the City's ordinance. The ordinance does not, on its face, require that a third party prepare the estimate.

It is also a rule of statutory construction that a statute or rule must be construed, if possible, to give effect to its objective and purpose. Sutherland, *Stat. Const.* Sec. 45.08 and Sec. 45.09 (5th Ed. 1992). State v. Corey J.G., 215 Wis.2d 395, 412, 572 N.W.2d 845 (1998). Sec. 32.01, provides a statement of purpose for the City's Landlord Tenant ordinance. One of the purposes of Chapter 32 is to establish standards and procedures for use, if needed, to encourage communication and resolution of disputes between landlords and tenants In order to promote full communication and resolution of disputes, parties need to know the actual costs of a repair in the marketplace. In order to promote dispute resolution, an estimate under Sec. 32.07(5)(a), MGO, should be based on a reasonable and fair calculation of anticipated costs. It should be based on related to actual market costs, not wild guesses. An estimation that is not based on actual costs will tend to cause disputes, rather than to resolve them.

Sec. 32.07(15), Madison General Ordinances, prohibits a landlord from intentionally

misrepresenting or falsifying any claim against a security deposit, including the costs of repairs. A landlord has a duty to make accurate and truthful claims against a security deposit. An estimate that is based on actual market costs meets this test.

The ordinance, Sec. 32.07(5), MGO, creates a requirement beyond the statement of claims required under ATCP 134.06. The ordinance requires receipts from a third party, where those receipts are applicable. It requires estimates of the cost of a repair or service that have a rational basis, and are not calculated in a arbitrary manner.

2. Combined Check-In and Check-Out Forms. Secondly, you ask whether, under Sec. 32.07(5)(a), MGO, a landlord may provide both the check-in form and the check-out form at the beginning of the tenancy. The plain wording of the Sec. 32.07(5)(a), MGO, states that the check-out form shall be provided to the tenant "prior to the termination of the tenancy." Any day prior to the termination of the tenancy, including the day the lease is signed would seem to meet that requirement. Sec. 32.07(5)(e), mentions providing a "combined" check-in/check-out form, so it appears that the check-out form may be supplied at the beginning of the tenancy. Otherwise it would be impossible for there to be a "combined" form.

It should be noted that Sec. 32.07(5)(b), MGO, requires that the landlord must notify the tenant in writing that the tenant may inspect the dwelling unit and notify the landlord of any pre-existing damages or defects by "noting the conditions on the check-in form" This means that a combined check-in/check out form must be some type of multiple page "carbon" form that allows the tenant to provide notification by returning the check-in portion of the form and keeping the check-out portion of the form for later use. If a check-in and check-out form were combined on one sheet of paper, it would be impossible for the landlord or the tenant to comply with the procedures of Sec. 32.07(5). For these reasons, we conclude that a landlord may provide both the check-in form and the check-out form at the same time at the beginning of the tenancy. In order to make clear to a tenant the nature of a combined form, the landlord should notify the tenant that the combined form must be saved to be used as a check-out form.

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Michael P. May, City Attorney

SYNOPSIS: Under Sec. 32.07(7)(b), MGO, a landlord is to provide copies of written receipts and estimates if the security deposit is not returned in full. Under Sec. 32.07(5)(a), MGO, a landlord may provide a combined check-in/check-out form at the beginning of the tenancy so long as the tenant is notified and the form is designed to allow the tenant to keep a copy of the check-in form for later use at check-out.