

CHAPTER 32

LANDLORD AND TENANT

Section

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32.01 STATEMENT OF PURPOSE. Whereas, the City of Madison has a significant tenant population and equitable landlord-tenant relations are a matter of public welfare. It shall be the policy of the City of Madison to encourage communication and resolution of disputes between landlord(s) and tenant(s). While such communication and resolution can and should occur without the direct participation of the City government, this chapter is adopted to establish standards and procedures for use if needed to reach this goal. This chapter is also intended to facilitate collective bargaining between landlords and tenant unions by establishing minimal procedures to be followed in that process. (Cr. by Ord. 6098, 1-6-78)

32.02 RULES AND DEFINITIONS.

- (1) Rules.
 - (a) The rules and definitions contained in this section shall be applied throughout Chapter 32.
 - (b) (R. by Ord. 10,778, 11-16-93)
 - (c) All rights of tenants under Chapter 32 shall be nonwaivable.
- (2) Definitions.
 - (a) Authorized Agent. A person empowered by landlord(s), tenant, or tenant union to represent them. The agent need not be a member of the authorizing group.
 - (b) City financial assistance means any grant, loan, contract, purchase of service agreement or other arrangement by which the City of Madison funds or otherwise makes available assistance to rental housing development, redevelopment or rehabilitation projects in the form of:
 - 1. Monetary funds;
 - 2. Real and personal property or any interest in or use of such property, including:
 - a. Transfers or leases of such property for less than the fair market value, or for reduced consideration; and
 - b. Proceeds from a subsequent transfer or lease of such property if the City's share of its fair market value is not returned to the City.

3. The sale or lease of, or the permission to use (on other than a casual or transient basis) City property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient;
 4. "City financial assistance" includes, but is not limited to, capital revolving fund loans, redevelopment contracts, CDBG, HOME and Affordable Housing Trust Funds, economic development agreements, tax increment financing or financing for blight elimination and slum clearance. City financial assistance does not include funds made available directly to the tenant or a third party as a household subsidy, such as emergency shelter assistance, grant funded security deposits or rental supplements. City financial assistance also does not include any portion of street improvements, including, but not limited to, improvements of sidewalks, lighting, curb and gutter and/or reverse mortgage assistance. (Cr. by Ord. 13,171, 10-29-02)
- (c) Earnest Money Deposit. The total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental application considered by the landlord. (Cr. by Ord. 7542, 10-22-81; Renumbered by Ord. 13,171, 10-29-02)
 - (d) Government Housing Subsidies means financial assistance used for tenant based housing purposes including, but not limited to, Section 8 vouchers and certificates (Housing Choice Voucher Program), welfare to work vouchers and any other Section 8 special allocation vouchers. (Cr. by Ord. 13,171, 10-29-02)
 - (e) Grievance. Any dispute between tenant(s) and landlord over rents or other condition of tenancy.
 - (f) Guest. Any person present on the leased premises with the consent of the current tenant who is not listed in the lease. (Cr. by Ord. 12,932, 12-11-01)
 - (g) Landlord. The owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them. (Am. by Ord. 10,555, 12-11-92)
 - (h) Owner. One or more persons, jointly or severally vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.
 - (i) Person means any individual, partnership, association, corporation, joint venture, limited liability company or partnership, trust, or other entity that may enter into contracts. (Cr. by Ord. 13,171, 10-29-02)
 - (j) Recipient of City financial assistance means any person, including that person's successors, assignees and transferees. (Cr. by Ord. 13,171, 10-29-02)
 - (k) Rental Agreement. A written or oral agreement for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of tenancy such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.
 - (l) Residential Property. This chapter covers any premises which is used for any residential purpose under the terms of a rental agreement.
 - (m) Security Deposit. The total of all payments and deposits given by a tenant to the landlord in a residential tenancy as security for the performance of the tenant's obligations, and includes but is not limited to all rent payments in excess of one month's prepaid rent, all pet deposits, furniture deposits and key deposits. (Am. by Ord. 10,812, Adopted 1-18-94)

- (n) Tenant. A person, occupying ore entitled to present or future occupancy of a mobile home, as defined in Sec. 9.23(1) or residential property under a rental agreement, and includes persons occupying a mobile home or residential property under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed by Sheriff's execution of a judicial writ of restitution issued under Sec. 799.44, Wis. Stats. It also applies to person entitled to the return of a security deposit or an accounting for the security deposit. (Am. by Ord. 11,724, 12-13-96)
- (o) Tenant Union. Any organization which intends to engage in collective bargaining with landlord(s).

(Section 32.02(2) Am. by Ord. 12,533, 2-18-00; Ord. 12,932, 12-11-01)

32.03 HOUSING COMMITTEE.

- (1) Creation. There is hereby created a Housing Committee for the City of Madison.
- (2) Composition. The Housing Committee shall consist of fifteen (15) members appointed by the Mayor and subject to approval by the Common Council. Two (2) members shall be alderpersons. The other members shall be citizen members. Members shall serve without compensation. The members shall elect annually from among their citizen members a chairperson and vice-chairperson; however, the initial chairperson shall be selected by the Mayor. (Am. by Ord. 13,309, 4-30-03)
- (3) Terms. All members shall be appointed for three year terms, however, the initial terms of six (6) of the citizen members shall expire on April 30, 2001. Initial terms of the remaining eight (8) citizen members shall expire on April 30, 2002. Thereafter, each citizen member shall be appointed for a three-year term commencing on May 1st and expiring on April 30th. The term of any alder person shall expire with the expiration of his or her term in office.
- (4) Powers and Duties. The Housing Committee shall have the following powers, duties, and functions:
 - (a) encourage the development and preservation of affordable housing in the City of Madison;
 - (b) serve as a focal point for housing issues, including landlord-tenant issues;
 - (c) oversee the coordination of City of Madison housing policies;
 - (d) make recommendations to the Mayor and the Common Council on all aspects of housing policy;
 - (e) create subcommittees to carry out its functions;
 - (f) hold public hearings on, and recommend to the Common Council specific policies and programs to encourage and assess the City's housing efforts; and
 - (g) in addition to the foregoing, the Housing Committee shall have such other powers, duties and functions related to housing as are conferred on it by the Mayor or the Common Council from time to time.
 - (h) Perform the functions formerly exercised by the Rent Abatement Oversight Committee:
 - 1. Adopt such rules and regulations, subject to approval by the Common Council, as may be necessary to carry out the purpose and provisions of the rent abatement process in Sec. 32.04 of the Madison General Ordinances.
 - 2. Recommend to the Common Council additions to, deletions from, and changes in the Schedule of Rent Impairing Violations in Sec. 32.04(5)(d) as well as other provisions in Chapter 32 that the Committee believes are appropriate for Common Council action.
 - 3. Approve forms for the use of tenants, landlords, the Building Inspection Division of the Department of Planning and Community and Economic Development and Rent Abatement Hearing Examiners to facilitate the rent abatement process in Sec. 32.04 of the Madison General Ordinances. (Am. by ORD-08-000109, 10-7-08)

4. Institute procedures for the selection of Rent Abatement Hearing Examiners for the setting of a time and place for rent abatement hearings and for the giving of notice thereof to interested landlords and tenants within ten (10) days of the filing of a request for a hearing concerning authorization for rent abatement with the Building Inspection Division of the Department of Planning and Community and Economic Development. (Am. by ORD-08-000109, 10-7-08)
5. Establish criteria and procedures for waiving the ten dollar (\$10) filing fee in cases of economic hardship.
6. Maintain statistics on the number of requests for hearings concerning authorization for rent abatement, the number of hearings held and the results thereof including, but not limited to such information as the following:
 - a. Whether abatement was granted and, if so, in what percentage.
 - b. Where abatement was denied, the specific reason therefor.
 - c. The amount of time elapsed between the filing of the request for a hearing and the issuance of a decision.
7. In order to assist in determining the effectiveness of the abatement process and to ensure full enforcement of the abatement ordinance, the Committee shall also maintain additional statistics which may include such other information as the following:
 - a. The amount of time elapsed between the initial inspection and authorization for abatement, if any.
 - b. Any extensions of time to effect compliance with inspection orders for repairs to residential rental property.
 - c. The number of inspection orders forwarded to the City Attorney for prosecution, the date referred and the final disposition of such referrals.
 - d. The number of requests to the City Attorney for enforcement of a Hearing Examiner's order or for prosecution for failure to obey same including such information as the date of referral, the action taken by the City Attorney, the date on which final action was taken and the outcome of such action including abatement amounts secured for a tenant and forfeitures imposed.
8. Staff. The Department of Planning and Community and Economic Development shall provide staff support for both the Housing Committee and for the Rent Abatement Hearing Examiners and shall receive and retain all documents, reports and records relating thereto.
- (5) Meetings. The Housing Committee shall meet at least once a month and shall conduct its business in accordance with rules which it may establish. The Director of the Building Inspection Division or his or her designee shall provide staff assistance to the Housing Committee, shall serve as its Secretary, but shall not vote. The City Attorney or his or her designee shall furnish the Housing Committee with legal assistance necessary to carry out its functions. The staff of the Department of Planning and Community and Economic Development shall provide assistance to any subcommittees created by the Housing Committee. (Am. by Ord. 12,882, 8-7-01; Ord. 13,652, 7-7-04; ORD-08-00109, 10-7-08)

(Sec. 32.03 Cr. by Ord. 12,527, 2-10-00)

32.035 RENT ABATEMENT OVERSIGHT COMMITTEE. (R. by Ord. 13,673, 8-6-04)

32.04 RENT ABATEMENT.

- (1) Statement of Intent. The Common Council of the City of Madison hereby finds that in order to insure the proper repair and maintenance of residential buildings within the City of Madison, to prevent the deterioration and neglect of such structures to the protection of the health and safety of the people of Madison and to further enforcement of and compliance with the Building and Minimum Housing and Property Maintenance Codes of the City of Madison, it is necessary, in the case of uncorrected rent impairing violations, that tenants residing in the City of Madison be authorized to abate an appropriate portion of their rental payments under the provisions of this section.
- (2) Notice. A list of addresses of rental properties with uncorrected rent-impairing violations shall be published each week in the official City paper within ten (10) days of the reinspection which reveals noncompliance. Such notice shall indicate that the tenants may be eligible for rent abatement and shall state that any such tenant must request authorization to abate rent within thirty (30) days of publication of the notice of eligibility by the Building Inspection Division of the Department of Planning and Community and Economic Development. A copy of the notice shall also be sent by first class mail, addressed to "Occupant" at each rental unit with uncorrected rent-impairing violations, on or before the date of publication of the notice. Together with the copy of the notice there shall be mailed a cover letter including, but not limited to, the following information: Notice of Eligibility to Apply for Rent Abatement - The owner of your apartment has not followed an order from the City of Madison Building Inspection Division to correct Housing Code violations. Because the owner has not complied, you may be able to get a portion of your rent back pursuant to Madison General Ordinances Sec. 32.04. Along with said cover letter, a letter shall also be included with the copy of the notice, which shall include, but will not be limited to, the following information: Notice of Eligibility to Seek Self Help Repair- In addition to seeking rent abatement, because the owner of your apartment has not followed an order from the City of Madison Building Inspection Division to correct Housing Violations, you may have the right to correct these violations and deduct the amount of the repairs from your rent, if you follow the procedures in Madison General Ordinances Sec. 32.17. (Am. by Ord. 11,994, 12-30-97; ORD-06-00146, 11-2-06; ORD-08-00109, 10-7-08)

(3) Definitions.

Affected Applicant. In rent abatement categories where the percentage of rent abatement is expressed as a certain percentage or a certain dollar amount “per affected applicant”, abatement applies only to those dwelling units/lodging rooms affected by the violation and only if a tenant therein has applied for rent abatement.

Affected Dwelling Unit or Lodging Room means a dwelling unit or lodging room in which a rent impairing violation exists or a dwelling unit or lodging room in a residential building where a common area violation exists.

Applicant encompasses the total number of eligible tenants residing in a dwelling unit or lodging room where an eligible tenant has applied for rent abatement and not an individual eligible tenant within the unit or room. (Am. by Ord. 9752, Adopted 4-4-89)

Common Area Violation. A condition constituting a rent impairing violation which exists in any part of a residential building or lot not contained within a dwelling unit or lodging room.

Eligible Tenant(s). Any current or former tenant(s) of a landlord of residential premises where the landlord fails to comply with an order of the Building Inspection Division of the Department of Planning and Community and Economic Development to correct a rent impairing violation by the original due date in the orders unless that date is found unreasonable by the Building Board of Examiners and Appeals, provided that the tenant has lived in an affected dwelling unit for some portion of the time period from the date of the initial inspection by the Building Inspector to the close of the fifteen (15) day period during which a request for abatement hearing may be filed. (Cr. by Ord. 9752, 4-4-89; Am. by ORD-08-000109, 10-7-08)

Per Fixture means per affected appliance regardless of how many separate rent impairing violations may affect that appliance.

Only Facility means the only appliance of its kind in the dwelling unit or lodging room.

Provider Agency means any governmental agency or private social services agency which by contract provides rental assistance on behalf of low-income tenants where such assistance payments are paid directly to the landlord. (Cr. by Ord. 11,339, 8-25-95)

Rent Impairing Violation. A rent impairing violation within the meaning of this section shall designate a condition in a dwelling unit, lodging room or other area of a residential building or lot which constitutes or, if not promptly corrected, will constitute a fire hazard or a threat to the health or safety of occupants thereof. Such conditions include but are not limited to those which involve deficiencies in security, heating, electricity and/or plumbing.

Successor Tenant(s). Any individual(s) who become(s) a tenant in a dwelling unit or lodging room where a prior tenant was authorized or is in the process of being authorized to abate rent pursuant to Sec. 32.04 and where, at the time the tenancy of the successor tenant commences, there exists an uncorrected rent impairing violation which was determined or is in the process of being determined by a hearing examiner to be abatable.

Anyone who succeeds a successor tenant is also a successor tenant, provided that at the time her/his tenancy commences there exists an uncorrected rent impairing violation for which abatement was authorized.

(Cr. by Ord. 9752, Adopted 4-4-89; Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00; Sec. 32.06(3) R & ReCr. from former Sec. 32.06(4)(b) by Ord. 11,339, 8-25-95)

(4) Authorization of Rent Abatement.

- (a) Eligibility. Notwithstanding any other provision of law or any agreement, whether oral or written, tenants and provider agencies shall be eligible to abate a portion of the total rental payments, in accordance with this section and pursuant to the order of a Rent Abatement Hearing Examiner or by written agreement of the parties, if the landlord of the residential premises fails to comply with an order of the Building Inspection Division of the Department of Planning and Community and Economic Development to correct by the original due date, unless such due date is found to be unreasonable upon appeal to the Board of Building Code, Fire Code, Conveyance Code and Licensing Appeals pursuant to Sec. 29.18(3) of the Madison General Ordinances, a violation which is “rent impairing” as that term is defined in Sec. 32.04(3).

Any such order of the Building Inspection Division shall specifically state that uncorrected violations may be eligible for abatement in addition to any other penalties provided by law. A tenant’s eligibility to abate rent shall apply only to the eligible tenant(s) or successor tenant(s) upon whose rented premises the uncorrected rent impairing violation exists or to any eligible tenant(s) or successor tenant(s) in a building with an uncorrected rent impairing violation in a common area. A provider agency’s ability to abate rent shall apply only to provider agencies which pay or have paid a portion of an eligible tenant’s rent while an uncorrected rent-impairing violation exists on the premises or common area of the eligible tenant’s building. Where an award is made and rent has been paid by both a tenant and a provider agency, the tenant’s portion of the award shall be up to but not greater than the amount of rent the tenant has paid. Where the award amount is less than or equal to the amount of rent the tenant paid, the tenant shall receive all of the award. No rent may be abated pursuant to this ordinance until abatement is ordered by the Rent Abatement Hearing Examiner or authorized by written agreement between the parties. (Am. by Ord. 11,960, 11-4-97; ORD-08-00109, 10-7-08; ORD-09-00019, 3-14-09)

- (b) Other Remedies. The right of a tenant to abate a portion of the rent as established by this section shall not preclude or affect in any way the tenant’s right to abate under Chapter 704 of the Wisconsin Statutes; nor shall it preclude or affect in any way the tenant’s or landlord’s right to any of the remedies provided by the laws of the State of Wisconsin and the Madison General Ordinances pertaining to the relationship of landlord and tenant. (Cr. by Ord. 11,339, 8-25-95)
- (c) Designation of Rent Impairing Violations. The Common Council shall, after notice and public hearing, adopt a list of violations of the provisions of chapters 18, 19, 27, 28, 29 and 30 of the Madison General Ordinances to be classified as “rent impairing” as above defined. Said list shall contain a brief description of the condition constituting the violation, the section of the ordinances violated and the percentage range of possible rent abatement. The Rent Abatement Oversight Committee may at any time recommend a change in the number of violations, their descriptions or the percentage of possible rent abatement for a particular violation but no such change shall be made except in the manner set forth above. (Am. by Ord. 11,339, 8-25-95)
- (d) Schedule of Rent Impairing Violations. A tenant authorized to abate rent shall do so in accordance with the following schedule with the precise amount to be set by the Rent Abatement Hearing Examiner after notice and hearing pursuant to Sec. 32.04(4)(e). The maximum total abatement authorized pursuant to this ordinance shall not exceed ninety-five percent (95%) of the periodic rental payment, except where the premises have been vacated pursuant to an order of the Director of the Building Inspection Division of the Department of Planning and Community and Economic Development or pursuant to any other tenant right to remove from residential rental premises secured under Wisconsin law. (Am. by ORD-08-000109, 10-7-08)

MGO Violation	Description	% of Rent Abatement
1. 27.04(2)(a) [27.05(2)(j)]	a. Kitchen sink or lavatory basin i. Not provided or missing b. Flush water closet i. Not provided or missing c. Bathtub or shower i. Not provided or missing d. Water pressure/volume i. None ii. Inadequate	10-25% 24-48 hrs 25% More than 48 hrs 50-95% Not only facility 5-10% Only facility 25-50% Not only facility 5-10% 24-48 hrs 25% More than 48 hrs 50-95% 10-25%
2. 27.04(2)(b) [27.05(2)(j)]	a. Hot water tank i. Not provided or totally not functional ii. In need of repair to the extent that supply is inadequate or water is consistently below 100°F. iii. Consistently does not provide 120° water but above 100° iv. Tank leak - See Basement Water and Moisture Problems	25-50% 10-25% 5-10%
3. 27.04(2)(c)	a. Garbage and refuse storage facilities i. Adequate storage not provided	1-5%
4. 27.04(2)(d) [27.05(2)(i)] [27.05(2)(h)]	a. Required exit i. Not provided or totally unusable ii. Partially usable iii. Blocked by accumulation of stored items, junk, trash or debris A. totally B. partially iv. Other impairment of exit use, i.e., double cylinder lock, skeleton keyed lock, movable furniture obstructing exit path Note: Repairs to components of an exit system (e.g., doors, stairs, porches, handrails, guardrails) where the exit remains in use should abate under repair categories.	10-25% per exit 5-10% per exit 10-25% per exit 5-10% per exit 1-5% per exit

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
5. 27.04(2)(f)	a. Natural light or ventilation i. Not provided in one or more rooms ii. Inadequate light or ventilation	10-25% per room 5-10%
6. 27.04(2)(f) [27.07(2)(c)]	a. Screens i. No screens provided or all screens in need of repair ii. Not all screens provided and/or some screens in need of repair	10-25% 5-10%
7. 27.04(2)(g) [27.04(2)(g)] [27.04(2)(i)]	a. Electrical service and wiring i. No electricity ii. Inadequate electrical service (that part of the wiring system that starts where utility wires end and ends with and includes the main fuses) (substantially limits usage or presents potential hazard) iii. Inadequate branch circuits iv. Unfused circuits (the use of unfused circuits must be discontinued) v. Overfused circuits vi. Exposed wires, damaged or bare, presenting shock hazard vii. Convenience outlets not provided, not functional, not proper number, not proper installation (one or more outlets)	24-48 hrs 25% More than 48 hrs 50-95% 10-25% 5-10% 10-25% 5-10% 5-10% 5-10%

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
8. 27.04(2)(g) [27.04(2)(g)4.] [27.04(2)(g)5.]	a. Lighting i. Required light switches not functioning or not provided ii. Public halls and/or stairs not lit iii. Outside entrance doors and/or required parking areas unlit	1-5% 1-5% per affected applicant 1-5% per affected applicant
9. 27.04(2)(h) 10. 27.04(2)(i) [27.04(2)(g)] 11. 27.05(2)(a)	a. Heat i. No heat or consistently below 55° ii. Inadequate (55-66°) or occasionally inadequate a. Required exit signs i. Missing or not lit a. Improper grading and/or no eaves troughs and/or downspouts i. Not causing basement or ground floor water or moisture problems ii. Resulting in basement water or moisture problems	24-48 hrs 25% More than 48 hrs 50-95% 10-25% 1-5% per sign No Abatement See Basement Water and Moisture Problems

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
12. 27.05(2)(g)1. [27.05(2)(k)] [27.05(2)(g)3.]	a. Interior floor, wall, or ceiling	
	i. Unsafe so that an area or room is ordered vacated by B.I. Dept.	Not a kit., bath or BR 25-50% Kit., bath or BR 50-95%
	ii. Is damaged or in such disrepair that it interferes with tenant's full use of all or part of the premises (including but not limited to holes in floors, walls, ceilings)	Kit., bath, BR (including closets) or other living areas 10-25% Other 5-10%
	iii. Incapable of affording privacy	10-25%
	iv. Reasonably waterproof or hard surface not provided in areas subject to moisture	5-10% per room
	v. Appropriate floor surfacing not provided, or damaged so that it does not function to provide ease of maintenance vi. Unsealed gaps allowing collection of dirt and other matter severe enough to create a cleaning or sanitation problem in bathing, toilet or food preparation areas	5-10% per room 1-5%
13. 27.05(2)(g)2.	a. Exterior foundation, wall, floor and/or roof condition	
	i. Unsafe so that an area or room is ordered vacated by B.I. Dept.	Not a kit., bath or BR 25-50% Kit., bath, or Br 50-95%
	ii. Is damaged or in such disrepair that it interferes with the tenant's full use of all or part of the premises (including but not limited to roof leaks, holes in floors, walls, or ceilings)	Kit., bath, BR (including closets) or other living areas 10-25% Other 5-10%
	iii. Incapable of affording privacy iv. Resulting in wet basement - see Basement Water and Moisture Problems	10-25%

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
18. 27.05(2)(h)1.	a. Door viewer, front entry door dwelling unit or lodging room. Not provided or not functional	5%
19. 27.05(2)(h)2.	a. Exterior hinge pins not protected in dwelling unit or lodging room	5% per door
20. 27.05(2)(h)3.	a. Dead bolt lock (one or more locks)	
	i. No lock or totally not functional lock	25-50%
	ii. Existing lock provides some security but is not a deadbolt. For example: A slide bolt lock, live bolt lock, guarded latch lock on doors accessible from grade, lock with no strike plate	10-25%
	iii. Lock conditions which have minimal effect on security. For example: Screws in strike plate not 2 1/2" long, difficult but not impossible to lock and unlock, live, guarded or slide bolt locks on doors not accessible from grade	1-5%
	b. Secondary locking device	
	i. Door does not lock and no secondary locking device or totally not functional	25-50%
21. 27.05(2)(h)4	ii. Door locks but no secondary locking device or totally not functional	10-25%
	a. Required window sash fasteners not provided or not functional (one or more fasteners)	
	i. First floor, basement, and all other windows accessible by balconies, fire escapes, trees, or other existing means	10-25%
22. 27.05(2)(h)5	ii. All other windows where required	1-5%
	a. Required window ventilating sash fasteners not provided or not functional (one or more fasteners)	5-10%

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
23. 27.05(2)(h)7.	a. Common area doors i. No lock or totally not functional lock ii. Lock conditions which have a minimal effect on security, e.g., no strike plate screws in strike plate not 2-1/2" long iii. Required door closer missing or not functioning	5-10% 1-5% 1-5%
24. 27.05(2)(h)10.	a. Required locks on residential buildings with two or more dwelling units and/or lodging rooms on all exterior doors and main entrance door accessed from common area not provided or not functional i. No positive locking guarded latch lock or no functional locking guarded latch ii. No approved self closing device or no functioning self closing device b. Missing or nonfunctional approved guard plate affixed to exterior side of door deemed necessary to provide adequate security against illegal entry	10-25% 10-25% 10-25% 10-25%
25. 27.05(2)(h)11.	a. Common area interior doors leading to basement i. No positive action guarded latch lock or no functional positive guarded latch lock ii. No approved self closing device or no functioning approved self closing device	5-10% 5-10%
26. 27.05(2)(h)12.	a. All doors leading to shared laundries and storage areas in basements i. No positive action guarded latch lock or no functioning positive action guarded latch lock ii. No approved self closing device or no functioning approved self closing device	5-10% 5-10%

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement	
27. 27.05(2)(i)	a. Inside and outside stair and/or porch i. Hazardous to use		
	b. Required appurtenances to any porch or stair such as handrails and guardrails		
	i. Protecting an elevation of less than 4' A. Missing B. Inadequate	5-10% per affected app. 5-10% per affected app	
	ii. Protecting an elevation of more than 4' A. Missing B. Inadequate	10-25%/ affected app. 5-10% per affected app.	
28. 27.05(2)(j) [27.04(2)(a)]	a. Kitchen sink, lavatory* i. Totally not functional	10-25%	
	ii. In need of repair to the extent that use is limited (e.g., including but not limited to extremely slow drain, missing or not functional faucet handle...)	5-10% per fixture	
	b. Flush Water Closet*		
	i. Totally not functional	24-48 hrs. 25% More than 48 hrs 50-90% Not only facility 5-10%	
	ii. In need of repair to extent that use is limited	5-10% per fixture	
	*Also see Basement Water and Moisture Problems		
	c. Bathtub or shower* i. Totally not functional ii. In need of repair to extent that use is limited (e.g., including but not limited to extremely slow drain, missing or not functional faucet handles . . .) *Also see Basement Water and Moisture Problems	Only facility 25-50% Not only facility 5-10% 5-10% per fixture	
	d. Water Pressure/Volume i. Inadequate or fluctuating hot and cold ii. Consistently leaking hot water faucet	10-25% 1-5%	

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
29. 27.05(2)(j) [27.04(2)(a)] [27.04(2)(b)]	a. Leaking Water Supply or Drain Piping, not containing sewage	
	i. Leaking to extent and in such a place that it interferes w/tenant's full use of all or part of premises	
	A. Kitchen, bathroom, bedroom (including closets) or other living areas	10-25%
	B. Other	5-10%
	ii. Leaking pipes in basement	See Basement Water & Moisture Problems
	b. Leaking or obstructed drain piping containing sewage	
	i. If leaks or obstruction cause backup of sewage into fixtures, onto floors, or through ceilings or walls (including basement)	50-90% per affected applicant
30. 27.05(2)(k)	a. Bathroom floor surfacing	See 27.05(2)(g)1.
31. 27.05(2)(l)	a. Supplied facility, equipment or utility	
	i. Contracted stove or refrigerator	
	A. Not functional	10-25%
	B. Partially functional	5-10%
	b. Non-required screens	No Abatement
32. 27.05(2)(m)	a. Owner-caused discontinuation of utilities	
	i. No electricity	See 27.04(2)(g)
	ii. No heat	See 27.04(2)(h)
	iii. No water service	See 27.04(2)(a)
33. 27.05(2)(q)4.	a. Covering of foam plastic insulation (if insulation not installed by tenant)	5-10%
34. 27.05(2)(z)	a. Required for main entrance door accessed through common area not provided or not functional	10-25%
	i. Doorbells, intercoms or effective buzzer system of which to alert occupant of request to access the building	
35. 27.07(2)(a)	a. Failure to clean and disinfect common area after sewage backup	10-25% per affected applicant
	b. Owner not maintaining common areas in sanitary condition	5-10% per affected applicant
36. 27.07(2)(c)	a. Screens	See 27.04(2)(f)

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description	% of Rent Abatement
37. 27.07(2)(d)	a. Extermination of pests	
	i. Severe infestation, whether occasional or chronic	10-25% per affected applicant
	ii. Non-severe but chronic	1-5% per affected applicant
38. 27.07(2)(f)	a. Apartment clean prior to occupancy	25-50%
	b. Failure to clean and disinfect basement after sewage backup	10-25%
39. 29.20(15)(c)	a. Smoke or heat detectors not installed where required in storage areas	5-10% per affected applicant
40. 34.907	a. Smoke alarms not installed where required in:	
	i. Inside every bedroom and sleeping area	5-10% per affected applicant
	ii. Within 6 feet of each door leading to a bedroom or sleeping area of each unit	10-25%
	iii. Each floor of the building	10-25%
41.	a. Basement Water and Moisture Problems	
All code sections which result in water problems may use these percentages	i. Basement water violations use these percentages regardless of cause of leak	
	A. Basement not used for habitation: accumulated water	1-5% per affected applicant
	B. Basement used for habitation: damp and mold or mildew accumulated	1-5% per affected applicant
	C. Basement used for habitation	
	aa. Accumulated water	Not a kit., bath or BR 25-50%
	bb. Continually wet but no standing water	Kit., bath or BR 50-95%
	D. Basement laundry - presents potential electrical hazard when appliances are in use	5-10%
		5-10% per affected applicant

Schedule of Rent Impairing Violations - Continued

MGO Violation	Description
42. Chapter 18	<p>Plumbing Code which adopts by reference Wisconsin Administrative Code Ind. 25, Plumbing Chapter 145 Wisconsin Statutes.</p> <p>If a violation is cited on an occupied rental property referencing sections from the above Plumbing Codes and the violations described could appropriately be listed as violations of Sections 27.04(2)(a), 27.04(2)(b) and/or 27.05(2)(j) of the Minimum Housing Code, then the rent abatement list shall equally apply to those violations.</p> <p>(NOTE: Any violation cited under the State Plumbing Codes would in an existing rental property also be a violation of Sec. 27.05(2)(j) which uses the phrase “properly installed”.)</p>
43. Chapter 19 [NEC] [ILHR 16] [ILHR 52]	<p>Electrical Code - Adopts Wisconsin State Electrical Code Volume II, Wisconsin State Administrative Code Chapter 24 and by reference the 1984 National Electrical Code.</p> <p>If a violation is cited in an occupied residential rental property referencing sections from the above Electrical Codes and the violations could appropriately be listed as violations of Sections 27.04(2)(g) of the Minimum Housing Code, then the rent abatement list shall equally apply to those violations.</p> <p>(NOTE: Any violation cited under the State Codes or the National Electrical Code (NEC) would in an existing rental property also be a violation of Section 27.04(2)(g) which uses the phrase “properly installed”.)</p> <p>(Sec. 32.04(d) Am. by Ord. 9752, Adopted 4-4-89; ORD-06-00100, 8-2-06; ORD-09-00041, 3-19-09; ORD-10-00083, 9-15-10)</p>

(e) Procedure.

1. Application for Authorization for Rent Abatement. An eligible tenant who may be entitled to abate a portion of his/her rental payment under this ordinance shall have thirty (30) days from publication of the notice of possible eligibility by the Building Inspection Division of the Department of Planning and Community and Economic Development to file a request for a hearing on authorization for rent abatement. The request shall be in writing on a form approved by the Rent Abatement Oversight Committee, shall state with specificity the name and address of the landlord and the alleged rent impairing violation (s) and shall be filed with the Building Inspection Division. The application shall be accompanied by a fee of ten dollars (\$10) made payable to the City Treasurer, which fee shall be recovered from the landlord if abatement is ordered. If the applicant qualifies for waiver of the filing fees, however, the application shall be accompanied by an affidavit of economic hardship signed by the applicant. Within ten (10) days of the filing of the request, the Department of Planning and Community and Economic Development staff shall select a Hearing Examiner from the Rent Abatement Hearing Examiner panel, set a time and place for the hearing and give the landlord and the tenant(s) written notice thereof. The hearing shall be held as soon as possible, but not prior to the end of the 30-day filing period. Notice of the hearing including a statement of the time, place and nature of the hearing shall be mailed to the landlord and tenant(s) at least ten (10) days prior to the hearing. (Am. by Ord. 9752, Adopted 4-4-89; Ord. 11,994, 12-30-97; ORD-08-00109, 10-7-08)
2. Rent Abatement Hearing Examiner.
 - a. The Rent Abatement Hearing Examiner shall have the authority to conduct hearings on requests for authorization for rent abatement and to determine the exact amount of rent, if any, which may be abated pursuant to this ordinance.
 - b. The Rent Abatement Hearing Examiner shall have the authority to administer oaths and to issue subpoenas pursuant to Wis. Stat. § 885.01 at the request of the parties and shall be responsible for the fair, orderly and impartial conduct of the rent abatement hearing and the preservation of the exhibits and the record therein.
 - c. In any matter set for hearing the Rent Abatement Hearing Examiner may hold a conference between the parties to attempt to clarify or simplify the issues. In addition, prior to the hearing, upon request of the parties the Hearing Examiner may function as a mediator to encourage voluntary settlement.

(Sec. 32.04(4)(e)2. Am. by Ord. 10,227, 3-29-91)

3. Conduct of Hearing. The Rent Abatement Hearing Examiner shall conduct the hearing on the request for authorization for rent abatement, shall administer oaths to all witnesses and may issue subpoenas upon request of the parties. So far as practicable the rules of evidence in Wis. Stat. § 227.45 shall be followed. The landlord and the tenant may be represented by counsel or other representative, may call and examine witnesses and cross-examine witnesses of the other party. All proceedings and testimony shall be recorded on tape. If a review is sought of the Hearing Examiner's decision, a written transcript shall be prepared at no cost to the parties, provided however that a reasonable fee may be charged for copies. For all other purposes, a copy of the tape recordings shall be supplied to anyone requesting the same at the requester's expense. If either party requests a stenographic recording and transcription, the Rent Abatement Oversight Committee shall make the necessary arrangements, but the expense shall be borne by the requesting party. In the hearing, the tenant(s) shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence, i.e. by the preponderance of the evidence, that the landlord failed to correct (a) rent impairing violation(s) by the due date in an order of the Building Inspection Division. It is the landlord's burden to show by the preponderance of the evidence that any rent impairing violations were negligently or willfully caused by the tenant or the tenant's guests or that the tenant's refusal to allow entry prevented the landlord from making the corrections in a timely manner. Thereafter, the tenant has the burden to show that any such refusal was reasonable under the circumstances. Either party may present additional evidence on the nature, extent and seriousness of violations, the length of time conditions existed and the extent to which the tenant was deprived of the full use of the rented premises, to assist in determining the percent of abatement which should be allowed. (Am. by Ord. 10,875, 3-31-94; ORD-08-00109, 10-7-08; ORD-09-00147, 11-6-09)

4. Decision.

- a. If, on the evidence at the hearing, the Rent Abatement Hearing Examiner finds that the landlord failed to comply with an order of the Building Inspection Division to correct by the original due date a “rent impairing” violation as that term is defined in Sec. 32.04(4)(b), the Hearing Examiner shall order that rent be abated retroactive to the date of the initial inspection in order to effectuate the purpose of this ordinance and to provide fair and equitable compensation to the tenant(s) for the diminished value of the rented premises due to the landlord’s continued violation of the City of Madison’s building/housing codes. Any such abatement shall be established in accordance with the Schedule of Rent Impairing Violations in Section 32.04(4)(d). In setting the exact percentage of abatement the Hearing Examiner shall consider the nature, extent and seriousness of the particular condition(s), the total number of rent impairing violations at issue, the length of time the condition(s) existed and the extent to which the condition(s) deprive the tenant(s) of full use of the rented premises. If the Hearing Examiner finds that the landlord’s failure to comply with the order of the Building Inspection Division by the due date was caused by factors wholly outside the landlord’s control and if the Hearing Examiner further finds that the landlord has taken affirmative steps to minimize the impact of the uncorrected rent-impairing condition(s) on the tenant(s), any sums reasonably expended by the landlord in that regard should be considered in setting the percentage of abatement and may operate to reduce the final abatement percentage below the minimum percentage listed for the item(s) in the Schedule of Rent Impairing Violations in Sec. 32.04(4)(d). The Hearing Examiner shall not authorize rent abatement for any condition(s) found to be caused either negligently or willfully by the tenant or his/her guests, nor shall abatement be ordered for any period of time after the tenant has unreasonably refused entry to the landlord for the purpose of correcting the condition(s) giving rise to the violation(s). (Am. by Ord. 11,339, 8-25-95; ORD-08-00109, 10-7-08)
- b. If, after hearing, the Hearing Examiner finds that the landlord did not fail to comply with an order of the Building Inspection Division to correct a rent impairing violation by the due date or that the rent impairing violations were caused by the tenant or the tenant’s guests or that the tenant unreasonably refused entry for the purpose of correcting a rent impairing violation, the Hearing Examiner shall enter an order denying the request for authorization to abate rent for any items negligently or willfully caused by the tenant or guests of the tenant or for any items which remained uncorrected due to the tenant’s unreasonable refusal to allow entry for repair purposes. Where the landlord has received an Official Notice of code violations requiring correction within seventy-two (72) hours or less, a refusal by the tenant to allow entry after reasonable notice of less than twenty-four (24) hours may be deemed an unreasonable refusal solely for the purpose of determining whether rent abatement shall be awarded for the violation which was the subject of the Official Notice. (Am. by Ord. 10,875, 3-31-94; ORD-08-00109, 10-7-08)

- c. The decision and order of the Hearing Examiner shall contain written findings and shall be mailed to the parties within twenty (20) days of completion of the hearing or as soon thereafter as possible. The failure to issue and mail a decision within twenty (20) days shall neither deprive the Hearing Examiner of jurisdiction to render a final decision in the matter nor affect the validity thereof. (Am. by Ord. 9444, 3-25-88)
 - d. Except as provided in Sec. 32.04(5)(c) of the Madison General Ordinances relating to the rights of successor tenants, the holder of the landlord's interest in the premises at the time the decision and order of the Hearing Examiner is issued and the holder or holders of the landlord's interest during the period of time that the right to continuing abatement remains in effect are bound by the order and by the applicable provisions of this chapter relating to rent abatement. (Cr. by Ord. 10,018, 5-14-90)
- (f) Petition for Reconsideration. Within ten (10) days after service by mail of the decision of the hearing examiner, either party may file with the Building Inspection Division a written petition for reconsideration specifying in detail the grounds for the relief sought. In addition, a hearing examiner may on his/her own motion reconsider the decision or order a hearing on reconsideration. (Am. by ORD-08-000109, 10-7-08)
- 1. Reconsideration will be granted only on the basis of:
 - a. A material error of fact or law or an error in the calculation of an award amount, or
 - b. where the landlord's or tenant's failure to appear at the hearing was due solely to extraordinary, justifiable and unforeseeable circumstances beyond her or his control, which circumstances prevented attendance at the hearing. Petitions for reconsideration based on a tenant's or landlord's failure to appear must contain a sworn, notarized statement describing factually and in detail those extraordinary circumstances which caused the petitioner's non-appearance. In addition, said petition must be received by the Building Inspection Division by 4:30 p.m. on the first business day following the hearing date or be deemed untimely. This subparagraph b. shall be automatically repealed one year from the date of its publication.
(Am. by Ord. 10,990, 10-10-94; ORD-08-00109, 10-7-08)
 - 2. Copies of the petition shall be served by first class mail by the petitioner on all parties, who may file replies within seven (7) days after service by mail of the petition.
 - 3. Within twenty-one (21) days of the filing of the petition, the hearing examiner shall enter an order denying reconsideration or an order granting reconsideration disposing of the petition without a hearing or shall order a rehearing, which shall be held within twenty (20) days. The failure to issue a decision within the above time period shall not deprive the Hearing Examiner of jurisdiction to render a decision on reconsideration or affect the validity thereof. If no order is entered within twenty-one (21) days of the filing of the petition, the petition shall be deemed denied. (Am. by Ord. 10,990, 10-10-94)
 - 4. Upon rehearing, if any, proceedings shall conform as nearly as may be to Section 32.04(4)(e) et seq, relating to an original hearing.
 - 5. The filing of a petition for rehearing shall not suspend or delay the effective date of the original decision and order, and the order shall take effect on the date fixed by the hearing examiner and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.
(Sec. 32.06(4)(f) Am. by Ord. 9752, Adopted 4-4-89)
(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

- (g) Request for Modification. If, subsequent to a decision by a Hearing Examiner ordering rent abatement, substantial further deterioration or substantial improvement occurs in any rent impairing conditions which were the subject of the original order, the applicant, landlord or any successor tenant may request modification of the rent abatement amount. Only one such request for modification may be made by each eligible individual, which request shall follow the procedures in Sec. 32.04(4)(e) et seq. relating to the original application.(Am by Ord. 9752, Adopted 4-4-89)
- (h) Enforcement. Whenever, in the judgment of the Rent Abatement Oversight Committee, the judicial enforcement of the ordinance is necessary, the Committee shall in writing request the City Attorney to enforce the ordinance in the name of the City of Madison. (Renumbered from (g) to (h) by Ord. 9444, 3-25-88)
- (i) Appeal. All orders of the Rent Abatement Hearing Examiner shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek review thereof within thirty (30) days of service by mail of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address.

The institution of the proceeding for judicial review shall not stay the decision and order of the Hearing Examiner; however, the reviewing court may order a stay upon such terms as it deems proper.

(Am. by Ord. 10,227, 3-29-91)

(5) Successor Tenant.

- (a) A successor tenant is entitled to abate rent pursuant to the order of a rent abatement hearing examiner issued in accordance with this Chapter, provided that at the time the tenancy commences there exists an uncorrected rent impairing violation which was determined or is in the process of being determined by the hearing examiner to be abateable.
- (b) In order to be deemed a successor tenant under this ordinance an otherwise eligible individual must advise the landlord in writing with a copy to the Rent Abatement Clerk of her or his intent no later than fifteen (15) days after receipt of written notification by the landlord which conforms to the requirements of Sec. 32.04(7) of the Madison General Ordinances regardless of whether said written notification is given within the times prescribed therein. If said written notification is given at or prior to the time the rental agreement is entered into, the successor tenant's notice of intent must be given no later than fifteen (15) days after the commencement of the successor tenancy.
- (c) Failure to provide the landlord with a timely written notice of intent to become a successor tenant forfeits a tenant's right to proceed to abate rent as a successor tenant under this chapter, except where the landlord has failed to provide the written notification of the tenant's right to abate rent pursuant to subdivision (b) above. In cases where the landlord fails to provide written notice as required, an otherwise eligible tenant may assert the rights of a successor tenant at any time during the tenancy or in any action relating to or arising out of the tenancy.

(New Sec. 32.06(5) Cr. by Ord. 9752, Adopted 4-4-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

(6) Duration of Abatement.

- (a) Authorization to abate a portion of the rent pursuant to Sec. 32.04(4) et seq. for failure of a landlord to correct a rent impairing violation ceases upon certification by the Building Inspection Division of the Department of Planning and Community and Economic Development that said violation has been satisfactorily corrected, except that a tenant, a provider agency or successor tenant shall not be required to reimburse any appropriately abated portion of the rent to a landlord where correction of the rent impairing violation was made after payment of the balance of the rental payment had been tendered to the landlord. Where more than one rent impairing violation has been authorized for rent abatement and partial correction has been certified, authorization to abate continues for the uncorrected rent impairing violations, until such time as their satisfactory correction has been verified. (Am. by ORD-08-000109, 10-7-08)
- (b) If abatement is authorized, the landlord must promptly repay any rent previously paid by the tenant, provider agency or successor tenant and apportioned to rent impairing violations from the date of the original inspection by the Building Inspection Division at which said violations were discovered. (Am. by ORD-08-000109, 10-7-08)
- (c) If the landlord fails to promptly reimburse the tenant, provider agency or successor tenant as required in Subdivision (b) above, the tenant, provider agency or successor tenant may enforce the order requiring reimbursement as follows:
 - 1. The tenant, provider agency or successor tenant may deduct the amount previously paid and subsequently determined to be apportioned to rent impairing violations from future rental payments.
 - 2. If the total of future rental payments payable for the balance of the tenancy is less than the reimbursement required in Sec. 32.04(6)(b) or if the tenant or successor tenant no longer resides at the premises in question, the tenant, provider agency or successor tenant shall recover from the landlord double the amount not reimbursed in accordance with the order of the Hearing Examiner plus costs of collection including reasonable attorney fees.

- (d) The failure of a landlord to promptly reimburse the tenant, provider agency or successor tenant as required in Subdivision (b) above and the failure of either a landlord, a tenant or a provider agency after a decision by the reviewing court on judicial review, to return monies wrongfully not reimbursed or wrongfully abated shall be deemed a violation of this ordinance and shall be punishable pursuant to Sec. 32.04(11) of the Madison General Ordinances.
- (e) Rent abatement awarded in a decision and order of a Rent Abatement Hearing Examiner shall accrue during the period when either a tenant or a successor tenant is entitled to the exclusive possession and occupancy of an affected dwelling unit. Under no circumstances shall there be recovery by both a tenant and a successor tenant for the same period of time.

(Sec. 32.06(6) Am. by Ord. 11,339, 8-25-95)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533,

- (7) Rent Abatement and Code Violations Disclosure. The landlord or any person authorized to enter into a rental agreement shall exhibit to the prospective tenant, prior to the time a rental agreement is entered into, the following:

- (a) A copy of any official notice of outstanding violation of Chapter 27 (Minimum Housing and Property Maintenance Code), Chapter 28 (Zoning Code) or Chapter 29 (Building Code) of the Madison General Ordinances of which the said landlord or person has actual notice and which affects the subject rental building regardless of the location of the violation(s) or defect(s) therein;
- (b) A copy of any Hearing Examiner decision and order which affects the subject rental unit or any common areas of the subject rental building.
- (c) The failure by a landlord to comply with the provisions of this subsection regarding written notice of a successor tenant's right to abate rent shall not be subject to the penalties set forth in Sec. 32.14 of the Madison General Ordinances.

In addition, prior to the time a rental agreement is entered into, the landlord shall advise the prospective tenant in writing of a successor tenant's right to abate rent pursuant to the order aforementioned until authorization to abate ceases as provided in Sec. 32.04(6). In cases where the rent abatement request is pending at the time the rental agreement is entered into, the landlord shall provide the successor tenant written notification of a successor tenant's rights when the case has been decided and shall exhibit a copy of the decision and order to the successor tenant upon receipt thereof.

Finally, at the time occupancy commences the landlord shall exhibit to the tenant (formerly, prospective tenant) a copy of all additional official notices referred to in Subdivision (a) above and a copy of all decisions and orders referred to in Subdivision (b) above, if any have been issued since the signing of the rental agreement. Similarly, at the time of occupancy the landlord shall provide the required written notice of a successor tenant's rights with respect to all such additional official notices and decisions.

The written notice of successor tenant's rights shall specifically state in underlined or otherwise emphasized print the following: "If you wish to become a successor tenant and to abate rent in accordance with Chapter 32 of the Madison General Ordinances you must provide your landlord and the Rent Abatement Clerk with written notice of that intent within fifteen (15) days of receiving written notification from your landlord of your right as a successor tenant to abate rent. Failure to provide your landlord with timely written notice forfeits your right to be a "successor tenant" and to abate rent as a successor tenant under Chapter 32 of the Madison General Ordinances."

(Sec. 32.06(7) Am. by Ord. 9796, 5-31-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

(8) Eviction or Retaliation.

- (a) No person or tenant who complains to the Building Inspection Division of the Department of Planning and Community and Economic Development of violations of Chapters 18, 19, 27, 28, 29 or 30 or complies with this section shall be evicted for nonpayment of rent or because said person or tenant has elected to act under said section, so long as rent is being abated in accordance with the provisions of this ordinance or Chapter 704 of the Wisconsin Statutes. In addition, no tenant shall be evicted for nonpayment of rent where the tenant continues to abate rent pursuant to a lawful order of a Hearing Examiner pending judicial review of the order after a stay of the Hearing Examiner's decision has been ordered by the reviewing court, if written notice of the request for judicial review was not given to the tenant in accordance with Section 32.04(4)(i) of the Madison General Ordinances. Furthermore, no tenant who has been authorized to abate a portion of his/her rental payment shall be evicted for failure to pay rent as a result of underpayment of rent due to a computation error, so long as the tenant remedies the underpayment within five (5) days after notice thereof by the landlord. (Am. by Ord. 10,018, 5-14-90)
- (b) No person or tenant shall be evicted or retaliated against for complaining of violations of Chapters 18, 19, 27, 28, 29 or 30 or for complying with this section, and it shall be presumed that any attempt to terminate the tenancy of such tenant or to evict such tenant or to raise such tenant's rental payments or to otherwise harass or retaliate against such tenant during the period from the first complaint to the Building Inspection Division of the Department of Planning and Community and Economic Development to six (6) months after the certification by the Building Inspection Division of the Department of Planning and Community and Economic Development of the City of Madison that all violations have been corrected is done in retaliation for the tenant's complaint to the Building Inspection Division of the Department of Planning and Community and Economic Development of a violation of Chapters 18, 19, 27, 28, 29 or 30 or for his or her compliance with this section. Said attempt is hereby declared null and void and subject to a forfeiture of not less than one hundred and fifty dollars (\$150) nor more than nine hundred dollars (\$900) for each such attempt. It is further provided that in order to overcome such presumption, the landlord must show by a preponderance of the evidence that such acts by him were based upon good cause. "Good cause" as used herein means that the landlord must show a good reason for his action, other than one related to or caused by the operation of this ordinance, including but not limited to normal uniform rental increases due to utility increases or other increased costs to landlord, or for other bonafide, nondiscriminatory business reason. (Am. by Ord. 9752, Adopted 4-4-89)

(Sec. 32.06(6) Renumbered to (8) by Ord. 9752, Adopted 4-4-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

(Sec. 32.04(8) Am. by ORD-08-00109, 10-7-08)

- (9) Prosecution. It is the intent of this section that any use of abatement will not prohibit the Building Inspection Division of the Department of Planning and Community and Economic Development from prosecuting violations of the code relating to said property. (Sec. (7) Renumbered to (9) by Ord. 9752, Adopted 4-4-89; ORD-08-00109, 10-7-08)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

(10) Coercion.

- (a) Any person who accepts, as a result of misrepresentation, harassment or coercion, rental payments for premises subject to abatement under this ordinance may be subject to a forfeiture of not less than one hundred and fifty dollars (\$150) nor more than nine hundred dollars (\$900) whether said rental payments are tendered by or on behalf of the tenant occupying the premises at the time abatement is authorized or by, or on behalf of, any subsequent or other tenant who occupies the premises during the existence of such abatement authorization. Each such payment accepted shall constitute a separate violation.
- (b) Any tenant who willfully and maliciously uses or attempts to use this ordinance to harass a landlord shall be fined not less than one hundred and fifty dollars (\$150) nor more than nine hundred dollars (\$900).

(Sec. 32.06(8) Renumbered to (10) by Ord. 9752, Adopted 4-4-89; Am. by Ord. 12,881, 8-24-01)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

(11) Penalty.

- (a) Any person violating any of the provisions of this section shall upon conviction be subject to a forfeiture of not less than one hundred fifty dollars (\$150) nor more than nine hundred dollars (\$900), unless a different penalty is specifically provided, with each separate day of violation to be considered a separate offense. (Am. by Ord. 12,881, 8-24-01)
- (b) Any person who shall fail or neglect to comply with any lawful order of the Rent Abatement Hearing Examiner issued pursuant to the provisions of this section shall be deemed guilty of a violation of this section, and every day or fraction thereof on which such person shall fail or neglect to comply with such order, shall be deemed a separate offense.

(Sec. 32.06(9) Renumbered to (11) by Ord. 9752, Adopted 4-4-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

- (12) Severability. In the event that any section of this ordinance shall be declared or judged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the other sections of this ordinance, which shall be in full force and effect as if the said section or said sections were not originally a part thereof. In addition, should enforcement of these ordinance provisions relating to rent abatement be temporarily or permanently stayed in whole or in part by judicial order or should any of said sections of this ordinance be declared or judged invalid or unconstitutional by a court, the provisions of Sec. 32.06 of the Madison General Ordinances, entitled Rent Withholding, in force and effect on October 20, 1986, which relate to rent withholding procedures shall be immediately reinstated without further action by the Common Council.

(Sec. 32.06(10) Renumbered to (12) by Ord. 9752, Adopted 4-4-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

- (13) Effective Date of Ordinance. This ordinance shall be effective and apply to all orders written by the Building Inspection Division of the Department of Planning and Community and Economic Development on or after January 1, 1979. The amendments to this ordinance relating to rent abatement shall be effective and apply to all orders written by the Building Inspection Division of the Department of Planning and Community and Economic Development ninety (90) days after the publication of this ordinance as amended. (Am. by ORD-08-000109, 10-7-08)

(Sec. 32.06(11) Renumbered to (13) by Ord. 9752, Adopted 4-4-89)

(Sec. 32.06 Am. by Ord. 9011, 11-28-86)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

32.05 TENANTS RIGHTS TO PRIVACY AND EXCLUSIVE POSSESSION.

- (1) It shall be unlawful for the owner or operator of any residential dwelling unit to commit or permit any of the following acts which tend to interfere with the rights of the tenant therein to privacy and the exclusive possession of the premises and personal property therein:
- (a) Removing, altering or replacing locks affixed to the premises unless a key is immediately provided to the tenant therein so as not to deny the tenant access except as is necessary to preserve or protect the premises in the event of damage or destruction in the tenant's absence. In such a case, a key shall be provided to the tenants as soon thereafter as practicable.
 - (b) Removal of doors or windows without the consent of the tenant therein except as is reasonably necessary to preserve or protect the premises when damage or destruction occurs in the tenant's absence.
 - (c) Confiscation of personal property belonging to tenants in lieu of rent or any other alleged claim.
 - (d) Except as provided in Subdivision (e), entering on a tenant's leased property including the shared areas within a single dwelling unit without at least twenty-four (24) hours notice of the specific date and approximate time of entry unless the tenant approves a shorter period of notice on a case by case basis, except when the landlord reasonably believes that entry is necessary to preserve or protect the premises from damage or destruction which is not intentionally caused by the landlord.
 - (e) Unless the tenant approves a shorter period of notice or a larger window of availability on a case by case basis, entering upon a tenant's leased premises solely to show the property for sale or lease without at least twenty-four (24) hours notice (a) of the specific date and either the exact time or a four- (4) hour window, or (b) covering not more than a three-day period and either the exact time or a four- (4) hour window per day. (Am. by ORD-10-00016, 2-18-10)
 - (f) No landlord may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, and identifying himself or herself upon request. (Cr. by Ord. 12,533, 2-18-00)
 - (g) A landlord may regulate guests, but may not prohibit, a tenant from having all guests. Guest regulations, if any, shall be included in the rental agreement. Guest regulations shall be in conformance with the definition of a Family provided in Chapter 28 of Madison General Ordinances. Guest regulations shall not permit the violation of zoning regulations, including capacity standards, provided in Chapter 28 of Madison General Ordinances. Nothing in these ordinances shall prohibit a landlord from commencing an eviction action against a tenant for permitting a person to reside in the tenant's rental unit in violation of Madison General Ordinances or state law. (Cr. by Ord. 12,932, 12-11-01)
- (2) It shall be unlawful for a tenant to change or re-key locks affixed to the premises without the prior approval of the landlord except in a case of emergency when necessary to protect or preserve the premises or to protect the health or safety of the tenant. In such case a key shall be provided to the landlord within 48 hours or as soon thereafter as practicable and the landlord shall have the right to replace the altered lock. (Am. by Ord. 13,223, 1-25-03)
- (3) Any person who violates any provisions of this section or fails to comply with any of its requirements shall, upon conviction thereof, be subject to forfeiture of not more than one thousand dollars (\$1,000) and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. (Am. by Ord. 12,881, 8-24-01; Ord. 13,760, Adopted 12-14-04)
- (Sec. 32.05 Am. by Ord. 10,812, Adopted 1-18-94)

32.06 RENTAL AGREEMENTS AND RECEIPTS.

- (1) Copies of Rental Agreements, Rules. Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

- (2) Tenant Rights and Responsibilities. The landlord or any person authorized to enter into a rental agreement shall provide a copy of a document approved by the Housing Committee, entitled "Tenant Rights and Responsibilities," to a tenant at or prior to the signing of a rental agreement. If a residential property unit has more than one tenant, a landlord shall only be required to provide one copy of the document to the tenants.
- (a) The document shall contain:
1. An explanation of the rights and responsibilities of tenants as specified in state law and these Ordinances, including but not limited to:
 - a. timely payment of rent
 - b. maintenance and cleanliness of leased premises
 - c. responsibility for damages
 - d. responsibility for repairs
 - e. notice of intent to move
 - f. legal rules of conduct
 - g. provision of complete and accurate prior tenancy information
 - h. summary of Chapter 32, including but not limited to Secs. 32.04-32.12
 - i. summary of Section 39.03, relative to housing discrimination
 - j. summary of Section 34.907 relating to smoke alarms installation and maintenance (Cr. by ORD-09-00041, 3-19-09; Am. by ORD-10-00083, 9-15-10)
 2. The addresses, telephone numbers and other contact information of agencies and organizations related to landlord tenant issues, including but not limited to:
 - a. Apartment Association of South Central Wisconsin
 - b. Tenant Resource Center
 - c. Fair Housing Center of Greater Madison
 - d. Non-emergency police and fire services.
- (b) The document shall be made available to landlords by the Building Inspection Division for a charge not to exceed actual cost of production. (Am. by ORD-08-000109, 10-7-08)
- (c) Failure to comply with the provisions of this subsection shall subject a landlord to the penalties set forth in Sec. 32.14, M.G.O.
- (d) This subsection is effective July 2, 2003. (Cr. by Ord. 13,336, 6-7-03)
- (Cr. by Ord. 13,037, 3-26-02)
- (3) Receipt for Tenant Payments.
- (a) Immediately upon accepting any earnest money or security deposit, the landlord shall provide the tenant or prospective tenant with a written receipt for the deposit, stating the nature of the deposit and its amount. A receipt is not required where payment is made by check bearing a notation describing the purpose for which it was given, unless requested by the tenant.
- (b) If a tenant pays rent in cash, the landlord, upon receiving the cash payment, shall provide the tenant with a written receipt stating the nature and amount of the payment. A landlord is not required to provide a receipt for rent payments made by check.
- (Renumbered by Ord. 13,037, 3-26-02)
- (4) Upon each new lease and at least once every 12 months for every continuing tenant, the owner and tenant(s) shall sign a document indicating the required alarms are installed and operating in accordance with this section. The form must state the tenant, by signing the form, understands it is a violation of this section to tamper with, remove, alter, damage or otherwise render any smoke alarm inoperable. In addition the tenant's signature indicates the tenant understands their responsibility for maintenance and testing of the smoke alarm(s). The form shall state the penalties for rendering smoke alarms inoperable or otherwise affecting the performance of the alarm. (Cr. by ORD-09-00041, 3-19-09)
- (Sec. 32.06 Cr. by Ord. 12,533, 2-18-00)

32.07 SECURITY DEPOSIT REFUND PROCEDURES.

- (1) The landlord may require as a condition of a rental agreement a security deposit for the purposes provided in Sec. 32.07(14) and for no other purpose.
- (2)
 - (a) In this section 'security deposit' means the total of all payments and deposits given by a tenant to the landlord in a residential tenancy as security for the performance of the tenant's obligations, and includes but is not limited to all rent payments in excess of one month's prepaid rent, all pet deposits, furniture deposits and key deposits.
 - (b) The sum of all payments and deposits, held as security deposit shall not exceed the equivalent of one month's rent. A security deposit may not be instituted or increased during the occupancy of any original tenant(s) under the same, an amended, a renewed or a new rental agreement. If, however, the terms of the amended, new or renewed rental agreement allow as a new condition a pet or a waterbed and the increase in the security deposit is mutually agreed upon in writing between the parties, a security deposit may be instituted or increased provided it does not exceed one month's rent.
 - (c) Landlords who charge an amount less than or equal to fifty percent (50%) of one (1) month's rent as a security deposit shall be exempt from the provisions of this ordinance which require the payment of a rent credit.
 - (d) Except as permitted pursuant to Sec. 32.07(8) which provides that a security deposit shall be returned to a tenant or accounted for within twenty-one (21) days of vacation of the premises by that tenant, a landlord may not simultaneously hold a security deposit given by a tenant and a sub-tenant of the same rental premises unless the total of the deposits made by the parties does not exceed the equivalent of one month's rent.
 - (e) Nothing in this subsection shall be construed as prohibiting the voluntary prepayment of rent by a tenant or the prepayment of rent by a tenant pursuant to a mutually agreed upon semesterly, annual or other periodic payment plan, provided the plan contains a bona fide monthly rental payment option which the tenant is free to elect at her or his sole discretion. A bona fide rental payment option within the meaning of this ordinance is one where the total of all payments under the monthly payment option does not exceed by more than five percent (5%) the total of all payments under any of the other periodic payment options.
- (3) Rent Credit. The landlord shall provide a yearly rent credit calculated from the date the security deposit is paid or an earnest money deposit has been applied toward the security deposit according to Sec. 32.10(2)(b) to the date the security deposit is either returned or properly accounted for under Sec. 32.07(8) of the Madison General Ordinances. The rent credit shall be equivalent to the State of Wisconsin Department of Financial Institutions' (DFI) announced interest rate to be paid by Wisconsin's financial institutions for money held in escrow accounts for real estate; and the Mayor shall direct that the rent credit rate and that of the prior twenty (20) years be available to the public at the City Clerk's office, Building Inspection Division, Madison public libraries and on the City's official web page. The interest rate credited shall be the announced rate on the date the security deposit is paid or an earnest money deposit is applied toward the security deposit and the rate in effect on each annual anniversary date thereafter. (Am. by ORD-08-000109, 10-7-08)
 - (a) The rent credit and the date it is received shall be specified in the lease and in any subsequent renewal or given in writing to the tenant at the time of entering into the rental agreement.
 - (b) If not credited to the last month's rent annually or otherwise distributed to the tenant prior to the termination of the tenancy, the rent credit shall be paid to the tenant or accounted for in writing using the procedures set forth below for the return of the security deposit within twenty-one (21) days after surrender of rental premises and restoration of possession to the landlord.
 - (c) Voluntary prepayments of rent by a tenant under Section 32.07(2)(e) are not subject to the rent credit provisions set forth in this subsection.
 - (d) This subsection shall become effective January 1, 2004.

(Repealed and recreated by Ord. 13,414, 10-4-03)

- (4) The tenant shall place the dwelling unit in as overall clean condition, excepting ordinary wear and tear, as when the tenancy commenced or as improved by the landlord, the landlord's agents or the tenant pursuant to a written agreement with the landlord. (Former Subsection (5) Renumbered to Subsection (4) and Am. by Ord. 12,533, 2-18-00)
- (5) The landlord and tenant shall use a written CHECK-IN AND CHECK-OUT procedure.
- (a) The landlord shall furnish copies of check-in and check-out forms to tenants of each dwelling unit. The check-in form shall be provided to the tenant at the beginning of the tenancy and the check-out form shall be provided to the tenant prior to the termination of the tenancy.
- (b) Before a landlord accepts a security deposit under Sec. 32.10(3)(b), or converts an earnest money deposit to a security deposit under Sec. 32.10(2)(b) the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified date which is not less than seven (7) days after the start of tenancy:
1. Inspect the dwelling unit and notify the landlord of any pre-existing damages or defects by noting the conditions on the check-in form.
 2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit, and request the opportunity to view, within 30 days of the receipt of the notice, the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting such physical damages or defects. The landlord may require the tenant to make this request, if any, in writing. (Am. by ORD-08-00043, 4-26-08)
- (c) If a tenant makes a request under Paragraph (b)2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired, as well as provide the opportunity to view, within 30 days of the receipt of the notice, the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting such physical damages or defects. The landlord shall provide the list and make the photographs available for viewing by the tenant within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit. (Am. by ORD-08-00043, 4-26-08)
- (d) All check-out forms shall be comparable to the check-in forms. All check-out forms shall provide an obvious place for the tenant's forwarding address. Check-out forms shall also provide a space for the rent credit due and a space for the landlord's explanation for any portion of the rent credit deemed not due.
- (e) Acknowledgement, if any, of receipt of the check-in and check-out forms or combined check-in/check-out form shall be included in a written document entitled "NON-STANDARD RENTAL PROVISIONS", which the landlord provides to the tenant.
- (f) The landlord has the burden of proving compliance with all provisions and procedures set forth in this subsection or forfeits all right to any portion of the security deposit.
- (Former Subsection (6) Renumbered to Subsection (5) and Am. by Ord. 12,533, 2-18-00)

- (6) Failure by the landlord to offer either the check-in or check-out forms shall forfeit the landlord's right to withhold any amount from a security deposit for alleged cleaning costs or damages.
- (Former Subsection (7) Renumbered to Subsection (6) by Ord. 12,533, 2-18-00)
- (7) Every landlord who accepts a security deposit shall, within twenty-one (21) days after a tenant surrenders the rental premises, return, in person or by mail, to the tenant at the tenant's forwarding address or at the tenant's last known address if a forwarding address is not provided to the landlord, either:
- (a) The full security deposit; or
 - (b) A written, itemized statement showing the specific reason or reasons for the withholding of the deposit or any portion of the deposit, applicable receipts and estimates including the necessary hours and the wage rate for the work done or to be done any rent credit due, and a notice that the tenant will be provided a copy of the photographs documenting any damage, waste or neglect of the premises being charged to the tenant if requested by the tenant in writing within 30 days of receipt of the notice. Upon receipt of a timely request, the landlord has 30 days to provide the tenant a copy of the photographs maintained by the landlord under Sec. 32.07(14)(a) documenting the damage, waste or neglect. The landlord shall not be held responsible for the inability of the Post Office to complete delivery of a first class letter. (Am. by ORD-07-00015, 2-06-07; ORD-08-00043, 4-26-08)
 - (c) If a landlord returns a security deposit in the form of a check, draft, or money order, the landlord shall make the check, draft, or money order payable to all tenants who are parties to the agreement, unless the tenants designate a payee in writing.
 - (d) A tenant does not waive his or her right to the full amount owed under Subdivision (a) merely by accepting a partial payment of that amount.

(Former Subsection (8) Renumbered to Subsection (7) and Am. by Ord. 12,533, 2-18-00)

- (8) A tenant surrenders the premises under Subsection (7) on the last day of tenancy provided under the rental agreement, except that:
 - (a) If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.
 - (b) If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.
 - (c) If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.
(Subsection (8) created by Ord. 12,533, 2-18-00)
- (9) If the landlord fails to provide a written statement within the prescribed period in accordance with Sec. 32.07(7)(b), or fails to provide the tenant a copy of the photographs requested under Sec. 32.07(7)(b), or fails to comply with the security deposit limits in Sec. 32.07(2)(b) or fails to comply with the rent credit provisions of Sec. 32.07(3), or fails to comply with or otherwise violates Sec. 32.07(14) and (15) concerning the reasons for which security deposits may be withheld, the landlord forfeits all rights to any portion of the deposit. (Am. by ORD-08-00043, 4-26-08)
- (10) If a landlord fails to comply with or otherwise violates the ordinance provisions set forth below, the tenant shall have the right to recover damages in the amount indicated below together with costs including reasonable attorney’s fees:

Ordinance Violation	Damages
(a) Failure to comply with the security deposit limit in Sec. 32.07(2)(b).	The money due plus up to twice the amount wrongfully held.
(b) Failure to comply with the rent credit provisions under Sec. 32.07(3).	The money due plus up to twice the amount wrongfully withheld or not provided.
(c) Failure to use check-in/check-out forms under Sec. 32.07(5).	The money due plus up to twice the amount wrongfully withheld.
(d) Failure to return security deposit or provide written statement of reasons for withholding under Sec. 32.07(7)(a) & (b)	The money due plus up to twice the amount wrongfully withheld.
(e) Failure to comply with Sec. 32.07(14) & (15) relating to the reasons for which security deposits may be withheld.	The money due plus up to twice the amount wrongfully withheld.

- (11) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.
- (12) This section does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant is entitled.
- (13) Any attempted waiver of this section by a landlord or tenant by contract or otherwise is void and unenforceable.
- (14) A landlord may withhold from a tenant's security deposit only for the following:
 - (a) Tenant damage, waste or neglect of the premises, provided that the landlord documents such damage, waste or neglect of the premises with photographic evidence (in any form, so long as such damage, waste or neglect can be photographed), a copy of which must be provided to the tenant upon a timely request being made under Section 32.07(7)(b) and which photographs must be retained by the landlord for either 90 days from providing the tenant notice under Sec. 32.07(7)(b) of partial or full withholding of the security deposit, or 90 days from the start of a new tenancy for the premises, whichever is later. The failure of a landlord to take, provide, or retain a photograph documenting a specific claim of damage, waste or neglect that was able to be photographed only precludes the landlord from withholding from the tenant's security deposit for the specific claim in question, and does not otherwise affect the landlord's ability to recover for such damage, waste or neglect. However, if the tenant accepts responsibility for a specific claim of damage, waste or neglect, in writing on the checkout form, no photograph will be required to be taken, provided, or retained of the specific item. (Am. by ORD-08-00043, 4-26-08)
 - (b) Unpaid rent for which the tenant is legally responsible, subject to Sec. 704.29, Wis. Stats.
 - (c) Payment which the tenant owes for utility service provided by the landlord but not included in the rent.
 - (d) Payment which the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.
 - (e) Unpaid mobile home parking fees assessed against the tenant by a local unit of government under Sec. 66.0435(3), Wis. Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.
 - (f) Other reasons authorized in the rental agreement, which may include one or more non-standard rental provisions authorizing a landlord to withhold from a tenant's security deposit for reasons not identified in Subdivisions (a) through (e). The landlord shall include the non-standard provisions, if any, in a separate written document entitled "NON-STANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss each non-standard provision

with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a non-standard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that non-standard provision with the tenant and that the tenant has agreed to it.

Notwithstanding the language above which allows additional reasons for withholding security deposits if those are specified in writing, nothing in this subsection or elsewhere in this chapter shall be construed as authorizing any withholding for normal wear and tear, including activities that are customarily performed by the landlord or the landlord's agents before a new tenancy commences, including, but not limited to, washing windows, shampooing carpets, occasional repainting or reupholstering furniture; or for other damages or losses for which the tenant is not otherwise responsible under applicable law.

- (15) No landlord may intentionally misrepresent or falsify any claim against a security deposit, including the cost of repairs, or withhold any portion of a security deposit pursuant to an intentionally falsified claim.

(Sec. 32.07 Am. by Ord. 10,812, Adopted 1-18-94; Am. by Ord. 12,533, 2-18-00; Former Subsection (4) repealed by Ord. 12,533, 2-18-00)

32.08 HOUSING OWNERSHIP, DEFECT AND INFORMATION DISCLOSURE.

- (1) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing, at or before the execution of a rental agreement whether oral or written, the name, address and telephone number of:
- (a) The person authorized to collect or receive rent and manage and maintain the premises, and who can promptly be contacted by the tenant; and
 - (b) An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands. The address disclosed shall be an address within the state at which service of process can be made in person.
 - (c) A landlord shall keep tenants informed of changes, if any, in the information required in Subdivisions (a) and (b). The landlord shall mail or deliver written notice of each change within ten (10) business days after the change occurs. This section extends to and is enforceable against any successor landlord.
 - (d) This subsection does not apply to an owner-occupied structure containing no more than four (4) dwelling units.

(Subsection (1) Am. by Ord. 12,533, 2-18-00; Ord. 13,224, 1-25-03)

- (2) Code Violations and Conditions Affecting Habitability. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:
- (a) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection, whether or not notice has been received from code enforcement authorities:
 1. The dwelling unit lacks hot or cold running water.
 2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature in all living areas of the dwelling unit of at least 67°F (19°C) during all seasons of the year in which the dwelling unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.
 3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.
 4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

5. The dwelling unit is not served by plumbing facilities in good working condition.
 6. The dwelling unit is not served by sewage disposal facilities in good operating condition.
- (b) Utility Charges. If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.
- (c) The landlord or any person authorized to enter into a rental agreement shall exhibit to the prospective tenant, prior to the time a rental agreement is entered into, the following:
1. A copy of any official notice of outstanding violation of Chapter 27 (Minimum Housing and Property Maintenance Code), Chapter 28 (Zoning Code) or Chapter 29 (Building Code) of the Madison General Ordinances of which the said landlord or person has actual notice and which affects the subject rental building regardless of the location of the violation(s) or defect(s) therein; and
 2. A copy of any Hearing Examiner decision and order which affects the subject rental unit or any common areas of the subject rental building.
 3. The failure by a landlord to comply with the provisions of this subdivision regarding written notice of a successor tenant's right to abate rent shall not be subject to the penalties set forth in Sec. 32.14 of the Madison General Ordinances.

In addition, prior to the time a rental agreement is entered into, the landlord shall advise the prospective tenant in writing of a successor tenant's right to abate rent pursuant to the order aforementioned until authorization to abate ceases as provided in Sec. 32.06(6). In cases where the rent abatement request is pending at the time the rental agreement is entered into, the landlord shall provide the successor tenant written notification of a successor tenant's rights when the case has been decided and shall exhibit a copy of the decision and order to the prospective tenant upon receipt thereof.

Finally, at the time occupancy commences the landlord shall exhibit to the tenant (formerly, prospective tenant) a copy of all additional official notices referred to in Subdivision (a) above and a copy of all decisions and orders referred to in Subdivision (b) above, if any have been issued since the signing of the rental agreement. Similarly, at the time of occupancy the landlord shall provide the required written notice of a successor tenant's rights with respect to all such additional official notices and decisions.

The written notice of successor tenant's rights shall specifically state in underlined or otherwise emphasized print the following: "If you wish to become a successor tenant and to abate rent in accordance with Chapter 32 of the Madison General Ordinances you must provide your landlord and the Rent Abatement Clerk with written notice of that intent within fifteen (15) days of receiving written notification from your landlord of your right as a successor tenant to abate rent. Failure to provide your landlord with timely written notice forfeits your right to be a "successor tenant" and to abate rent as a successor tenant under Chapter 32 of the Madison General Ordinances.

(Sec. 32.08(2)(d) Am. by Ord. 9796, 5-31-89; Renumbered to Subsection (c) and Am. by Ord. 12,533, 2-18-00)

- (d) The landlord or any person authorized to enter into a rental agreement shall notify the prospective tenant in writing, prior to the time a rental agreement is entered into, of occupancy limits imposed on the premises by Sec. 27.06 of the Minimum Housing and Property Maintenance Code; the family definition in Sec. 28.03(2) of the Zoning Code and the zoning district in which the premises are located; and the off-street parking requirements in Sec. 28.11 of the Zoning

Code. Any tenant required to vacate leased premises because of a violation of any of the sections of the Madison General Ordinances herein specified is relieved of any further obligation under the lease, if he or she has not been so notified.

- (3) Any person authorized to enter into a rental agreement on the landlord's behalf and who fails to comply with Subsections (1) and (2), becomes an agent of each person who is a landlord for the purpose of:
 - (a) Service of process and receiving and receipting for notices and demands; and
 - (b) Performing the obligations of the landlord under this section and under the rental agreement and expending or making available for such purpose all rent collected from the premises.
- (4) Penalty. Any person who violates any provision of this section or fails to comply with any of its requirements shall upon conviction thereof forfeit not less than seventy-five dollars (\$75) nor more than one thousand five hundred dollars (\$1,500). (Am. by Ord. 12,881, 8-24-01)
- (5) The landlord or any person authorized to enter into a rental agreement shall provide applicants who have not been accepted for tenancy with written reason(s) for denial of tenancy. By the end of the third business day after denial, the written reasons for denial shall be personally delivered to the applicant by the landlord or mailed to the applicant. An application is deemed denied for the purpose of this ordinance if no determination is made by the landlord within 21 days of the date a completed application is accepted by the landlord. The landlord is exempt from this section of the ordinance if, pursuant to Section 32.24 of Dane County Ordinances, an applicant has indicated on the application for residential tenancy that the applicant does not wish to receive a written explanation of a denial of tenancy. An applicant may indicate that the applicant does not wish to receive a written explanation of a denial of tenancy by indicating "no" in the space provided on the application for rental tenancy and by initialing the same. (Cr. by Ord. 13,039, 3-26-02)
- (6) Severability. The provisions of any part of this ordinance are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this ordinance that the same would have been adopted had such invalid provisions, if any, not been included herein.
- (7) Effective Date. The effective date of this section shall be August 1, 1978. All disclosure and notice to tenant requirements under Subsections (1) and (4) shall be given to tenants under existing rental agreements on or prior to said date and thereafter to any new tenants as provided herein. The requirements of Subsection (2) shall be effective on August 1, 1978 and be applicable to all current and future tenancies.
- (8) Requirement That Landlord Notify Tenant of Automatic Renewal Clause. A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least fifteen (15) days but not more than thirty (30) days prior to the time specified for the giving of such notice to him, gives to the tenant written notice in the same manner as specified in Sec. 704.21, Wis. Stats. calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

(Sec. 32.08 Am. by Ord. 7542, 10-22-81; Former Subsection (3) Repealed, and Former Subsections (4)-(8) Renumbered to Subsections (3)-(7) by Ord. 12,533, 2-18-00; Former Subsections (5)-(7) Renumbered to Subsections (6)-(8) by Ord. 13,039, 3-26-02)

32.09 PROMISES TO REPAIR.

- (1) Date of Completion. Every promise or representation made by a landlord to a tenant or prospective tenant to the effect that the dwelling unit or any other portion of the premises, including furnishings or facilities, will be cleaned, repaired or otherwise improved by the landlord shall specify the date or time period on or within which the cleaning, repairs or improvements are to be completed.

- (2) Initial Promises in Writing. All promises made before the initial rental agreement shall be in writing with a copy furnished to the tenant.
- (3) Performance; Unavoidable Delays. No landlord shall fail to complete the promised cleaning, repairs or improvements on the date or within the time period represented under Subsection (1), unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or other causes beyond the landlord's control. The landlord shall give timely notice to the tenant of reasons beyond the landlord's control for any delay in performance, and stating when the cleaning, repairs or improvements will be completed.
- (4) Private Right to Recovery. Nothing herein shall be construed so as to deprive any tenant or prospective tenant from maintaining and prosecuting a private action against a landlord for damages caused by said landlord's failure to comply with any provision of this section of the ordinances.

(Sec. 32.09 Cr. by Ord. 7542, 10-22-81)

32.10 EARNEST MONEY DEPOSITS.

- (1) A landlord may not accept an earnest money deposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which the applicant is being considered for tenancy.
- (2) Refunding or Crediting An Earnest Money Deposit.
 - (a) A landlord who receives an earnest money deposit from a rental applicant shall send the full deposit to the applicant by first-class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:
 - 1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.
 - 2. The applicant withdraws the rental application before the landlord accepts that application.
 - 3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.
 - (b) A landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:
 - 1. Apply the earnest money deposit as rent or as a security deposit.
 - 2. Return the earnest money deposit to the tenant.
 - (c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under Subdivision (a) or (b) merely by accepting a partial payment or credit of that amount.
- (3) Withholding An Earnest Money Deposit.
 - (a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.
 - (b) A landlord may withhold from an earnest money deposit, under Subdivision (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under Sec. 704.29, Wis. Stats.
 - (c) Upon request by any person giving an earnest money deposit, the landlord shall provide that person with a written statement accounting for all amounts permanently withheld from the deposit.

(Sec. 32.10 Cr. by Ord. 7542, 10-22-81; Am. by Ord. 12,533, 2-18-00)

32.11 PROHIBITED RENTAL AGREEMENT PROVISIONS. No rental agreement may:

- (1) Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under Ch. 799, Wis. Stats.
- (2) Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport or waive the landlord's obligation to mitigate damages as provided under Sec. 704.29, Wis. Stats.
- (3) Require payment, by the tenant, of attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent the recovery of costs or attorney's fees by a landlord or tenant pursuant to a court order under Ch. 799 or 814, Wis. Stats.
- (4) Authorize the landlord or any agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.
- (5) Relieve, or purport to relieve the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. This does not affect ordinary maintenance obligations assumed by a tenant under a rental agreement, in accordance with Sub. (7) and Sec. 704.07, Wis. Stats.
- (6) Impose, or purport to impose liability on a tenant for:
 - (a) Personal injury arising from causes clearly beyond the tenant's control.
 - (b) Property damage caused by natural disasters, or by persons other than the tenant or the tenant's guests or invitees. This does not affect ordinary maintenance obligations assumed by a tenant under the rental agreement, in accordance with Sub. (7) and Sec. 704.07, Wis. Stats.
- (7) Provide for the waiver of any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy. (Am. by Ord. 12,533, 2-18-00)
- (8) Contain any provision which, if enforced or invoked, would violate Chapter 32 or other ordinance or state law. (Cr. by Ord. 10,812, Adopted 1-18-94)
- (9) Require payment by the tenant of the cost of cleaning or shampooing carpet or require that carpet be cleaned or shampooed at the end of a lease term, unless there is unusual damage caused by tenant abuse. (Cr. by Ord. 13,174, 11-5-02; Reconsidered & republished, 11-26-02)

(Sec. 32.11 Cr. by Ord. 7542, 10-22-81)

32.12 PROHIBITED PRACTICES.

- (1) Advertising or Rental of Condemned Premises. No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze, or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.
- (2) Automatic Lease Renewal Without Notice. No landlord shall enforce, or attempt to enforce, an automatic renewal or extension provision in any lease unless, as provided under Sec. 704.15, Wis. Stats., the tenant was given separate written notice of the pending automatic renewal or extension at least fifteen (15) days, but no more than thirty (30) days before its stated effective date.
- (3) Confiscation of Personal Property. No landlord may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property, except as authorized under Secs. 704.05(5) and 779.43, Wis. Stats., or a written lien agreement between the landlord and the tenant. A lien agreement, if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the lien agreement in a separate written document entitled "NON-STANDARD RENTAL PROVISIONS" which the landlord provides to the tenant. The landlord shall specifically identify and discuss the lien agreement with the tenant before the tenant enters into any rental agreement with the landlord. The lien agreement is not effective unless signed or initialed by the tenant. Any proceeds from the disposition of personal property that, together with a security deposit, exceed one month's rent shall be due the tenant. (Am. by Ord. 12,533, 2-18-00)

- (4) Retaliatory Conduct.
- (a) Except as provided in sub. (b), no landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or refuse to renew a lease, or constructively evict a tenant by means of the termination or substantial reduction of heat, water or electricity to the dwelling unit, or report the tenant to law enforcement authorities as having unlawfully entered or immigrated into the United States regardless of the validity of such a report, or threaten any of the preceding, in retaliation against a tenant if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:
1. Reporting a violation of this chapter or a building or housing code to any governmental authority, or filing suit alleging such violation; or
 2. Joining or attempting to organize a tenant's union or association or a neighborhood watch group or a neighborhood association; or
 3. Asserting, or attempting to assert any right specifically accorded to tenants under state or local law.
- (b) Notwithstanding sub. (a), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (a).
(Am. by Ord. 13,711, 10-26-04; ORD-07-00143, 10-18-07)
- (5) Self-Help Eviction. No landlord may exclude, forcibly evict, or constructively evict a tenant from a dwelling unit other than by an eviction procedure specified under Chapter 799, Wis. Stats. (Cr. by Ord. 12,533, 2-18-00)
- (6) Failure to Deliver Possession. No landlord shall fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the landlord is unable to deliver possession because of circumstances beyond the landlord's control.
(Renumbered from 32.12(5) by Ord. 12,533, 2-18-00)
- (7) Minimum Income Requirements.
- (a) No landlord may deny an application for housing based solely on a minimum income requirement or minimum income-to-rent ratio or other financial criterion of a similar nature as part of a prospective tenant screening process if other reliable, demonstrable evidence of an applicant's actual ability to pay the rental amount exists and is provided by the applicant.
- “Evidence of actual ability to pay the rental amount” shall mean demonstrated ability to pay both (i) a comparable income-to-rent ratio and (ii) a comparable rent amount over the past twenty-four months with income from any lawful source or combination of lawful sources. A landlord may consider increases in the applicant's expenses and debts compared to the prior twenty-four month period when calculating the evidence of the actual ability to pay the rental amount. “Reliable demonstrable evidence” shall include but not be limited to: references from landlords and employers or written documentation reasonably necessary to verify prior rent payment history and income, such as a lease, cancelled checks or receipts; certificates, vouchers, or other proof of governmental assistance; wage statements; pay stubs or proof of other lawful sources of income; or tax returns. “Comparable” shall mean equal to or greater than.
- (b) No landlord may require any prospective tenant to produce or disclose their Social Security Number in relation to an application for housing or in relation to the execution of a lease, unless such disclosure is mandated by state or federal law. An applicant's refusal to provide a Social Security Number to a landlord shall not be a basis upon which said landlord may deny housing to such an applicant unless such disclosure is mandated by state or federal law. Every application for housing which requests the production or disclosure of an applicant's Social Security Number shall notify the applicant of the specific state or federal statute which mandates such disclosure or shall notify the applicant that such disclosure is voluntary and that the landlord may not deny the applicant housing on the basis of the applicant's decision to withhold their Social Security Number. (Cr. by Ord. 13,711, 10-26-04)

- (c) Nothing in this subsection shall prohibit a landlord from requesting supplementary documentation of income if required to do so by law or as a condition of eligibility under any local, state or federal government program or from voluntarily considering other evidence of actual ability to pay submitted by an applicant in the event reliable demonstrable evidence as defined above does not exist.
- (d) Nothing in this subsection shall prohibit a landlord from requiring a co-signer or guarantor for a rental agreement, where the applicant does not meet the minimum income requirement or minimum income-to-rent ratio and some or all of the rent will be paid by a private individual on the applicant's behalf.
- (e) Nothing in this subsection shall be construed to prohibit a landlord from denying an application based solely on an applicant's participation in, or the requirements of, the federal Section 8 program.
- (f) In addition to the penalties provided in this chapter, an applicant who is denied housing based on a minimum income requirement or minimum income-to-rent ratio may sue for damages therefor in a court of competent jurisdiction and shall recover twice the amount of any pecuniary loss, together with costs including reasonable attorney's fees.
- (g) Upon receipt of an application for housing or an earnest money deposit, the landlord shall disclose in writing to the applicant any use of a minimum income requirement or minimum income-to-rent ratio and the reliable demonstrable evidence acceptable to landlord as part of a prospective tenant screening process.
- (h) Upon denial of an application for housing that is based solely on a minimum income requirement or minimum income-to-rent ratio, the landlord shall furnish in writing to the applicant a notice of the reason or reasons for the denial. Reasons for denial shall be provided to the applicant by the end of the third business day after the landlord receives the application or earnest money deposit, or by a later date to which the applicant agrees in writing. The later date may not be more than 21 calendar days after the landlord receives the earnest money deposit. The notice of reasons for denial shall inform the applicant that the application will receive another consideration if there is an available unit and if the applicant furnishes to the landlord evidence of actual ability to pay the rental amount. Notice of denial shall also include information regarding the type of information the landlord will find acceptable in order to reconsider the applicant. Notwithstanding the above, nothing in this subsection shall require a landlord to hold the apartment for an applicant who has initially been denied based on a minimum income requirement or minimum income-to-rent ratio.
- (i) This ordinance shall become effective 45 days from the date of its adoption by the Common Council.
- (j) (Repealed by Ord. 12,772, 3-13-01)

(Sec. 32.12 Cr. by Ord. 7542, 10-22-81; Am. by Ord. 12,473, 9-23-99; Sec. 32.12(7) renumbered from Sec. 32.12(6) by Ord. 12,533, 2-18-00)

- (8) Showing Premises for Rental Purposes. No landlord may enter leased premises for the purpose of showing the premises to prospective tenants until one-fourth (1/4) of the lease period has passed. This provision does not apply to:
 - (a) entry for the purpose of subletting or if a lease period is less than nine (9) months; or
 - (b) if a summons and complaint for eviction has been filed.
 - (c) such dates and times agreed to in writing by the landlord and tenant, when the tenant has signed a notice of non renewal. (Cr. by Ord 13,702, 9-29-04)

(Cr. by Ord. 12,709, 11-9-00; Am. by Ord 13,702, 9-29-04)

- (9) Landlord and Tenant shall enter into a Non Standard Rental Provision, in the manner prescribed in Sec. 32.07(14)(f), Madison General Ordinances, that provides that Landlord will not enter into an agreement to rent the leased premises to another tenant for the subsequent lease period until after the date specified in the Non Standard Rental Provision. This provision does not apply if a lease period is less than nine (9) months. Nothing in this subsection shall prohibit a landlord from mitigating their damages after an eviction or a lease termination.
- (a) If Landlord and Tenant fail to enter into a Non Standard Rental Provision regarding showing premises for rental purposes, then it is presumed that the parties to the lease intend that the Landlord will not rent the leased premises to another tenant for a subsequent lease period until after one fourth (1/4) of the lease period has passed.
- (Cr. by Ord. 12,709, 11-9-00; Am. by Ord. 13,702, 9-29-04)
- (10) Threats of Prohibited Practices. No landlord shall threaten to engage in, or attempt to engage in, any practice that violates Sections 32.12(3), 32.12(4) or 32.12(5) of the Madison General Ordinances. (Cr. by Ord. 12,817, 5-18-01)
- (11) Late Rent Fees and Penalties. No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement. A late rent fee or late rent penalty shall not exceed five percent (5%) of the periodic rental payment. Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent payments received from that tenant to offset the amount of rent owed by a tenant. No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty. If a landlord offers a tenant a rent discount or reduction in rent for the advance or timely payment of rent, then the landlord may not also charge a late rent fee or late rent penalty. Such a rent discount or reduction shall not exceed five percent (5%) of the periodic rental payment. (Cr. by Ord. 12,533, 2-18-00; Renumbered by Ord. 12,709, 11-9-00; Ord. 13,175, 11-5-02)
- (12) No landlord may do any of the following for the purpose of inducing any person to enter into a rental agreement:
- (a) Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.
- (b) Misrepresent the amount of rent or non-rent charges to be paid by the tenant.
- (c) Fail to disclose, in connection with any representation of rent amount, the existence of any non-rent charges which will increase the total amount payable by the tenant during tenancy.
- (d) Misrepresent to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.
- (Renumbered by Ord. 12,709, 11-9-00)
- (13) City Financial Assistance.
- (a) Refusal to Make Available. It shall be unlawful for any person receiving City financial assistance for the development, redevelopment or rehabilitation of a housing project to refuse to rent or lease, refuse to negotiate for the lease or rental, or otherwise make unavailable, deny or withhold such housing solely because the applicant for housing is a direct recipient of federal, state or local government housing subsidies. Recipients of City financial assistance shall comply with this subdivision for a minimum of the term of assistance or longer, as negotiated. This provision shall apply only to the specific project receiving City financial assistance.
- (b) Effective Date. This provision shall apply to projects receiving new City financial assistance on or after December 1, 2002.
- (Cr. by Ord. 13,171, 10-29-02)

- (14) Rent In Place. It shall be unlawful for a landlord to: terminate the tenancy of a tenant, prior to the last day of tenancy under the existing rental agreement, based solely upon the tenant's participation in, or the requirements of the federal Section 8 program, when the tenant has received a voucher for the federal Section 8 program from the CDA; or refuse to accept rent payments in the form of a federal Section 8 voucher when the tenant has received said voucher after the approval of the rental application.
- (a) Amendments and Extension of Lease. Any amendments to the rental agreement, or any rental agreement, which may be required by the tenant's participation in the federal Section 8 program shall not extend the term of the tenancy beyond the last day of the rental agreement, unless the tenant and landlord agree to such an extension.
- (b) Referral to City Attorney. A refusal by a landlord to participate in the Section 8 Program when a tenant has received a voucher for it from the CDA prior to the last day of tenancy under the existing rental agreement may be reported to the CDA, who shall refer the refusal to the City Attorney. A landlord found to have wrongly denied tenancy under the Section 8 program may be prosecuted by the City Attorney's office and, upon conviction, shall be subject to the penalties under Sec. 32.12(16) of these ordinances.
- (c) Effective Date. This Subsection shall take effect on November 1, 2002.
(Cr. by Ord. 13,171, 10-29-02; Am. by ORD-06-00052, 5-4-06)
- (15) No landlord may refuse to provide an application form or deny an application for housing based solely on the status of a tenant's application for a Section 8 voucher or that a tenant is on a waiting list to receive a Section 8 voucher. A refusal by a landlord to provide an application form or deny an application for housing based solely on the status of a tenant's application for a Section 8 voucher or that a tenant is on a waiting list to receive a Section 8 voucher may be reported to the CDA who shall refer the refusal to the City Attorney. A landlord found to have wrongly denied tenancy under the Section 8 program may be prosecuted by the City Attorney's office and, upon conviction, shall be subject to the penalties under Sec. 32.12(17) of these ordinances.
- (a) Participation Limited. Nothing in this subsection shall be construed to require a landlord to participate in the federal Section 8 program other than to accept a federal Section 8 voucher from a tenant pursuant to Secs. 32.12(13) and (14), Madison General Ordinances.
- (b) Effective Date. This Subsection shall take effect on November 1, 2002.
(Cr. by Ord. 13,171, 10-29-02; Am. by ORD-06-00052, 5-4-06)
- (16) Penalty.
- (a) By City. Any person who violates any provisions contained in Subsections 32.12 (13), (14) or (15) of these ordinances, or fails to comply with any of the several requirements, shall upon conviction thereof forfeit not less than \$100 nor more than \$3,000 for the first conviction within three (3) years; not less than \$3,000 nor more than \$5,000 for a second conviction within three (3) years; and not less than \$5,000 nor more than \$10,000 for a third or subsequent conviction within three (3) years.
- (b) By Tenant. In addition to the forfeitures provided above, any tenant subjected to a landlord's unlawful conduct prohibited in Subsections 32.12(13), (14) or (15), above, shall be entitled to initiate a separate cause of action and shall be entitled to receive up to triple his/her actual damages plus reasonable attorney's fees and costs.
(Cr. by Ord. 13,171, 10-29-02)
- (17) Severability. The provisions of any part of this ordinance are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this ordinance that the same would have been adopted had such invalid provisions, if any, not been included herein.
(Cr. by ORD-07-00143, 10-18-07)

32.13 REPAIRS, UNTENANTABILITY.

- (1) Application of Section. This section applies to any tenancy if there is no contrary provision in writing signed by both parties. Nothing in this section is intended to affect rights and duties arising under other provisions of the Statutes.
- (2) Duty of Landlord.
 - (a) Unless the repair was made necessary by the negligence or improper use of the premises by the tenant, the landlord is under duty to:
 1. Keep in reasonable state of repair portions of the premises over which he maintains control;
 2. Keep in a reasonable state of repair equipment under his control necessary to supply services which he has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator or air-conditioning;
 3. Make necessary structural repairs;
 4. Repair or replace plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition, except as provided in Sec. 32.13(3)(b).
 - (b) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from his duty as to the other tenants to make repairs as provided in Subdivision (a) above.
 - (c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either Sec. 32.13(3) or (4) governs.
- (3) Duty of Tenant.
 - (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.
 - (b) The tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.
- (4) Untenantability Because of Damage by Fire, Water or Other Casualty, or Hazard to Health. If the premise becomes untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on him. If the landlord proceeds to repair or rebuild the premises or eliminate the hazard to health, and the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(Sec. 32.13 Cr. by Ord. 7542, 10-22-81)

32.14 PENALTIES.

- (1) Any violation of any section of Chapter 32 of the Madison General Ordinances for which there is not provided a specific penalty shall be subject to a forfeiture of not less than sixty dollars (\$60) nor more than six hundred dollars (\$600) upon conviction. Each day of violation shall be construed as a separate offense.
- (2) The civil remedies provided to landlords and tenants in this chapter are not intended to preclude prosecution of an individual for violating any of the provisions of this chapter and the imposition of a forfeiture by the court upon conviction.

(Sec. 32.14 Am. by Ord. 10,812, Adopted 1-18-94; Ord. 12,817, 5-18-01; Ord. 12,881, 8-24-01)

32.15 RETALIATION PROHIBITED.

- (1) No person or tenant shall be retaliated against for complaining of violations of Secs. 32.05, 32.07, 32.11, 32.12 or 32.13 of the Madison General Ordinances or for complying with those sections.
- (2) Retaliation shall include, but not be limited to, eviction, inconsistent rent payment increases, failure to perform promised repairs, refusal to renew a lease or other harassment of the tenant committed by the landlord or his or her agents, or threatening any of the preceding. Any such acts shall be presumed to be retaliatory if committed within six months after the tenant has complained to any state or local investigatory or enforcement agency of violations of Secs. 32.05, 32.07, 32.11, 32.12 or 32.13 of the Madison General Ordinances or their statutory or administrative code equivalents. In order to overcome the presumption that such acts are retaliatory, the landlord must show by a preponderance of evidence that such acts were based upon good cause, as that term is used in this Chapter. (Am. by Ord. 10,452, Adopted 5-19-92; ORD-07-00143, 10-18-07)
- (3) Any retaliatory act is hereby declared null and void and, in addition to any other penalty provided in this Chapter, is subject to a forfeiture of not less than one hundred fifty dollars (\$150) nor more than nine hundred dollars (\$900) for each such act. (Am. by Ord. 12,881, 8-24-01)
- (4) Enforcement by Tenant. Any person suffering damages because of a violation by any other person of Section 32.15, or Section 32.12(4), may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such damages, together with costs, including reasonable attorney's fees. (Cr. by ORD-07-000143, 10-18-07)
- (5) Severability. The provisions of any part of this ordinance are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this ordinance that the same would have been adopted had such invalid provisions, if any, not been included herein. (Cr. by ORD-07-000143, 10-18-07)

(Section 32.15(1)-(3) Cr. by Ord. 8544, 3-18-85)

32.16 SELF-SERVICE STORAGE FACILITIES.

For the purposes of this subsection, the definitions found in Wis. Stat. § 704.90(1) shall apply. No operator of a self-storage facility may charge fees to a lessee, except as specifically provided under the rental agreement. A late fee shall not exceed the greater of fifteen percent (15%) of the periodic rent payment or ten dollars (\$10.00) for the first late rent payment in any twelve month period and shall not exceed the greater of fifteen percent (15%) of the periodic rent payment or twenty dollars (\$20.00) for the second or subsequent late rent payment in any twelve month period. A late fee may not be imposed until 3 calendar days after the unpaid rent is due. When a discount in the amount of rent due is given for payment prior to or on the due date provided in the rental agreement, such discount shall be considered a late fee. Late fees do not include expenses necessary to the preservation, removal, storage, preparation for sale and sale of the personal property, as provided in Sec. 704.90(3), Wis. Stats. (Cr. by Ord. 13,415, 10-4-03)

32.17 SELF HELP REPAIRS.

- (1) Eligibility. As an addition to the rent abatement procedures contained in Sec. 32.04, MGO, if a landlord of a rental premises fails to comply with an order of the Building Inspection Division of the Department of Planning and Community and Economic Development by the original or extended due date and after the issuance of the letter of eligibility for rent abatement, unless such due date is found to be unreasonable upon appeal to the Board of Building Code, Fire Code, Conveyance Code and Licensing Appeals pursuant to Sec. 29.18(3) of the Madison General Ordinances, the tenant may elect to cause repairs to be made to correct the violations contained in the order, in accordance with this Sec. 32.17, MGO and deduct the cost of those repairs from their rent, pursuant to this section. If said order of the Building Inspection Division contains more than one item that has not been completed by said due date, the tenant may elect to seek rent abatement for one or more items and self help repairs. (Am. by ORD-09-00019, 3-14-09)
- (2) Notice. Prior to commencing self help repairs, the tenant shall send a notice to the landlord, by first class mail, return receipt requested, at the address provided by the landlord to the tenant pursuant to Sec. 32.08(1)(b), or if the premises are an owner occupied structure containing no more than four (4) dwelling units, to the owner's residence. The Notice shall contain substantially the following information:
 - (a) The tenant's statement that the tenant intends to make self help repairs to the property.
 - (b) The name of the tenant.
 - (c) A list of the work to be performed. The list shall contain only work necessary to correct the deficiencies found by the Building Inspection Division that were not completed by the original due date.
 - (d) The name of the persons who will perform the work, including the name of any contractors, subcontractors or other persons hired by the tenant.
 - (e) The date that work will be commenced. Such date shall not be less than ten (10) days after the date of mailing the notice.
 - (f) If the tenant intends to perform part or all of the work, a good faith estimate of the number of hours needed to complete the work by the tenant.

This notice requirement shall be construed liberally in favor of the person giving notice. If the landlord has actual notice that the tenant intends to use this self help procedure to correct the items in the Order of the Building Inspection Division, the tenant shall not be barred from deducting the cost of the self help repair from their rent because of a deficiency in meeting this notice requirement.

- (3) Commencement of Work.
- (a) No work may be commenced by the tenant until ten (10) calendar days after the tenant has mailed, first class return receipt requested, the notice provided in Sub. (2). The notice provided in Sub. (2) may not be mailed more than ten (10) calendar days before the original due date provided in the original order of the Building Inspection Division. After ten (10) calendar days, if the landlord has not either: commenced the work contained in the order of the Building Inspection Division using their own employees and contractors, or agreed to do the work by assuming direct responsibility for supervising and compensating the contractors retained by the tenant under the schedule previously negotiated by the tenant and the contractor, then the tenant may commence the work. If the landlord agrees to commence the work to correct the deficiencies, the tenant shall make reasonable efforts to accommodate the work and to permit access to the dwelling unit. If the landlord agrees to commence the work to correct the deficiencies, but substantial compliance is not obtained within 30 days of commencing the work, the tenant shall again be eligible for the rent abatement procedures contained in Sec. 32.04, MGO, or the tenant may immediately proceed to complete the work and may deduct payments made by the tenant for work in the manner provided herein.
- (b) The ten (10) day limit in this paragraph does not apply if the Building Inspection Division has issued orders for work that relates to health and safety that must be completed in less than ten (10) days. In such cases, the tenant may commence work within twenty-four (24) hours of giving notice.
- (4) Scope of Work to be Deducted. No rent deduction may be made by the tenant for payment for any repairs or work other than work done to correct the code violations outlined in the order of the Building Inspection Division that were not corrected by the original due date.
- (5) Rent Deduction. At the time rent is due, the tenant shall submit copies of all invoices for the work to the landlord along with an itemized statement indicating the actual cost of repairs paid for by the tenant and lien waivers from all contractors for work done. The tenant may deduct the entire amount of those repairs for which the tenant has a payment receipt and a lien waiver from contractors and suppliers, from the total amount of rent due. If the actual amount of the receipt for the work or materials exceeds one periodic rent payment, the excess shall be applied to future rents due until the entire amount paid by the tenant for the work or materials has been deducted from rent. In the event that tenants or co-tenants who pay separate rent have jointly completed the work, they may each deduct a pro rata share of the cost of the repairs from their respective rent payments.

If the owner files a letter of objection (copied to the tenant) with the Building Inspection Division within ten (10) days of receiving notice from the tenant of intent to make repairs under this ordinance, the tenant cannot reduce the rent under the provisions of this ordinance until determined eligible for rent abatement by a Hearing Examiner, pursuant to Sec. 32.04, MGO. For those items determined to be eligible for rent abatement, the landlord will reimburse the tenant one hundred and twenty-five percent (125%) of the costs for repairs as determined by the Hearing Examiner.

- (6) Who May Perform Work; Permits Required. When State law, the Wisconsin Administrative Code, Madison General Ordinances or other applicable regulations require that a licensed professional or state-credentialed dwelling contractor perform the work to correct the deficiencies, including architectural, design, surveying, electrical, plumbing, heating and air conditioning work, no one other than a properly licensed professional or state-credentialed dwelling contractor shall perform such work. The tenant shall not perform any work themselves when a licensed professional or state-credentialed dwelling contractor is required to perform the work, nor shall the tenant permit such work to be done by anyone other than a properly licensed professional or state-credentialed dwelling contractor qualified to do the work. A tenant may deduct the cost of materials used by the tenant if the tenant chooses to complete the work themselves. A tenant may deduct the cost of their labor from rent at the hourly rate provide in Sec. 4.20(3), MGO., not to exceed the number of hours stated in the estimate provided pursuant to Sec. 32.17(2)(f), MGO. All work to be completed must be done in a workmanlike manner and must comply with all applicable state and City codes and regulations as provided in the Madison General Ordinances. No work may be commenced by the tenant until all applicable permits and regulatory approvals are obtained. If a permits or approvals are required to commence the work, the tenant shall obtain all applicable permits and approvals and may deduct the fees from the rent, in the manner specified in sub (5).
- (7) Lien Waivers. Any contractor shall forward any lien waivers directly to the tenant who contracted the work. The tenant shall forward all lien waivers from contractors to the landlord along with the receipts deducted from the rent.
- (8) Eviction or Retaliation Prohibited. No person or tenant who complies with this section shall be evicted for nonpayment of rent because said person or tenant has elected to act under this section 32.17 and has deducted the cost of work from rental payments. No person or tenant shall be evicted or retaliated against for giving either verbal or written notice to the landlord that they intend to use the self help procedures under this section 32.17. It shall be presumed that any attempt to terminate the tenancy of such tenant or to evict such tenant or to raise such tenant's rental payments or to refuse to renew the tenant's lease or to otherwise harass or retaliate against such tenant during the period commencing when verbal or written notice is first given by the tenant to the landlord that the tenant intends to use these self help procedures, until six months after certification by the Building Inspection Division of the Department of Planning and Community and Economic Development of the City of Madison that all violations have been corrected, is retaliation. Such attempt is hereby declared null and void and subject to a forfeiture of not less than \$150 and not more than \$900 for each attempt. It is further provided that in order to overcome such presumption, the landlord must show by a preponderance of the evidence that such acts by the landlord were based on good cause. "Good Cause" used herein means that the landlord must show a good reason for his or her action, other than one related to or caused by the operation of this ordinance, including but not limited to normal uniform rental increases due to utility increases or other increased costs to the landlord, or for other bona fide, nondiscriminatory business reason.
- (9) Effective Date. This ordinance shall take effect one hundred and twenty (120) days after adoption.
(Sec. 32.17 Am. by ORD-08-000109, 10-7-08)