

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

Date: November 20, 2014

MEMORANDUM

TO: Landlord Tenant Subcommittee

FROM: Steve Brist, Assistant City Attorney

RE: State Statutes that Form the Basis for Concluding City Ordinances May Need to be Changed, Along with the Corresponding Ordinance Section to which it is Applicable

I. Statutes that form the basis for concluding City Ordinances may need to be changed

66.0104. Prohibiting ordinances that place certain limits or requirements on a landlord.

(1) In this section:

- (a) "Premises" has the meaning given in s. 704.01 (3).
- (b) "Rental agreement" has the meaning given in s. 704.01 (3m).
- (c) "Tenancy" has the meaning given in s. 704.01 (4).

(2) (a) No city, village, town, or county may enact an ordinance that places any of the following limitations on a residential landlord:

1. Prohibits a landlord from, or places limitations on a landlord with respect to, obtaining and using or attempting to obtain and use any of the following information with respect to a tenant or prospective tenant:

- a. Monthly household income.
- b. Occupation.
- c. Rental history.
- d. Credit information.
- e. Court records, including arrest and conviction records, to which there is public access.
- f. Social security number or other proof of identity.

2. Limits how far back in time a prospective tenant's credit information, conviction record, or previous housing may be taken into account by a landlord.

3. Prohibits a landlord from, or places limitations on a landlord with respect to, entering into a rental agreement for a premises with a prospective tenant during the tenancy of the current tenant of the premises.

4. Prohibits a landlord from, or places limitations on a landlord with respect to, showing a premises to a prospective tenant during the tenancy of the current tenant of the premises.

(b) No city, village, town, or county may enact an ordinance that places requirements on a residential landlord with respect to security deposits or earnest money or pretenancy or posttenancy inspections that are additional to the requirements under administrative rules related to residential rental practices.

(c) No city, village, town, or county may enact an ordinance that limits a residential tenant's

responsibility, or a residential landlord's right to recover, for any damage or waste to, or neglect of, the premises that occurs during the tenant's occupancy of the premises, or for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.

(d)

1.

a. No city, village, town, or county may enact an ordinance that requires a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law.

b. Subdivision 1. a. does not apply to an ordinance that has a reasonable and clearly defined objective of regulating the manufacture of illegal narcotics.

2. No city, village, town, or county may enact an ordinance that requires a landlord to communicate to the city, village, town, or county any information concerning the landlord or a tenant, unless any of the following applies:

a. The information is required under federal or state law.

b. The information is required of all residential real property owners.

c. The information is solely information that will enable a person to contact the owner or, at the option of the owner, an agent of the owner.

(3)

(a) If a city, village, town, or county has in effect on December 21, 2011, an ordinance that is inconsistent with sub. (2) (a) or (b), the ordinance does not apply and may not be enforced.

(b) If a city, village, town, or county has in effect on March 1, 2014, an ordinance that is inconsistent with sub. (2) (c) or (d), the ordinance does not apply and may not be enforced.

History: 2011 a. 108; 2013 a. 76.

704.07 Repairs; untenability.

(1) APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements of this section in a residential tenancy, including an agreement in a rental agreement, is void. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

(2) DUTY OF LANDLORD.

(a) Except for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to do all of the following:

1. Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

2. Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

3. Make all necessary structural repairs.

4. Except for residential premises subject to a local housing code, and except as provided in sub. (3) (b), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

5. For a residential tenancy, comply with any local housing code applicable to the premises.

(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 the

landlord's duty as to the other tenants to make repairs as provided in par. (a).

(bm) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any building code or housing code violation to which all of the following apply:

1. The landlord has actual knowledge of the violation.
2. The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises.
3. The violation presents a significant threat to the prospective tenant's health or safety.
4. The violation has not been corrected.

(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 sub. (3) or (4) governs.

II. Sections of the City Ordinances that may need to be changed.

Note: the numbers correspond to the numbered items in the October 16, 2014 memo.

1. Sec. 66.0104(2)(d) 1, Wis. Stats.
2. Sec. 66.0104(2)(b), Wis. Stats.
3. Sec. 66.0104(2)(d) 1, Wis. Stats.
4. Sec. 66.0104(2)(d) 1, Wis. Stats.
5. Sec. 66.0104(2)(d) 1, Wis. Stats.
6. Sec. 66.0104(2)(c), Wis. Stats.
7. Sec. 66.0104(2)(d) 1, Wis. Stats.
8. Sec. 66.0104(2)(b), Wis. Stats.
9. Sec. 66.0104(2)(b), Wis. Stats.
10. Sec. 66.0104(2)(b), Wis. Stats.
11. Sec. 66.0104(2)(b), Wis. Stats.
12. Sec. 66.0104(2)(b), Wis. Stats.
13. Sec. 66.0104(2)(b), Wis. Stats.
14. Sec. 66.0104(2)(d) 1, Wis. Stats.
15. Sec. 704.07(2)(bm), Wis. Stats.

16. Sec. 66.0104(2)(d) 1, Wis. Stats.

17. Sec. 66.0104(2)(d) 1, Wis. Stats.

18. Sec. 66.0104(2)(d) 1, Wis. Stats.

19. Sec. 66.0104(2)(d) 1, Wis. Stats.

20. Sec. 66.0104(2)(d) 1, Wis. Stats.

21. Sec. 66.0104(2)(d) 1, Wis. Stats.
 (b) 66.0104(2)(a)1.f.

22. Sec. 66.0104(2)(a) 4, Wis. Stats.

23. Sec. 66.0104(2)(a) 3, Wis. Stats.