

## 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 Landlord and Tenant Issues 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; ORD-12-00076, 6-20-12)
- (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	10-25% 24-48 hrs 25% More than 48 hrs 50-95%
	b. Flush water closet	
	i. Not provided or missing	Not only facility 5-10% Only facility 25-50%
	c. Bathtub or shower	
	i. Not provided or missing	Not only facility 5-10% 24-48 hrs 25%
	d. Water pressure/volume	
	i. None	More than 48 hrs 50-95%

	ii. Inadequate	10-25%
2. 27.04(2)(b) [27.05(2)(j)]	a. Hot water tank	
	i. Not provided or totally not functional	25-50%
	ii. In need of repair to the extent that supply is inadequate or water is consistently below 100°F.	10-25%
	iii. Consistently does not provide 120° water but above 100°	5-10%
	iv. Tank leak - See Basement Water and Moisture Problems	
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	10-25% per exit
	ii. Partially usable	5-10% per exit
	iii. Blocked by accumulation of stored items, junk, trash or debris	
	A. totally	10-25% per exit
	B. partially	5-10% per exit
	iv. Other impairment of exit use, i.e., double cylinder lock, skeleton keyed lock, movable furniture obstructing exit path	1-5% per exit
	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.	

5. 27.04(2)(f)	a. Natural light or ventilation	
	i. Not provided in one or more rooms	10-25% per room
	ii. Inadequate light or ventilation	5-10%
6. 27.04(2)(f) [27.07(2)(c)]	a. Screens	
	i. No screens provided or all screens in need of repair	10-25%
	ii. Not all screens provided and/or some screens in need of repair	5-10%
7. 27.04(2)(g) [27.04(2)(g)] [27.04(2)(i)]	a. Electrical service and wiring	
	i. No electricity	24-48 hrs 25% More than 48 hrs 50-95%
	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)	10-25%
	iii. Inadequate branch circuits	5-10%
	iv. Unfused circuits (the use of unfused circuits must be discontinued)	10-25%
	v. Overfused circuits	5-10%
	vi. Exposed wires, damaged or bare, presenting shock hazard	5-10%
	vii. Convenience outlets not provided, not functional, not proper number, not proper installation (one or more outlets)	5-10%
8. 27.04(2)(g)	a. Lighting	

[27.04(2)(g)4.] [27.04(2)(g)5.]	i. Required light switches not functioning or not provided	1-5%
	ii. Public halls and/or stairs not lit	1-5% per affected applicant
	iii. Outside entrance doors and/or required parking areas unlit	1-5% per affected applicant
9. 27.04(2)(h)	a. Heat	
	i. No heat or consistently below 55°	24-48 hrs 25% More than 48 hrs 50-95%
	ii. Inadequate (55-66°) or occasionally inadequate	10-25%
10. 27.04(2)(i) [27.04(2)(g)]	a. Required exit signs	
	i. Missing or not lit	1-5% per sign
11. 27.05(2)(a)	a. Improper grading and/or no eaves troughs and/or downspouts	
	i. Not causing basement or ground floor water or moisture problems	No Abatement
	ii. Resulting in basement water or moisture problems	See Basement Water and Moisture Problems
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	5-10% per room
	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	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	10-25%
	iv. Resulting in wet basement - see Basement Water and Moisture Problems	
14. 27.05(2)(g)2.	a. Chimney	
	i. Not properly removing the products of combustion (discontinue use of appliance(s) vented into chimney)	Abatement based on lost appliance/facility: No hot water, 27.04(2)(b) No heat, 27.04(2)(h)
	ii. In danger of collapse	10-25%

15. 27.05(2)(g)3.	a. Unsealed gaps in bathing, toilet or food preparation areas allowing collection of dirt and other matter	
	i. Severe enough to create a cleaning or sanitation problem	1-5%
16. 27.05(2)(h)	a. Exterior doors, interior doors, basement hatchway doors (one or more doors)	
	i. Missing, therefore negating, dwelling unit or lodging room security	25-50%
	ii. Missing and affecting privacy, health or safety	10-25%
	iii. In a state of disrepair which threatens security (one or more doors)	Use the security analysis & %s in 20.a.i.,ii.,& iii.
	iv. Hazardous e.g., unhinged, requiring excessive force to open, door or hardware interfering with egress	5-10%
	v. Missing or nonfunctional latch assembly on a bedroom, bathroom or dwelling unit entrance door	1-5%
17. 27.05(2)(h)	a. Windows (one or more windows)	
	i. Missing from first floor, basement or other window openings accessible by balconies, fire escapes, trees, etc. and negating dwelling unit or lodging room security	25-50%
	ii. Missing and affecting privacy, health or safety	10-25%
	iii. In a state of disrepair which threatens security	Use security analysis & %s in 21.a.i. & ii.
	iv. Ventilating locks not functional	5-10%



	v. Hazardous, e.g. windows which must be propped open, broken windows with glass shards in the frame	5-10%
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 2½" 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%
	ii. Door locks but no secondary locking device or totally not functional	10-25%
21. 27.05(2)(h)4	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%

	ii. All other windows where required	1-5%
22. 27.05(2)(h)5	a. Required window ventilating sash fasteners not provided or not functional (one or more fasteners)	5-10%
23. 27.05(2)(h)7.	a. Common area doors	
	i. No lock or totally not functional lock	5-10%
	ii. Lock conditions which have a minimal effect on security, e.g., no strike plate screws in strike plate not 2½" long	1-5%
	iii. Required door closer missing or not functioning	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	10-25%
	i. No positive locking guarded latch lock or no functional locking guarded latch	10-25%
	ii. No approved self closing device or no functioning self closing device	10-25%
	b. Missing or nonfunctional approved guard plate affixed to exterior side of door deemed necessary to provide adequate security against illegal entry	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	5-10%
	ii. No approved self closing device or no functioning approved self closing device	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	5-10%
	ii. No approved self closing device or no functioning approved self closing device	5-10%
27. 27.05(2)(i)	a. Inside and outside stair and/or porch	
	i. Hazardous to use	10-25% per affected app.
	b. Required appurtenances to any porch or stair such as handrails and guardrails	
	i. Protecting an elevation of less than 4'	
	A. Missing	5-10% per affected app.
	B. Inadequate	5-10% per affected app.
	ii. Protecting an elevation of more than 4'	
	A. Missing	10-25% per affected app.
	B. Inadequate	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	Only facility 25-50% Not only facility 5-10%
	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.)	5-10% per fixture
	*Also see Basement Water and Moisture Problems	
	d. Water Pressure/Volume	
	i. Inadequate or fluctuating hot and cold	10-25%
	ii. Consistently leaking hot water faucet	1-5%
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	
	i. Doorbells, intercoms or effective buzzer system of which to alert occupant of request to access the building	10-25%
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)
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. All code sections which result in water problems may use these percentages	a. Basement Water and Moisture Problems	
	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	1-5% per affected

	mold or mildew accumulated	applicant
	C. Basement used for habitation	
	aa. Accumulated water	Not a kit., bath or BR 25-50% Kit., bath or BR 50-95%
	bb. Continually wet but no standing water	5-10%
	D. Basement laundry - presents potential electrical hazard when appliances are in use	5-10% per affected applicant
42. Chapter 18	<p>Plumbing Code which adopts by reference Wisconsin Administrative Code SPS 325, 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> <p>(Am. by ORD-12-00035, 3-28-12)</p>	
43. Chapter 19 [NEC] [SPS 316] [SPS 352]	<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; ORD-12-00035, 3-28-12)</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 Landlord and Tenant Issues 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; ORD-12-00076, 6-20-12)
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 Landlord and Tenant Issues 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; ORD-12-00076, 6-20-12)

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. (R. by ORD-10-00114, 12-8-10)

(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 Landlord and Tenant Issues 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; ORD-12-00076, 6-20-12)
- (i) Appeal. All orders of the Rent Abatement Hearing Examiner shall be final administrative determinations and shall be subject to certiorari review in Dane County Circuit Court pursuant to the time limits and procedures set forth in Wis. Stat. § 68.13, which procedures are adopted and incorporated by reference. Such decisions are not reviewable under Sec. 9.49, MGO. Any party to the proceeding may seek review thereof within thirty (30) days of receipt 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; Amd. by [ORD-18-00053](#), 5-14-18)

(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 her/him were based upon good cause. "Good cause" as used herein means that the landlord must show a good reason for her/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; ORD-14-00012, 1-14-14)

(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)