

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

Date: October 16, 2014

**MEMORANDUM**

TO: Landlord Tenant Subcommittee

FROM: Steve Brist, Assistant City Attorney

RE: Sections of Chapter 32 That May be Repealed or Amended because of State Law Changes

1. **12 hours, rather than 24 hours, notice required.** Sec. 32.05(1)(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.
2. **No limit on the days or hours when the premises may be shown.** 32.05(1)(e) Entering upon a tenant's leased premises solely to show the property for sale or lease without at least twenty-four (24) hours notice, the notice shall indicate the exact time of entry and the length of stay not to exceed a combined total of three (3) hours per day and shall cover not more than three consecutive days, unless the tenant approves a shorter period of notice or a larger window of availability on a case-by-case basis. (Am. by ORD-10-00016, 2-18-10)
3. **Written guest regulations need not be provided.** Sec. 32.05(1)(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.
4. **Tenants Rights and Responsibilities brochure need not be provided.** Sec. 32.06(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 Landlord and Tenant Issues 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. (Am. by ORD-12-00076, 6-20-12)

- (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.

5. **Voter Registration forms need not be provided.** Sec.32.06(5) Voter Registration Forms. In order to increase citizen participation in elections, and in light of the many tenants residing in the City of Madison, every landlord shall provide a tenant with a voter registration form at the time the tenant takes possession of the residence. The voter registration form shall be the form made available by the City Clerk or as downloaded from the City Clerk's website. The landlord shall also provide each residential unit with the "How to Register" information available from the City Clerk. (Cr by ORD-12-00096, 7-27-12)

6. **No cap on late rent fees.** Sec. 32.06(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

7. **Notice of right to continue to abate rent as subsequent tenant not required** 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.
8. **No cap on security deposit** Sec. 32.07(2)(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.
9. **Landlord may hold two security deposits for same premise** Sec. 32.07(2)(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.

10. **No interest on security deposits. Sec. 32.07(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.
11. **Not required to use check out forms.** Sec. 32.07(5) (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.
12. **No itemization of amounts of security deposits withheld; security deposits may be increased during tenancy; wage rates need not be disclosed; damage not required to be photographed.** Sec. 32.07(7)(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, in a minimum of ten-(10) point font, 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.

13. **Double damages, not triple damages permitted.** Sec. 32.07(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.

14. **Reasons for denial or non renewal need not be stated.** Sec. 32.08(5) Written Reasons For Denial of or Non-Renewal of Tenancy.

(a) All applications for residential tenancy shall contain the following question in writing in a prominent place on the application: “Do you wish to receive a written explanation of the denial of tenancy? Yes \_\_\_\_ No \_\_\_\_.”

15. **Not all building code violations need be disclosed** Sec. 32.08(2)(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.

16. **Telephone number need not be provided** Sec. 32.08(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:
  
17. **Notification of all code violations need not be given.** 32.08(2)(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. 28.211 of the Zoning Code and the zoning district in which the premises are located; and the off-street parking requirements in Sec. 28.141 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. (Am. by ORD-12
  
18. **Written Reasons for denial of tenancy not required** Sec. 32.08(5) (b) 1. Unless the applicant has indicated on the application that the applicant does not want to receive a written explanation of a denial of tenancy, the lessor or any person authorized to enter into rental agreements on behalf of the lessor, shall provide any applicant who is denied tenancy with a written statement of reasons for the denial of tenancy as required by sub (d).
  2. If the applicant has indicated s/he does not want to receive a written explanation, the applicant may request a written explanation of a denial within thirty (30) days and the lessor shall provide the statement as required by sub. (d).
  
- (c) A lessor that decides not to renew a tenant's lease at the expiration of the lease term or terminates a periodic tenancy or tenancy at will, shall provide the affected tenant with a notice of non-renewal as required by sub. (d). The notice shall be served at least sixty (60) days prior to the expiration of the lease term unless the term is shorter than sixty (60) days, which shall require a notice compliant with Wis. Stat. § 704.19.
  
- (d) 1. In denying an initial application for tenancy or non-renewal of a lease at the expiration of a lease term or a tenancy period or terminating a tenancy at will, the lessor shall furnish the applicant or tenant a written statement of the reasons tenancy was denied or terminated.
  2. The statement shall include the reason(s) for the action, a description of the information supporting the decision, and identification of all sources of the relied-upon information. Lessor shall also furnish the applicant with a copy of the lessor's tenant selection policies.
  3. The written notification required by sub. 1. shall be personally delivered or mailed to the applicant within three (3) days of the denial of tenancy.

4. An application is deemed denied for the purpose of this section if no determination is made by the lessor within twenty-one (21) days of the date the completed application is received by the lessor.

19. **Security Deposit Itemization not required, labor and materials costs not required**

Sec. 32.08 (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, in a minimum of ten-(10) point font, 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; ORD-10-00108, 11-17-10)
- (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.

20. **No itemization of amounts withheld from earnest money deposit required.** Sec. 32.10 (3)(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

21. **No requirement to disclose minimum income requirements.** Sec.32.12(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.
- (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 therefore 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

22. **Landlord may show premises to prospective tenants at any time.** Sec. 32.12(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.

23. **Landlord may re rent the premises at any time.** Sec. 32.12 (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.