

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

Date: March 5, 2012

MEMORANDUM

TO: Landlord/Tenant Subcommittee

FROM: Lana J. Mades, ACA

RE: Impact of 2011 Act 108 (Creating Wis. Stats. 66.0104) relating to Landlord/Tenant Relations

The Office of the City Attorney has been asked to detail the Madison General Ordinances that will be affected by 2011 Act 108, which was recently signed into law by Governor Scott Walker. For ease of discussion, I have attached to this memo an initial draft of ordinance changes that would be in compliance with Act 108. While there have been instances in the past in which ordinances were pre-empted by legislation, but yet were kept on the books in the event such legislation changed in the future, it is the opinion of the City Attorney's office that, given the scope of the changes, the affected ordinances should be revised in this instance.

The following sections of Chapter 32 should be revised in the following fashion in order to comply with 2011 Act 108 (See also highlighted portions of attached draft ordinances):

32.02(2)(c): Making definition of "earnest money" consistent with ATCP 134.02(3)

-Credit check fees are not considered earnest money

32.02(2)(m): Making definition of "security deposit" consistent with ATCP 134.02(11)

-Removes language specifically related to pet, furniture and key deposits

32.05(e): Making notice requirement prior to a showing consistent with ATCP 134.09(2)

-Allows a landlord to show the property with 12 hours notice, rather than 24

-Removes the language relating to the requirement that the notice contain the exact time of entry and limits the length of stay

32.07: Rewriting security deposit refund procedures to be consistent with ATCP 134.06

-Removes the requirement that security deposits cannot exceed 1 months rent

-Removes the requirement that interest be provided on the deposit

-Removes the requirement that landlords provide check-in/check-out forms

-Removes the requirement that landlords include receipts with their security deposit withholding itemization

-Removes the requirement that photographs of damages are to be made available

-Removes the language prohibiting the increase or institution of a security deposit during a tenancy

-Removes the language prohibiting the holding of a security deposit by both a primary tenant and a sublessor

32.10(2): Making earnest money procedures consistent with ATCP 134.05

-Removes the requirement of an itemization of amounts withheld from earnest money

32.12(7): Removing the entirety of 32.12(7) does two things: 1) It gets the ordinances in compliance with Act 108 by removing restrictions against consideration or use of minimum income requirements or obtaining tenant's social security number; and 2) It removes internally inconsistent language that relates to Section 8. 32.17(e) states, "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." This appears to be inconsistent with other sections of chapter 32, such as 32.12(13) through (15), which specifically prohibit landlords from taking certain actions because of participation in the Section 8 program.

-Please note that while the ordinances prohibiting landlords from taking certain actions based on a tenant's involvement in the Section 8 program would theoretically survive Act 108, as a practical matter, they would be very difficult to prosecute. Act 108 allows landlords to make decisions based on a person's income. Because eligibility for Section 8 is largely based on income thresholds, in most cases it would likely be difficult to prove to the requisite burden of proof that the landlord is acting specifically in response to Section 8, rather than in response to general income standards.

32.12(8): Removes restrictions regarding showing a property during first quarter of lease period

32.12(9): Removes restrictions regarding leasing a property to another tenant during the first quarter of the lease period

Certain portions of Chapter 39 (Department of Civil Rights) are also affected by Act 108. These portions include sections 39.03(2)(11) and 39.03(4)(a),(d), as landlords would now be allowed to require that tenants provide social security numbers, and could use conviction records, arrest records and occupational information in making rental decisions. Assistant City Attorney Adrianna Peguero can provide more specific information on the revisions needed to that Chapter.

Please let me know if I can be of any more assistance on this matter.

Sincerely,

Lana J. Mades
Assistant City Attorney
Madison City Attorney's office

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. "Earnest money deposit" does not include a fee which a landlord charges for a credit check in compliance with s. ATCP 134.05(3). (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 or 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).

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) Entering upon a tenant's leased premises solely to show the property for sale or lease without at least twelve (12) 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)
 - (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)

32.07 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.

(e) 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)

(1) CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES.

(a) Before a landlord accepts a security deposit, or converts an earnest money deposit to a security deposit, the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified deadline date which is not less than 7 days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(b) If a tenant makes a request under par. (a), 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. The landlord shall provide the list 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.

(2) RETURNING SECURITY DEPOSITS.

(a) Within 21 days after a tenant surrenders the rental premises, the landlord shall deliver or mail to the tenant the full amount of any security deposit held by the landlord, less any amounts properly withheld by the landlord under sub. (3).

(b) A tenant surrenders the premises under par. (a) on the last day of tenancy provided under the rental agreement, except that:

1. 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.

2. 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.

3. 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.

(c) If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

(d) 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 rental agreement, unless the tenants designate a payee in writing.

(e) A tenant does not waive his or her right to the full amount owed under par. (a) merely by accepting a partial payment of that amount.

(3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS.

(a) A landlord may withhold from a tenant's security deposit only for the following:

1. Tenant damage, waste or neglect of the premises.

2. Unpaid rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

3. Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

4. 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.

5. Unpaid mobile home parking fees which a local unit of government has assessed against the tenant

under s. 66.0435 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

6. Other reasons authorized in the rental agreement according to par. (b).

(b) A rental agreement may include one or more nonstandard rental provisions which authorize a landlord to withhold from a tenant's security deposit for reasons not identified under par. (a). The landlord shall include the nonstandard provisions, if any, in a separate written document entitled "**NONSTANDARD RENTAL PROVISIONS**" which the landlord provides to the tenant. The landlord shall specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

(c) This subsection does not authorize a landlord to withhold a security deposit for normal wear and tear, such as routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

(4) SECURITY DEPOSIT WITHHOLDING; STATEMENT OF CLAIMS.

(a) If any portion of a security deposit is withheld by a landlord, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim.

(b) 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.

(5) TENANT FAILURE TO LEAVE FORWARDING ADDRESS. A landlord who has otherwise complied with this section shall not be considered in violation solely because the postal service has been unable to complete mail delivery to the person addressed. This subsection does not affect any other rights that a tenant may have under law to the return of a security deposit.

~~(4)~~ (6) 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, 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)
- (e) 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)(7) 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.
(a) Failure to notify tenant in writing of right to document defects use check-in/check-out forms under Sec. 32.07(1)(5).	The money due plus up to twice the amount wrongfully withheld.
(b) Failure to return security deposit or provide written statement of reasons for withholding under Sec. 32.07(4)(7)(a) & (b)	The money due plus up to twice the amount wrongfully withheld.
(c) Failure to comply with Sec. 32.07(3)(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)~~ 8 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)~~ 9 This section does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant is entitled.
- ~~(13)~~ 10 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.

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.~~

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~~ 7) 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~~ 8) 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~~ 9) 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~~ 10) 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~~ 11) 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)~~ (13) 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 12)~~ 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)~~ (13) 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)~~ (10) and (11), 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 13)~~ Penalty.

- (a) By City. Any person who violates any provisions contained in Subsections 32.12 ~~(13), (14) or (15)~~ (10), (11) or (12) 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)~~; (10), (11) or (12) 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 14)~~ 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)