

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

Amending Section 32.04 of the Madison General Ordinances relating to adding additional Rent Impairing Violations to the Rent Abatement Ordinance.

PRESENTED October 20, 2020
REFERRED Landlord and Tenant Issues Committee

DRAFT

Drafted by: Steve Brist

Date: October 13, 2020

SPONSORS:

DRAFTER'S ANALYSIS: This proposal makes additions to the Schedule of Rent Impairing Violations contained in Sec. 32.04(4) of the Madison General Ordinances. Under this proposal, a tenant may abate rent for uncorrected violations for failure to abate lead paint on the exterior and in the interior of a rental unit. Failure to correct a health nuisance caused by mold on interior surfaces and failure to install carbon monoxide detectors is made subject to abatement. Finally, the maximum total abatement authorized under this ordinance is increased to 100% where the premises have been vacated pursuant to an order of the Director of the Building Inspection Division

Pursuant to Sec. 32.04(13) of the current Madison General Ordinances, these amendments shall be effective and apply to all orders written by the Building Inspection Division 90 days after publication.

The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (1) entitled "Statement of Intent" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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, Health 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. Subdivision (a) entitled "Eligibility" of Subsection (4) entitled "Authorization of Rent Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances in amended to read as follows:

"(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

Approved as to form:

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 or the Director of Public Health Madison and Dane County 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 or Public Health Madison and Dane County 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."

3. Subdivision (c) entitled "Designation of Rent Impairing Violations" of Subsection (4) entitled "Authorization of Rent Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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 7, 18, 19, 27, 28, 29, 30 and 3032 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."

4. Subdivision (d) entitled "Schedule of Rent Impairing Violations" of Subsection (4) entitled "Authorization of Rent Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

MGO Violation	Description	% of Rent Abatement
<u>12.</u> <u>27.05(2)(g)1.</u> <u>[27.05(2)(k)]</u> <u>[27.05(2)(g)3.]</u>	<u>vii. Mold on walls, ceilings and or floors causing unsafe condition so that an area or room is ordered vacated by B.I. Dept. or Health Dept.</u>	<u>Kit., bath or BR 50-95% Not a kit., bath or BR 25-50%</u>
	<u>viii. Mold in the dwelling on walls, ceilings and or floors causing documented health issues.</u>	<u>All areas of the dwelling including the basement 10 - 25% per room</u>
	<u>ix. Mold in the dwelling on walls, ceilings and or floors not causing documented health issues.</u>	<u>5-10% per room</u>

MGO Violation	Description	% of Rent Abatement
16. <u>27.05(2)(g)4</u>	a. <u>Cabinets/Countertops in disrepair or containing mold</u>	
	i. <u>Cabinets/Countertops hazardous to use.</u>	10-25%
	ii. <u>Cabinets/Countertops damaged or in such disrepair that it interferes with the tenant's full use of all or part of the premises (including but not missing drawers, doors or peeling paint)</u>	5-10%
	iii. <u>Mold in or on cabinet causing unsafe condition so that an area or room is ordered vacated by B.I. Dept. or Health Dept.</u>	Kit., bath or BR 50-95% Not a kit., bath or BR 25-50%
	iv. <u>Mold in or on cabinet causing documented health issues.</u>	All areas of the dwelling including the basement 10 - 25% per room
	v. <u>Mold in or on cabinet not causing documented health issues.</u>	5-10% per room
16. — 38.	<u>RENUMBERED 17. – 39.</u>	
40. <u>27.08</u>	a. <u>Premises Vacated Pursuant to Order of the Director of Building Inspection Unit</u>	
	i. <u>Premises vacated immediately after initial inspection without issuing an Official Notice</u>	100%
40. — 42.	<u>RENUMBERED 41. – 43.</u>	
44. <u>29.19</u>	a. <u>Carbon Monoxide Detectors not Installed Where Required</u>	
	i. <u>In the basement 5-10% per affected area</u>	5-10% per affected area
	ii. <u>On each floor level except attic, garage or storage area</u>	10-25%
	iii. <u>Outside of each separate sleeping area in the immediate vicinity of the sleeping units</u>	10-25%
	iv. <u>In sleeping rooms, if a fuel-burning appliance is located with the sleeping room</u>	10-25%
45. <u>7.49</u>	a. <u>Failure to abate a health nuisance</u>	
	i. <u>Lead bearing paint present on exterior surfaces causing a health nuisance</u>	5 - 10%
46. <u>7.05(5)</u>	a. <u>Failure to abate a health nuisance</u>	

MGO Violation	Description	% of Rent Abatement
	i. Documented health nuisance caused by lead paint on interior surfaces	10 - 25% per room
46. — 47.	RENUMBERED 47. – 48.	

5. Paragraph 3. entitled “Conduct of Hearing” of Subdivision (e) entitled “Procedure” of Subsection (4) entitled “Authorization of Rent Abatement” of Section 32.04 entitled “Rent Abatement” of the Madison General Ordinances is amended to read as follows:

“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 or Public Health Madison and Dane County. 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.”

6. Subparagraph a. of Paragraph 4. entitled “Decision” of Subdivision (e) entitled “Procedure” of Subsection (4) entitled “Authorization of Rent Abatement” of Section 32.04 entitled “Rent Abatement” of the Madison General Ordinance is amended to read as follows:

“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 or Public Health Madison and Dane County 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 or Public Health Madison and Dane County

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)."

7. Subparagraph b. of Paragraph 4. entitled "Decision" of Subdivision (e) entitled "Procedure" of Subsection (4) entitled "Authorization of Rent Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"b. If, after hearing, the Hearing Examiner finds that the landlord did not fail to comply with an order of the Building Inspection Division or Public Health Madison and Dane County 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."

8. Subdivision (a) of Subsection (6) entitled "Duration of Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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 or Public Health Madison and Dane County 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."

9. Subdivision (b) of Subsection (6) entitled "Duration of Abatement" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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 or Public Health Madison and Dane County at which said violations were discovered."

10. Subdivision (a) of Subsection (7) entitled "Rent Abatement and Code Violations Disclosure" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(a) A copy of any official notice of outstanding violation of Chapter 7 (Health Code), 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;"

11. Subdivision (a) of Subsection (8) entitled "Eviction or Retaliation" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(a) No person or tenant who complains to the Building Inspection Division of the Department of Planning and Community and Economic Development or Public Health Madison and Dane County or of violations of Chapters 7 18, 19, 27, 28, 29, 30 or 32 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."

12. Subdivision (b) of Subsection (8) entitled "Eviction and Retaliation" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(b) No person or tenant shall be evicted or retaliated against for complaining of violations of Chapters 7 18, 19, 27, 28, 29, 30 or 30-32 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 or Public Health Madison and Dane County 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 or Public Health Madison and Dane County 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 or Public Health Madison and Dane County of a violation of Chapters 7 18, 19, 27, 28, 29 30 or 3032 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."

13. Subsection (9) entitled "Prosecution" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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 or Public Health Madison and Dane County from prosecuting violations of the code relating to said property."

14. Subsection (13) entitled "Effective Date of Ordinance" of Section 32.04 entitled "Rent Abatement" of the Madison General Ordinances is amended to read as follows:

"(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 or Public Health Madison and Dane County 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."