

**CITY OF MADISON, WISCONSIN**

A CHARTER ORDINANCE \_\_\_\_\_

PRESENTED  
REFERRED

January 7, 2014  
Landlord Tenant Issues  
Committee  
\_\_\_\_\_

Creating Section 32.12(3) of the Madison General Ordinances relating to storage or disposition of personalty left by tenants.

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Drafted by: Steven Brist

Date: December 20, 2013

SPONSOR: Alders Zellers & Rummel

DRAFTER'S ANALYSIS: This proposal uses the City's statutory home rule powers to elect not to be governed by the current Wis. Stat. § 704.05(5). This proposal adopts the former state law regarding the storage or disposition of a former tenant's personal property by a landlord. The effect of this change is that if a tenant removes from a leased premises and leaves behind personal property, the landlord may not presume that the personal property is abandoned and the landlord must follow the procedures outlined in the former Sec. 704.05(5), Wis. Stats. Under this prior statute, which is adopted by this charter ordinance, a landlord must store the property and notify the tenant, personally or by mail, within 10 days of the date on which storage charges begin. The landlord acquires a lien on the stored property for the actual and reasonable costs of removal and storage. If the landlord wishes to dispose of the property, landlord must give the tenant notice, personally or by ordinary mail, addressed to the tenant's last known address. The notice must state that if the tenant does not reclaim the property within 30 days after the date of personal service or mailing, then the landlord will dispose of the property by private or public sale or any other appropriate means. The rights of a third party lienholder who has the right to repossess the property left behind, such as a furniture company, to recover the property by paying the landlord's storage charges, is preserved. Proceeds from the sale are used to offset the costs of storage and sale and any remaining proceeds are to be sent to the department of administration to be used for housing for the homeless. The proposal also substantially incorporates the language contained in the existing Sec. 32.12(3), modified to be consistent with the rest of the proposal. The existing Sec. 32.12(3) permits the landlord and tenant to enter into a non-standard rental provision, at the time of the initial rental agreement, that grants the landlord the right to a lien on property left by a tenant.

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

The City of Madison elects not to be governed by the provisions of Wis. Stat. § 704.05(5). This election is made pursuant to Wis. Stat. § 66.0101(4).

Subsection (3) entitled "Confiscation of Personal Property" of Section 32.12 entitled "Prohibited Practices" of the Madison General Ordinances is repealed and recreated as follows:

"(3) Storage or Disposition of Personalty Left by Tenant.

(a) Procedure. If a tenant removes or is removed from the premises and leaves personal property, the landlord may do all of the following:

1. Store the personalty, on or off the premises, with a lien on the personalty for the actual and reasonable cost of removal and storage or, if stored by the landlord, for the actual and reasonable value of storage. The landlord shall give written notice of the storage to the tenant within ten (10) days after the charges begin. The landlord shall give the notice either personally or by ordinary mail addressed to the tenant's last-known address and shall state the daily charges for storage. The landlord may

**Approved as to form:**

not include the cost of damages to the premises or past or future rent due in the amount demanded for satisfaction of the lien. The landlord may not include rent charged for the premises in calculating the cost of storage. Medicine and medical equipment are not subject to the lien under this subdivision, and the landlord shall promptly return them to the tenant upon request.

2. Give the tenant notice, personally or by ordinary mail addressed to the tenant's last-known address, of the landlord's intent to dispose of the personal property by sale or other appropriate means if the property is not repossessed by the tenant. If the tenant fails to repossess the property within thirty (30) days after the date of personal service or the date of the mailing of the notice, the landlord may dispose of the property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if the landlord has first stored the personalty under sub. 1. If the proceeds minus the costs of sale and minus any storage charges are not claimed within sixty (60) days after the date of the sale of the personalty, the landlord is not accountable to the tenant for any of the proceeds of the sale or the value of the property. The landlord shall send the proceeds of the sale minus the costs of the sale and minus any storage charges to the department of administration for deposit in the appropriation under s. 20.505 (7)(h).
  3. Store the personalty without a lien and return it to the tenant.
- (b) Rights of Third Persons. The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by the tenant or by others. That lien has priority over any ownership or security interest, and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. The tenant or any secured party has the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges under par. (a) for removal, storage, disposition and arranging for the sale.
  - (c) Other Procedure. The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.
  - (d) 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 this Section, Wis. Stat. § 779.43, 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.
  - (e) This subsection, Sec. 32.12(3) is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication, subject, however, to the referendum procedures of Wis. Stat. § 66.0101 (5)."

EDITOR'S NOTE:

Sec. 32.12(3) currently reads as follows:

- "(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."