



Legislation Text

File #: 01629, Version: 2

**Fiscal Note**

The City Attorney's Office has indicated that there may be some initial enforcement action required, but such actions, if any, are anticipated to be few and should be able to be accommodated within existing staff resources.

**Title**

SUBSTITUTE - Amending portions of Section 9.23 of the Madison General Ordinances to incorporate State of Wisconsin regulations for Mobile Home Parks, to define those regulations and to repeal certain obsolete provisions.

**Body**

DRAFTER'S ANALYSIS: This proposal amends existing Sec 9.23, MGO, by repealing certain provisions that are no longer enforced by the City, by adopting State of Wisconsin statutes and administrative rules as part of the Madison General Ordinances and by adding certain new provisions that interpret and define those provisions of state law. Adoption of these provisions by the City of Madison will allow the City to provide enforcement of regulations when such enforcement may not be available from the State of Wisconsin. Additionally, the proposal clarifies that the applicable provisions of Chapter 32, Landlord and Tenant, in Madison General Ordinances apply to landlords and tenants in mobile home parks. This is not new, but cross references will help clarify Section 9.23, MGO. The City of Madison's authority to adopt these regulations is contained in Sec. 66.0435, Wis. Stats.

The repealed provisions are obsolete and are no longer enforced by the City. They relate to water supply, service buildings and waste disposal. The provisions have been superseded by state regulations.

The provisions of state law that would be adopted in whole or in part by this proposal are as follows:

Section 710. 15, Wis. Stats., Sub (3), relating to Prohibited Consideration of Age of Mobile Home, Sub (4), Prohibited Consideration of Change in Ownership or Occupancy of Mobile Home, Sub (4m), No Interest in Real Estate, Screening Permitted

ATCP 125.02, relating to Tie-in sales; separate or discriminatory charges; ATCP 125.04, Rental agreement; limitations; ATCP 125.06 Sale of mobile home, transfer of tenancy; ATCP 125.07, Mobile home relocation; ATCP 125.08 Termination of Tenancy; and ATCP 125.09, Prohibited Practices.

Provisions that are not from state law include, proposed Sec. 9.23(6)(f)3 and 4, that further define prohibited consideration of the age of a mobile home; proposed Sec. 9.23 (6)(g)2, that further defines the prohibited consideration of a change in ownership or occupancy of a mobile home; proposed Sec. 9.23 (6) (d) 4, that further defines discriminatory charges and proposed Sec. 9.23 (13)(b)1. which adds language to the proposal that is similar to the provisions of Sec. 32.15, MGO, prohibiting retaliation in the termination or refusal to renew a lease.

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

1. New Subdivision (g) of Subsection (1) entitled "Definitions" of the Madison General Ordinances is created to read as follows:

"(g) "Screening" means the procedure used by an operator to determine that a prospective tenant meets the operator's minimum financial standards and other reasonable requirements established by the operator. Screening must comply with Sec. 3.23 and Sec. 32.10, Madison General Ordinances."

2. Current Subdivisions (g) and (j) of Subsection (1) entitled "Definitions" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances are renumbered to Subdivisions (h) through (k), respectively.

3. Subdivision (c) entitled "Water Supply" of Subsection (4) entitled "Regulations for Mobile Home Parks" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is hereby repealed.

4. Subdivision (d) entitled "Service Building" of Subsection (4) entitled "Regulations for Mobile Home Parks" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is hereby repealed.

5. Subdivision (e) entitled "Waste Disposal" of Subsection (4) entitled "Regulations for Mobile Home Parks" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is hereby repealed.

6. Subdivisions (f) and (g) of Subsection (4) entitled "Regulations for Mobile Home Parks" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances are renumbered to Subdivisions (c) and (d), respectively.

7. Subsection (6) entitled "Rental Agreement Limitations" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is amended to read as follows:

"(6) Rental Agreement Limitations.

- (a) No park operator may restrict the type of material used for mobile home steps or the type of air conditioning equipment serving mobile homes in a mobile home park, unless such restrictions are required by law, or are uniformly applied mobile home park requirements made a condition of the tenant's original rental agreement. Any such restrictions, however, may not be instituted during the occupancy of an original tenant under the same, an amended, a renewed or a new rental agreement. Notwithstanding the foregoing, if a tenant's mobile home steps are required by law to be replaced, the park operator may require that they be made to comply with current park standards.
- (b) No park operator may require the removal of a permanently attached mobile home towing tongue as a condition of renting a site for the accommodation of a mobile home.
- (c) It shall be unlawful to make as a condition of a new or renewed rental agreement the removal of any vehicles, including recreational vehicles and boats, permitted under a previous rental agreement with the same tenant unless sufficient other parking space is provided to the tenant at no charge.

(d) Tie-In Sales; Separate Or Discriminatory Charges.

No operator shall:

- 1. Require, as a condition to the rental of any site, the purchase of a mobile home from the operator or any dealer, manufacturer, or agent named by the operator.
- 2. Represent to any person that the purchase of a mobile home from the operator or any dealer, manufacturer, or agent named by the operator will give the purchaser an advantage over others in the rental or continued occupancy of a site.
- 3. Discriminate or threaten to discriminate in rental charges or in any other respect against a tenant for failure of the tenant to purchase a mobile home from the operator or any dealer, manufacturer, or agent named by the operator.
- 4. Discriminate in rental charges by granting a discount in rental charges or in any other charges to a tenant who purchase a mobile home from the operator or any, dealer, manufacturer, or agent named by the operator.
- 5. Solicit or receive any payment or other thing of value from any seller of a mobile home for agreeing to rent a site to the purchaser of such mobile home.
- 6. Solicit or receive any payment or other thing of value from any person upon the representation or understanding that such consideration will give that person an advantage over others in the rental or continued occupancy of a site.
- 7. Use a mobile home site to display a mobile home offered for sale, or rent a site to a mobile home dealer for purposes other than accommodation of a mobile home occupied as a residence, if the use or rental of the site results in there being no site in the mobile home park available to a prospective tenant who does not purchase a mobile home from the operator or renting dealer.

(e) Mobile Home Relocation.

- 1. No tenant shall be required to relocate a mobile home within a park during the term of the rental agreement, or to assume the cost of any required relocation under a new or renewal rental agreement, except in emergency or where the tenant has violated the terms and conditions of the rental agreement. This does not apply to a mobile home which has been vacated by the tenant.
- 2. Any required relocation shall, except in emergency, be preceded by written notice setting forth the reason for such relocation. Notice shall be given within the time period required under ch. 704, Stats., for termination of tenancies.

(f) Prohibited Consideration Of Age Of Mobile Home.

- 1. An operator may not deny a resident the opportunity to enter into or renew, and may not include, exclude or alter any terms of, a lease to continue to locate a mobile home in the park solely or in any part on the basis of the age of the mobile home.
- 2. An operator may not require the removal of a mobile home from a park solely or in any part on the basis of the age of the mobile home, regardless of whether the ownership or occupancy of the mobile home has changed or will change.
- 3. It shall be considered a prohibited consideration of the age of a mobile home to require a tenant

to make alterations, modifications or improvements to a mobile home as a condition of renewal of a lease or a change in the ownership or occupancy of a mobile home, when the mobile home is otherwise in good repair and in conformance with applicable governmental regulations.

4. It shall be considered a prohibited consideration of the age of a mobile home to require a tenant to make alterations, modifications or improvements to a mobile home that is older than five years, when the mobile home is otherwise in good repair and in conformance with applicable governmental regulations, and the mobile home is in compliance with park rules and regulations in effect at the time the mobile home originally entered the park.

(g) Prohibited Consideration Of Change In Ownership Or Occupancy Of Mobile Home.

1. An operator may not require the removal of a mobile home from a park solely or in any part because the ownership or occupancy of the mobile home has changed or will change. An operator may refuse to enter into an initial lease with a prospective resident or mobile home occupant for any other lawful reason.

2. It shall be considered a prohibited consideration of a change in ownership or occupancy of a mobile home to require a tenant to make alterations, modifications or improvements to a mobile home, as a condition of permitting a mobile home to remain in a park at the time of a change in ownership or occupancy, when the mobile home is otherwise in good repair and in conformance with governmental regulations."

8. New Subsection (7) entitled "No Interest In Real Estate; Screening Permitted." of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is created to read as follows:

"(7) No Interest In Real Estate; Screening Permitted.

Neither Subsection (6)(e) nor Subsection (6)(f) creates or extends any interest in real estate or prohibits the lawful screening of prospective residents and mobile home occupants by an operator."

9. Current Subsection (7) entitled "Changes in Rental Terms or Park Rules." of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is renumbered to new Subsection (8).

10. Subsection (9) entitled "Charges for Utility Services" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is created to read as follows:

"(9) Charges for Utility Services.

- (a) Charges for a utility service provided through the operator's facilities, if not included in the rent, shall be based on the amount of the utility service used by tenants. Charges for television service provided through the operator's facilities may be assessed in the form of a uniform charge to subscribing tenants, subject to par. (b). Charges, or the method of computing charges for utility services provided through the operator's facilities shall be set forth in the rental agreement under s. ATCP 125.03 (1) (b).
- (b) If television service is provided by the operator but not included in the rent, the operator may not limit a tenant's access to television service provided by an outside source. This paragraph is not intended to deny to an operator any right which the operator may have to compensation from a cable television company for easements or other use of the operator's property.
- (c) Charges for utility services provided through the operator's facilities, if based on amounts used, shall be periodically invoiced in writing to tenants. Invoices shall specify both the charge and the amount of the utility service used.
- (d) Charges for utility services provided through the operator's facilities, if not included in the rent, shall be competitive with retail prices charged for the same or equivalent services by public utilities or other local sources. If a utility service is provided directly to tenants by a public utility or other outside source, no additional charge may be assessed for the service by the operator.
- (e) If a mobile home park operator purchases water and sewer service and resells the service to the occupants of the mobile home park, the maximum allowable water and sewer bill to the average user within the mobile home park may not exceed the lesser of the mobile home park's water and sewer bill, plus 30%, divided by the number of occupied lots within the park, or the retail rates of the local municipality's water and sewer operation applied to the average user.
- (f) A mobile home park operator may establish water and sewer rates in excess of those set forth in Subdivision (e), if the operator has been granted permission by the Public Service Commission pursuant to PSC 186.31, or has been granted permission by any other state agency that regulates such water and sewer rates, as successor agency to the Public Service Commission."

11. Subsection (10) entitled "Restrictions on Choice of Vendors" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:

"(10) Restrictions On Choice Of Vendors. No operator may restrict the choice of vendors from whom a tenant may purchase goods or services. This subsection does not apply to:

- (a) Utility services, subject to Subdivision (9).
  - (b) Services provided by the operator in the installation of a mobile home on a site, or in the removal of a mobile home from a site, pursuant to Subdivision (10) (c).
  - (c) Snow removal, lawn care, or similar site maintenance services performed by the operator upon the failure of a tenant to fulfill the tenant's site maintenance obligations under the rental agreement. No charges may be imposed for site maintenance services performed by the operator under this paragraph unless the tenant, if available, is given prior notice and a reasonable opportunity to perform the tenant's obligations under the rental agreement. Charges for site maintenance services shall be set forth in the rental agreement.
  - (d) Services involving the transportation of a mobile home to or from a site within the mobile home park, if the operator can show that the person providing the service has damaged the park during a previous move and failed to compensate the operator for the damages.
  - (e) A nondiscriminatory prohibition against sales solicitations within the mobile home park."
12. Subsection (11) entitled "Entrance and Exit Fees" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:  
"(11) Entrance And Exit Fees. No operator may charge an entrance fee or exit fee in return for allowing the movement of a mobile home into or out of a mobile home park. This subsection does not apply to:
- (a) Periodic payments for the rental of a site, pursuant to the rental agreement.
  - (b) A security deposit not exceeding the amount of 3 months' rent or \$350, whichever is less.
  - (c) Material and labor costs incurred by the operator to move a tenant's mobile home into or out of the mobile home park, to install the mobile home on a site or remove it from a site, or to connect or disconnect utility services. The amount of any charges, or the basis upon which charges are to be calculated, shall be clearly set forth in the rental agreement."
13. Subsection (12) entitled "Sale Of Mobile Home; Transfer Of Tenancy." of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:  
"(12) Sale Of Mobile Home; Transfer Of Tenancy.
- (a) No operator may:
    - 1. Require any tenant to designate the operator, or any person named by the operator, as agent for the sale of a tenant's mobile home, or unreasonably restrict the sale of a tenant's mobile home by the tenant or an agent of the tenant's own choosing.
    - 2. Solicit or receive any payment or other thing of value as a condition to the assignment or sublease of a rental agreement by a tenant, or as a condition to the transfer of tenancy to a buyer of the tenant's mobile home.
    - 3. Sell, for placement in a mobile home park owned or operated by the operator, any mobile home purchased from a tenant who was prohibited from selling the home directly for placement in the mobile home park.
    - 4. Refuse to rent a mobile home site to the purchaser of a tenant's mobile home except for a reason specified under s. 710.15 (5m), Wis. Stats. This section does not prohibit the screening of prospective tenants by an operator.
    - 5. Limit a tenant's ability to post, on the tenant's mobile home or on the site on which the mobile home is located, a "For Sale" sign or other advertisement announcing the tenant's offer to sell the tenant's mobile home if the limitation is not applied uniformly to every person, including the operator and any mobile home dealer, who sells or offers to sell a mobile home on site in the mobile home park.
  - (b) This section does not create or extend any interest in real estate, or prohibit the awful screening of new tenants by the operator."
14. Subsection (13) entitled "Termination of Tenancy" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:  
"(13) Termination Of Tenancy.
- (a) Whenever an operator terminates any rental agreement or refuses, upon the expiration of a lease, to renew the lease or to enter into a new rental agreement, the operator shall provide the tenant with written notice setting forth the reason for such termination or refusal. Notices of termination shall comply with the requirements of Madison General Ordinances Chapter 32, s.710.15 and ch. 704, Stats., as applicable. If the rental agreement does not comply with the requirements of s. ATCP 125.03 (1) (intro.) and (2), the operator shall comply with the notice requirements of s. 704.17 (2), Stats., when terminating a tenancy, unless the park operator or tenant proves that other notice requirements under s. 704.17 (1) or (3), Stats., are applicable.

- (b) No operator shall terminate a rental agreement or refuse, upon expiration of a lease, to renew the lease or to enter into a new rental agreement for the reason that:
  - 1. The tenant has reported a violation, by the operator, of this chapter or any other law to any governmental authority, or filed suit alleging such violation. Any termination, refusal to renew a lease, or refusal to enter into a new lease shall be presumed to be retaliatory if committed within six months after the tenant has reported a violation by the operator of this chapter or any other law, to any governmental authority, or within six months after the tenant has filed suit alleging such violation. In order to overcome this presumption that such termination or refusal is retaliatory, the operator must show by a preponderance of evidence that such termination was based on good cause.
  - 2. The tenant is a member of a tenant's union or association.
  - 3. The operator wishes to make a site available to a person purchasing a mobile home from the operator or an agent of the operator.
- (c) No operator may solicit or receive any payment or other thing of value, except for normal rental payments, in return for permitting a tenant to leave the tenant's mobile home in the park upon termination of tenancy."

15. Subsection (14) entitled "Prohibited Practices" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:

"(14) Prohibited Practices.

No operator shall:

- (a) Make any false, deceptive, or misleading representation to induce a mobile home sale or site rental, or make any representation inconsistent with or contrary to the written rental agreement.
- (b) Impose any term or condition, any rule or regulation which the operator knows or reasonably ought to know is in conflict with this chapter or applicable law.
- (c) Require any tenant to make permanent improvements to the mobile home park or any of its facilities, or assess any separate charge therefore.
- (d) Enter a tenant's mobile home without the tenant's permission and reasonable notice to the tenant, **as provided in Sec. 32.05 (1)(d), (e) and (f), Madison General Ordinances.** This does not prohibit the operator from entering a tenant's mobile home if the tenant cannot be contacted and the operator reasonably believes that entry is necessary because of emergency, or to preserve and protect the mobile home or park."

16. Current Subsection (8) entitled "Penalties" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" of the Madison General Ordinances is renumbered to new Subsection (15).

17. Subsection (16) entitled "Enforcement by Tenant" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:

"(16) Enforcement by Tenant. Any person suffering pecuniary loss because of a violation by any other person of this Section 9.23 may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee."

18. Subsection (17) entitled "Applicability of Chapter 32" of Section 9.23 entitled "Regulations of Mobile Homes and Mobile Home Parks" is created to read as follows:

"(17) Applicability of Chapter 32. The provisions of Chapter 32, Madison General Ordinances, are applicable to mobile home park operators and tenants, to the extent that they are not in conflict with this Chapter, ATCP 125 or sec. 710.15, Wis. Stats."