

DATE: March 9, 2015

TO: Madison Common Council, Landmarks Ordinance Review Committee (LORC)

FROM: Ordinance Committee of the Madison Alliance for Historic Preservation

SUBJECT: **Landmarks Ordinance**

The Madison Alliance for Historic Preservation believes that Madison deserves a state-of-the-art historic preservation ordinance. The ordinance should be clear and understandable to the average citizen. It should provide a systematic process for identifying and protecting Madison's important historic resources. It should provide a transparent decision-making process that is based on clearly articulated standards.

Above all, the ordinance should provide clear, consistent, effective and reliable protection for those historic resources that the City plans to preserve. Property owners, neighborhood residents, developers and investors should not be at the mercy of vague standards or changing administrative whims. They should know what to expect, so they can plan and invest with reasonable confidence. Without that confidence, historic preservation cannot succeed.

We believe that a top-notch ordinance is possible, and we have worked hard to help LORC achieve it. We have tried, at every turn, to provide constructive, solution-oriented input. We have provided a clear statement of basic principles (see attached), and a complete ordinance draft that embodies those principles. We have offered detailed, side-by-side analyses of ordinance provisions. Our proposals have offered planning flexibility and pathways for appropriate development, while providing reliable protection for designated historic resources. At every turn, we have offered concrete "win-win" solutions. But, despite everyone's best efforts, we believe that the latest (Feb. 26) LORC draft falls well short of the mark.

We understand that LORC faces a tough challenge. The current landmarks ordinance has structural as well as conceptual weaknesses, and the details are complex. LORC has made some significant improvements. But we have not seen much progress on the basic questions of clarity, transparency, consistency and certainty. On these points, the latest LORC draft may actually compound some of the shortcomings of the current ordinance. Here are some of the problems we see:

- The LORC draft weakens an otherwise reasonable statement of purpose and intent by including vague "balancing" language. Balancing what? Far from clarifying the ordinance, this language creates uncertainty and ambiguity. It is a recipe for conflict.
- The LORC draft speaks of "guidelines" rather than clear, binding ordinance standards. Are the "guidelines" binding or not? Who decides?
- The LORC draft appears to authorize broad "waivers" of ordinance standards, rather than limited property-specific "variances" that meet clear qualifying criteria (comparable to the criteria for zoning variances). This is a "worst practice" according to the National Trust for Historic Preservation.

- The LORC draft authorizes the Common Council to reverse Landmarks Commission decisions in individual cases, even when the reversal conflicts with the Council’s own established ordinance standards. This substantially undermines the authority of the Landmarks Commission *and* the credibility of established ordinance standards. It opens the door to favoritism and special treatment, and tramples on the principles of consistency and certainty. It virtually guarantees an appeal in every significant case, and is a recipe for public “train-wrecks.” Ordinance standards can be amended if they prove unworkable; but they should not be waived aside for some individuals or businesses, while others are expected to comply.
- Although the LORC draft includes positive remedial provisions related to historic resource surveys, maintenance enforcement and “demolition by neglect,” it fails to articulate a systematic, coordinated, city-wide program for the identification, protection and promotion of the City’s valuable historic resources. We offered some common sense language in our proposed draft ordinance. But LORC has not yet looked at it.
- The LORC draft fails to define some key terms, and contains some definitions that create more confusion than clarity. This problem can be partly addressed by the standards developed for individual historic districts. But, wherever they may ultimately be placed, better definitions are needed.
- The LORC draft, even when presented in new “chapter 41” clothing, fails to deliver on the promise of a clear, state-of-the art ordinance prepared to modern drafting standards. We see much of the same vague and confusing language, dressed up with a few new headings. We applaud your decision to create a new ordinance chapter, and we understand that the “chapter 41” redraft is still a work in process. But unless the city attorney is encouraged and authorized to do a fundamental drafting overhaul, we view this as a hollow exercise. We are still largely chained to the same confusing language.

We understand that the Landmarks Commission and LORC have spent a lot of time on this, as have we. We don’t doubt your good faith, or your genuine desire to do what is right. But the latest LORC draft still falls short on the basic issues of clarity, transparency, consistency and certainty. These are the issues that matter most to us, and to the neighborhoods and people of Madison. We know that LORC has not yet completed its work, and that there is still hope for a good outcome that we can all be proud of. But we fear that the latest LORC draft could undermine, rather than modernize, historic preservation in Madison.

Assuming that you share our goal of a clear, state-of-the-art ordinance, we urge you to direct the following changes at your March 12 meeting:

- Eliminate the word “balancing” from the last sentence of the “Policy and Intent” statement. We fear that this word will be used, in contested cases, to undercut ordinance standards that are otherwise clear.
- Require standards, not “guidelines,” for development in historic districts. The Landmarks Commission may consider relevant U.S. Dept. of Interior guidelines when proposing or interpreting ordinance standards, and may propose standards that

incorporate national guidelines by reference, where appropriate. The Commission may also publish suggested “best practices” for historic properties. But an ordinance should deal in clear and enforceable standards, not uncertain “guidelines.”

- Eliminate the “worst practice” of allowing broad waivers of ordinance standards. Instead, allow limited property-specific variances that meet clear qualifying criteria (comparable to the criteria for zoning variances). That is the recognized “best practice” for historic preservation ordinances. Other jurisdictions also use the word “variance,” not “waiver,” because it has a more limited connotation. A historic preservation ordinance has the same effect as a zoning ordinance, and it should be applied in much the same way.
- Clarify that, when hearing appeals from Landmarks Commission decisions related to individual properties, the Common Council will *apply* (not just “consider”) the same ordinance standards that the Commission is required to apply. The Council’s interpretation of the standards may differ from the Commission’s interpretation. But the Council should not simply waive aside its own ordinance standards in the context of an individual appeal. If the Council believes that ordinance standards are unworkable and should be modified, it is free to modify them prospectively by ordinance. But it should not simply waive aside applicable standards for some, while expecting others to comply.
- Clarify that a district-specific ordinance may include standards related to any of the following (the ordinance should avoid “one-size-fits-all” standards for historic districts, because every district is different):
 - Architectural features.
 - Height, scale and gross volume.
 - Width and height proportions of publicly visible facades.
 - Proportions and relationships between doors and windows in publicly visible facades.
 - The rhythm of solids to voids, created by openings in and between publicly visible facades.
 - Textures and materials used on publicly visible facades.
 - Roof configurations.
 - Landscape treatments.
 - The amounts, shapes, and patterns of open spaces and setbacks.
 - The directional expression of publicly visible facades.
 - The demolition, movement or removal of structures.
 - Other matters that the Commission and Common Council deem appropriate to protect the character and assets of the historic district, consistent with this general ordinance.
- Clarify that ordinance standards may vary within and between historic districts, to address differing local conditions and planning goals. That will allow greater clarity and practical, locally relevant specificity. Define key terms such as “height” and “gross volume” to minimize confusion and conflict. Authorize the use of graphics, where appropriate, to portray the standards in an easily understood way. Establish a clear process for neighborhood input into proposed ordinance standards.

- Add ordinance text directing the Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments to coordinate their activities in order to do all of the following (see s. 41.21 of our model draft ordinance):
 - Ensure effective administration and enforcement of this ordinance.
 - Ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.
 - Identify and preserve important historic resources.
 - Call public attention to designated landmarks and historic districts.
 - Preserve and, where possible, enhance the historic character and ambience of designated landmarks and historic districts.

- Direct the city attorney to undertake a complete ordinance redraft, to modernize ordinance text and organization consistent with LORC’s policy decisions. LORC should not try to “wordsmith” the ordinance text, but should authorize the city attorney to develop draft language for later review and approval by LORC. The city attorney should be authorized to add or modify definitions and other material as needed, provided that the changes are consistent with LORC’s policy decisions (this could include material from our model ordinance draft, to the extent that the city attorney considers it helpful). LORC naturally retains its authority to review and modify the final product.

Thank you for your consideration. This is a defining moment for the future of historic preservation in Madison. We trust that you will not undermine Madison’s historic tradition, or create confusion and doubt where there should be clarity and certainty. We trust that you will give Madison the clear, fair, effective, state-of-the-art ordinance that it deserves.

See attached “Criteria for a Fair and Effective Landmarks Ordinance”

Cc: Stuart Levitan, Chair, Landmarks Commission
Alder Ledell Zellers
Amy Scanlon, Preservation Planner
John Strange, Assistant City Attorney