

Landmarks Commission

Policy & Procedure Manual



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Adopted by the City of Madison Landmarks Commission
January 30, 2017

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INTRODUCTION

The purpose of this basic policy and procedures manual is to put into one document a list of the current activities, procedures and basic policies of the City of Madison Landmarks Commission.

This manual is general in nature, but includes helpful references to specific ordinances further describing the role of the Landmarks Commission.

The Landmarks Commission is given authority by Madison General Ordinances Chapters 33, 41 and 28 which specifies the criteria for actions by the Commission or places the Commission in an advisory role.

In compliance with Chapter 33.19(2) Powers and Duties (g), the Landmarks Commission shall “Adopt policies and procedures, as necessary, to carry out its responsibilities.” These policies and procedures are enumerated in this document.

RULES OF PROCEDURE

The following rules of procedure were adopted by the Landmarks Commission (“the Commission”) to facilitate the performance of its duties and the exercising of its powers as outlined in the Madison General Ordinances.

a) Commission Leadership

In June of odd numbered years, the Commission shall elect a Chair and a Vice-Chair. In the absence of the Chair, the Vice-Chair shall serve as Chair. In the absence of both the Chair and Vice-Chair, the Commission shall select an acting Chair from its membership.

The Preservation Planner or her/his designee shall act as Secretary to the Commission.

b) Orientation for New Commissioners

As new Commission members are appointed, each shall be furnished with a membership roster, calendar of meeting dates, a Policy and Procedures Manual that includes rules of procedure, relevant ordinances and standards, maps of local historic districts, and a list of designated landmarks. Staff will schedule orientation meetings with new members to provide information and review policy and procedures. New members are encouraged to attend the training sessions offered for all city boards and commissions on rules governing open records and open meetings, as well as ethical standards of conduct. They are also encouraged to view the Historic Preservation Commission Training online instruction offered by the Wisconsin Historical Society.

c) Quorum

Four members shall constitute a quorum for the transaction of business and the taking of official action. Whenever a quorum is not present within fifteen (15) minutes of the scheduled meeting time, the Commission shall adjourn without taking any action, except that it may set a date and time for its next meeting. [Madison General Ordinances 33.01\(8\)](#).

d) Parliamentary Procedure

Roberts Rules of Order shall govern parliamentary procedure in Commission meetings, except that any Madison General Ordinance or Commission procedural rule shall take precedence over Roberts Rules of Order.

The Landmarks Commission is required to utilize the Common Council's process for Reconsideration. See [Madison General Ordinances 2.21 \(2013\)](#).

The following processes will differ from Robert's Rules of Order: (provide list here)

e) Secretary

The Preservation Planner is a staff member of the Department of Planning and Community and Economic Development. The Preservation Planner shall be the Secretary of the Landmarks Commission and carry out the duties that the Landmarks Commission properly delegates to the Preservation Planner under chapter 41. In carrying out those duties, the Preservation Planner shall exercise his or her own professional judgment and expertise, consistent with chapter 41 and subject to general oversight by the Landmarks Commission.

f) Designees

The Historic Preservation Ordinance allows the Landmarks Commission to identify designees for the purposes of approving projects that will have little effect on the exterior appearance of the property. The Secretary shall be the designee. The Secretary and the Landmarks Commission shall appoint other designees as appropriate and revise this document as required.

As Secretary, Amy Scanlon is hereby appointed as the designee of the Commission and is able to review Category 1, 2 and 3 projects. William Fruhling and Rebecca Cnare are hereby appointed to review Category 1 and Category 2 projects. When Amy Scanlon is unavailable, William Fruhling or Rebecca Cnare may review Category 3 projects and act as the Secretary of the Commission. Mike Van Erem, Fred Rehbein, and Alan Harper are hereby appointed to review Category 2 projects. Please refer to the Designee Review Process on page 6.

No one else is permitted to issue Certificates of Appropriateness on behalf of the Landmarks Commission.

g) Records

1. Agendas

The Secretary shall prepare an agenda for each meeting. The agenda shall be approved by the Chair. The agenda appears on the City's Legislative Information Center website, which is available on the main City website.

The order of business will be as follows:

- I. Roll Call
- II. Minutes
- III. Public Comment
- IV. Disclosures and Recusals
- V. Requests for Certificates of Appropriateness (requiring a public hearing)
- VI. Request for Certificates of Appropriateness (not requiring a public hearing)
- VII. Adjacency to Landmarks Advisory Recommendations
- VIII. Buildings Proposed for Demolition
- IX. New Business
- X. Unfinished Business
- XI. Regular Business
- XII. Secretary's Report
- XIII. Adjournment

All requests to be placed on the Commission agenda shall be received by the Planning Division Office by the submission deadline. The Secretary shall determine whether or not the submissions are complete and in proper form.

2. Minutes and Action Reports

The Secretary shall prepare the minutes for each meeting. The minutes appear on the City's Legislative Information Center website, which is available on the main City website.

A copy of the minutes of the past meeting is provided with the agenda for the next meeting. The originals of the Commission minutes are kept in the Planning Division Office.

The Secretary shall prepare the action reports for each meeting. The action reports shall be reviewed as part of the meeting minutes. The Secretary shall provide the action reports of the Commission to other Commissions or staff persons as required by ordinance, as needed for the development review process, or for facilitation of the preservation program.

3. Communications, Petitions, etc.

All communications, petitions, and reports should be addressed to the Commission and delivered or mailed to the Secretary. Commission members shall report and forward to the Secretary any individual communications they receive.

Written comments should be submitted 24 hours in advance of the meeting. Comments received less than 24 hours in advance of the meeting may not be processed for review at the meeting, but will be added to the public record as time allows.

4. Reports to other Bodies (the Urban Design Commission, Plan Commission, and Common Council)

The Secretary shall report the action of the Commission to the Urban Design Commission, Plan Commission and Common Council on all matters as appropriate.

The Secretary shall provide the action reports of the Commission to other Commissions or staff persons as required by ordinance, as needed for the development review process, or for facilitation of the preservation program.

5. Public Record

All Commission agendas, meeting minutes, action reports, communications, petitions, and miscellaneous reports shall be available on the City's Legislative Information Center website, which is available on the main City website.

h) Conduct of Meetings

Members of the public who wish to speak on agenda items shall register to speak by completing a registration form. Sign in shall be allowed up to the time of discussion for each agenda item.

Testimony on non-public hearing items before the Commission is limited to three (3) minutes and on public hearing items is limited to five (5) minutes; additional time may be allowed with the consent of the Commission. The Chair and Secretary shall monitor the time.

The Chair shall endeavor to keep testimony focused, and to maintain the decorum of the meeting.

No argumentative questioning of the Commission or speakers shall be permitted, and no member of the public may question another speaker. Speakers may direct questions to the Chair during their testimony; questions will be noted, and may be answered at the appropriate time during the hearing. Any Commission member may question a speaker on the facts presented or for clarification of a statement made.

Public testimony by Skype or phone or similar method shall be permitted subject to the discretion of the Chair and the Commission.

For the purposes of a public hearing, the Chair shall open the public hearing and call for alternate registrants for and against the subject under consideration. The name and address of each person appearing shall be stated. Upon conclusion of the public statements, the Chair shall close the public hearing. Once the hearing is closed, no member of the public may comment further unless the Commission votes to suspend its rules for this purpose.

Commission members may then ask questions of staff, make motions, engage in discussion, and vote on the item presented during the public hearing.

i) Motions and Voting

Motions shall be restated by the chair before a vote is taken. The name of the maker of a motion and of the person to second the motion shall be recorded.

The Chair may participate in discussion, questioning and debate, but will not make motions or vote on any matter unless to break a tie. Members of the Common Council who are not serving on the Commission likewise may participate in discussions, but may not make motions or vote on any matters.

Motions shall be passed by an affirmative vote with not less than a majority of the Commission in attendance. Voting shall be by voice. Any member of the Commission can request a roll call vote.

Please refer to the Review Process Policies, Actions on Matters Before the Commission on page 10.

j) Reports

The Commission may ask for reports and recommendations from the Secretary on any matters before it that are consistent with the annual work plan of the Preservation Planner.

k) Suspension of Rules

The Commission may suspend any of its procedural rules (except City and State Codes) by a majority vote of the members present.

l) Amendments

These rules, policies and procedures may be amended at any regular meeting by a majority vote of the members present. At a minimum, the Commission will review and update this document as necessary in May of even-numbered years and recorded with the City Clerk after being adopted by the Landmarks Commission.

m) Attendance

Commissioners shall endeavor to attend all regularly scheduled meetings of the Commission. Commissioners shall contact the Secretary to request an excused absence as soon as they are aware of a possible scheduling conflict. The City of Madison has specific rules for attendance that cannot be waived by Commission procedures and policies.

REVIEW PROCESS POLICIES

The following review process policies were adopted by the Landmarks Commission (“the Commission”) to facilitate the performance of its duties and the exercising of its powers as outlined in the Madison General Ordinances.

a) Development Review Process Summary

The development review process varies based on the complexity of a proposal and the type of request involved. However, each process generally includes three stages; the pre-application stage, the commissions review stage, and the plan sign-off, permitting, and inspection stage.

The Landmarks Commission has final review authority in some instances. In other instances, the Commission is required to make an advisory recommendation to the Plan Commission and/or the Urban Design Commission. When review by multiple Commissions is required, the Landmarks Commission is typically the first Commission to take action in the development review process.

b) Designee Review Process

The Historic Preservation Ordinance allows the Landmarks Commission to identify designees for the purposes of approving projects that will have little effect on the exterior appearance of the property. The categories below indicate the types of projects that may be approved by designees. In all cases, the designees may use their discretion and send the request to the Commission for a formal review. Please refer to the Rules of Procedure, Designees, page 2.

Category 1:

1. In kind repairs to existing buildings/structures that will not change the appearance.

Category 2:

1. Reroofing projects which will replicate the use of three-in-one tab asphalt or fiberglass shingles or other rectangular asphalt or fiberglass shingles of similar scale or sawn wooden shingles. Reroofing with tile, slate or metal may be approved if there is historical documentation, physical evidence, or generally understood methodology or practice that the building once had a tile, slate or metal roof. Reroofing projects on buildings or parts of buildings with flat roofs or shed roofs that are not visible from the street may be approved. If a house is shingled in the French method, new shingles of the same design may be approved. Small attic ventilators that match the roof in color may be approved.

Category 3:

1. Residing with narrow gauge clapboard aluminum or vinyl to the extent mandated by the Landmarks Ordinance on the following conditions:
 - The original material must be clapboard.
 - The new siding must approximate the width of the original siding.
 - Any decorative woodwork, such as molding on windows, decorative bargeboards, porch posts, spindles, etc. should be retained or covered with new material in such a way as to duplicate the appearance of the original. All trim should be from the siding. Soffits may be covered with aluminum, provided that they are ventilated.

- All later non-original layers of siding must be removed before the new siding is applied, or else all trim should be built up to project from the siding approximately the same amount as the original. Original siding must be retained and encapsulated.
2. Gutters and downspouts of enameled or anodized metal (not raw aluminum), provided that any decorative downspout or gutter details are retained. If existing gutters are raw aluminum and only parts are being replaced, then the designee(s) may approve matching the existing gutters.
 3. Handrails designed to be compatible with the style of the house.
 4. Project that will result in only a minor change of appearance and that will not destroy significant architectural elements, such as converting a door to a window on the rear of the house, or adding a flat skylight on a roofline not visible from the street.
 5. Projects that will result in a moderate change of appearance provided that there are compelling reasons for beginning work before the next Landmarks Commission meeting (such as emergency structural repairs or the onset of bad weather). Such projects must also be approved by the Chair of the Landmarks Commission, or in his/her absence the Vice Chair.
 6. Replacement of the face of an existing sign with new information and the installation of awnings, provided that the proposed design will not detract from the character of the building or district.
 7. The construction of a small garden shed in the rear yard of a property provided that the shed does not adversely affect the primary structure, is of simple design, with gable, hip or shed roof and provided that the shed design is compatible with the design of the house and the neighborhood.
 8. Projects that restore the original appearance/condition using historic materials may be approved provided that there is historical documentation, physical evidence, or generally understood methodology.
 9. Projects that have received a recent Certificate of Appropriateness from the Commission and require a minor modification (not a Minor Alteration) to that approval that does not destroy historic fabric or historic character and does not reverse or alter any portion of the project that was a significant part of the Commission discussion. Consistent with open meeting requirements, Staff may consult with members of the Commission.

c) Actions on Matters Before the Commission

1. Certificate of Appropriateness

For any Certificate of Appropriateness where the Landmarks Commission approval is required, the Commission may take one of the following actions:

- The Commission shall **Approve** the Certificate of Appropriateness if it determines that the request meets the applicable standards for approval. The Commission may adopt conditions of approval for a project if it believes that those conditions will allow the project to meet the standards for approval.

- The Commission shall **Deny** the Certificate of Appropriateness if it feels the request does not meet the applicable standards for approval. In doing so, the Commission shall specifically state the standards that the request does not meet and the reasons why those standards are not met.
- The Commission shall **Refer** the matter to a future meeting if it believes that the request currently before it does not meet the applicable standards for approval but that it could with additional modification or if it determines that the Commission has not been provided with complete information to make a determination. A referral may also be requested by the applicant or by staff because the request is not, or may not be, procedurally ready to proceed. For any referral, the Commission should specify its reasons for referring the matter to a future meeting.

2. Adjacency to Landmarks Advisory Recommendation

For any advisory recommendation related to adjacency to landmarks and landmark sites, the Commission shall use the language of section 28.144 to provide an advisory recommendation.

An example motion for an advisory recommendation may be similar to the following:

“The Landmarks Commission finds that the proposed development is not so large or visually intrusive as to adversely affect this historic character and integrity of the adjacent landmark.”

3. Historic Value Advisory Recommendation

When advised by the Preservation Planner regarding a demolition request, the LC may provide a report to the Plan Commission on the historic, architectural or cultural significance of the structure for which a demolition permit is sought, to assist the Plan Commission in its determination of whether the standards of Chapter 28 are satisfied. The determination of historic value does not look at the proposed project for the site - only the historic value of the existing building.

For any advisory recommendation related to the historic value of buildings proposed for demolition, the Commission shall take one of the following actions:

- *The Commission finds that the building(s) has no known historic value.*
- *The Commission finds that the building(s) has historic value related to the vernacular context of Madison’s built environment, or as the work/product of an architect of note, but the building itself is not historically, architecturally or culturally significant.*
- *The Commission finds that the building(s) has historic value based on architectural significance, cultural significance, historic significance, as the work/product of an architect of note, its status as a contributing structure in a National Register Historic District, and/or as an intact or rare example of a certain architectural style or method of construction.*

The Commission may also provide a separate report regarding a property proposed for demolition to the Plan Commission. This report can further describe the historic value of the property outside of the language of the actions above.

GENERAL POLICIES

The following general policies were adopted by the Commission to facilitate the performance of its duties and the exercising of its powers as outlined in the Madison General Ordinances.

a) New Alder Orientation

In June of each odd-numbered year, the Secretary and the Chair will conduct a new Alder orientation. This orientation will introduce new Alders to landmarks, historic districts, and the Historic Preservation Ordinance.

b) Education Series

Each May, in recognition of national Historic Preservation month, the Landmarks Commission may host a public education and outreach session during a regularly scheduled or special meeting.

The Commission may prepare information packets for property owners related to maintenance of historic buildings.

c) Annual Review of Policy and Procedure Manual

At the beginning of each calendar year, the Landmarks Commission shall review the adopted policy and procedure document and make revisions as needed.

CODE OF ETHICS

Landmarks Commission members are required to attend an in-person training conducted by the City Attorney's office. The general summary below cannot replace a full training nor does it constitute legal advice. As questions arise, contact the Office of the City Attorney or the City of Madison Ethics Board.

The Ethics Code spells out standards of conduct intended to foster public trust and promote confidence in the integrity of government by avoiding the appearance of self-interest, personal gain, or benefit. The Code also requires written disclosures by most City elected officials, employees and appointees regarding their private financial or personal interests in matters that may affect the City. See [Section 3.35 of the Madison General Ordinances \(MGO\)](#).

The Madison Ethics Code establishes guidelines to ensure that City elected officials, employees, and appointees (a) act impartially, responsibly and independently, (b) make decisions and policies through proper channels of City governmental structure, and (c) serve the public interest rather than some private interest.

The major areas of responsibility and accountability spelled out in the Code include:

- Disclosure of conflicts of interest and possible disqualification from subsequent action
- Use of office for private gain
- Disclosures of confidential or privileged information
- Receipt of gifts and favors
- Incompatible employment
- Restrictions after leaving office or appointment

As questions regarding conflicts of interest and the application of the Code of Ethics arise, commissioners should consult the Code of Ethics and the Office of the City Attorney. When in doubt, ask the City Attorney's Office or the City of Madison Ethics Board.¹

OPEN MEETING REQUIREMENTS

Landmarks Commission members are required to attend an in-person training conducted by the City Attorney's office. The general summary below cannot replace a full training nor does it constitute legal advice. As questions arise, contact the Office of the City Attorney.

"In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wisconsin Statutes Section 19.81(1)

Applicable open meetings laws are found in Section 19.81 through 19.98 of the Wisconsin Statutes, reproduced in Section 3.71 Madison General Ordinances, and supplemented by Administrative Procedure Memorandum (APM) 3-13. The Landmarks Commission as a body must meet "open meeting" requirements set forth in these statutes and ordinances to ensure its business is conducted properly. Generally, staff is responsible for ensuring that the meeting is properly noticed and conducted in compliance with these rules.

Individual members are responsible for following certain requirements outside of noticed meetings. Common issues include, but are not limited to:

- Illegal meetings – generally, a meeting occurs any time a group of members discusses Commission-related issues, if the group is large enough to take or block action on an issue. Social encounters among members should be limited to non-Commission topics of conversation. Tours by the Commission should be properly noticed to meet open meeting requirements.
- Email – an email discussion between members could be an illegal meeting. Generally, email should not be used to conduct substantive issue-related Commission business. Messages from citizens to members should be forwarded to staff for dissemination to the full Commission. Messages from staff or an individual member to the full Commission are permissible on procedural issues, but members should take care to reply only to the sender (not reply-all).
- Conference calls – a conference call between members could be an illegal meeting. Meetings may be conducted via conference call, but should be properly noticed as such and provide a public facility with speakerphone so the public is able to hear/participate.²

DECISION MAKING

Landmarks Commission members are required to attend an in-person training conducted by the City Attorney's office. The general summary below cannot replace a full training nor does it constitute legal advice. As questions arise, contact the Office of the City Attorney.

All parties who appear before the Commission are entitled to a fair and impartial hearing. This includes:

1. The appearance of fairness

The Commission must make decisions in an impartial and unbiased manner. Actual bias is not required; an impermissibly high *risk* of bias is sufficient to compromise the appearance of fairness. *Keen v. Dane County Board of Supervisors*, 269 Wis.2d 488 (Ct. App 2003).

2. Proper notice and hearing

Notice is handled by City staff (e.g. publication, mailed notice, noting on agenda). Hearings serve the dual function of providing citizens with an opportunity to express their views and to inform the decision-making body regarding the views of the affected community members.

3. Decisions based on the standards and the evidence before the body

Where decision-making standards are listed in the ordinances, the Commission must follow them. It is the responsibility of the applicant to demonstrate that a proposal meets the standards, and the responsibility of the Commission to explain how it came to a determination. Unless specifically required by statute or ordinance, particularized written findings are not necessary, nor are there "magic words" that must be used. However, a simple statement that "the standards are met" or "are not met" is insufficient to inform the applicant of the reasons for the determination. The decision and the transcript must provide a record that allows meaningful judicial review³

LEGAL ADVICE PROVIDED BY CITY ATTORNEY

Legal advice provided by the City Attorney is privileged and provided on a confidential basis. It should not be released to third parties or discussed at a public meeting, unless the advice is in a formal memorandum that Planning Staff and the City Attorney intend be distributed to the public.

ENDNOTES

1. *Ethics Code training materials can be found on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/ethics/index.cfm

(See Also: City Attorney Opinion 2007-003 available on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/opinions/2007Opinions.cfm)
2. *Open Meetings training materials can be found on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/meetings/training.cfm

(See Also: City Attorney Opinion 2004-001, available on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/opinions/2004Opinions.cfm)
3. Quasi-Judicial Decision-making training materials can be found on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/training/index.cfm

(See Also: City Attorney Opinion 2007-003 available on the City Attorney's Page of the City Website at www.cityofmadison.com/attorney/opinions/2007Opinions.cfm)

Note: Madison General Ordinances are available on the [City of Madison's Legislative Center](#) on the [City's website](#).