

PROPOSED REVISIONS TO SECTIONS 10 THROUGH 19 OF LANDMARKS ORDINANCE DRAFT

(10) Obligation to Maintain Landmarks, Landmark Sites and Historic Districts, Compliance with Regulations, Penalties for Violations, Demolition by Neglect.

(a) Public Interest in Preservation and Maintenance. The Common Council finds it is in the public interest to preserve and maintain landmarks, landmark sites, and improvements in an historic district, and to vigorously enforce the provisions of this and other ordinances ~~against those who allow such sites and structures to decay, deteriorate, become structurally defective or otherwise fall into disrepair.~~

(b) Obligation to Maintain. Every owner ~~or such other person who may have legal possession, custody, and control~~ of an improvement on a landmark site or in an historic district shall protect against exterior decay and deterioration, keep any structure free from structural defects, and maintain all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to fall into a state of disrepair. This provision shall be in addition to all other provisions of this ordinance and other ordinances, laws, or regulations requiring the maintenance of such improvements.

(c) Enforcement. The Director of the Building Inspection Division of the Department of Planning & Community & Economic Development or designee is authorized to enforce the provisions of this ordinance. Upon written official notice of the Director of the Building Inspection Division or designee, the owner ~~or such other person who may have legal possession, custody, and control~~ of an improvement, shall repair such decay, deterioration, or structural defects to bring the improvement into compliance with this ordinance. Insofar as they are applicable to a landmark, landmark site or improvement in an historic district, designated under this section, any provision of Chapters 18 (Plumbing Code), 27 (Minimum Housing and Property Maintenance Code), 29 (Building Code), 30 (Heating, Ventilating and Air Conditioning Code) and 31 (Sign Control Ordinance) of the Madison General Ordinances may be varied or waived, on application, by the appropriate board having such jurisdiction over such chapter or, in the absence of such board, by the Director of the Building Inspection Division, provided such variance or waiver does not endanger public health or safety. However, the Building Inspector or designee may not waive the provisions of this Ordinance.

(d) Penalties for Violations. Violations of the provisions in this ordinance shall be subject to a minimum forfeiture of two hundred fifty dollars (\$250) and a maximum forfeiture of five hundred dollars (\$500) for each separate violation. A second violation within thirty-six (36) months shall be subject to a minimum forfeiture of five hundred dollars (\$500). A third violation within thirty-six (36) months shall be subject to a minimum forfeiture of one thousand dollars (\$1000). Each and every day during which a violation continues shall be deemed to be a separate offense.

(e) Demolition by Neglect. In addition to the penalties imposed in (d) above, if the owner ~~or such other person who may have legal possession, custody, and control~~ of an improvement, fails to repair the improvement upon written official notice of the Building Inspector or designee, the Building Inspector or designee shall report to the Landmarks Commission whether he or she believes that the structure is undergoing demolition by neglect.

1. Upon receiving a report from the Building Inspector or designee stating that a structure is undergoing demolition by neglect, the Landmarks Commission shall, within ten (10) days of receiving such a report, issue and serve upon the owner ~~or such other person~~ a complaint notice stating the charge of demolition by neglect and setting a time, date, and place for a public hearing. Notice shall be given according to Subsection (6) of this ordinance. The public hearing shall take place not less than thirty (30) nor more than sixty (60) days after the serving of such ~~a complaint notice~~. The purpose of the hearing is to receive evidence concerning ~~the charge of~~ ongoing demolition by neglect and to ascertain whether the owner ~~or other such person~~ wishes to petition the Landmarks Commission for a waiver under Subsection (15) of this ordinance.

2. If after notice and hearing, the Landmarks Commission determines that the structure is undergoing demolition by neglect, the Landmarks Commission shall state in writing the findings of fact in support of such a determination, serve a copy of its decision determination to the owner ~~or other such person~~, and provide a copy of its decision determination to the Common Council. In the event that the owner ~~or other such person~~ states an interest to pursue a waiver, the Landmarks Commission decision determination shall be stayed until after the Landmarks Commission's determination in accordance with Subsection (15) of this ordinance.

(11) Certificate of Appropriateness.

(a) Certificate of Appropriateness Required. A Certificate of Appropriateness, approved by the Landmarks Commission, is required for the following:

1. Exterior alteration of a designated landmark or structure within an historic district.
2. Construction of new structure on a landmark site or in an historic district.
3. Demolition or removal of all or part of a landmark or structure in an historic district.
4. Erecting or affixing a sign on a landmark site or in an historic district.
5. Alteration of part of a landmark designated as an Additional Preservation Restriction.
6. Land divisions and combinations involving a landmark site or in an historic district.
7. Sandblasting or other types of cleaning methods using abrasive or corrosive products of any exterior surface of an improvement on a landmark site or in an historic district.

(b) Permits. The Director of the Building Inspection Division shall not issue a permit allowing alteration, construction, demolition, removal, or for any other action for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission and issued by the Preservation Planner or designee.

(c) Prohibition. No owner, operator, or person in charge of a landmark, landmark site or structure within an historic district shall cause or permit any painting of signs, alteration, construction, demolition or removal for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission.

(d) Administrative Approval. The Landmarks Commission may authorize the Preservation Planner, or other designee(s) to approve certain projects, provided that the Commission shall first adopt written policies establishing which projects can be administratively approved, and the process to be followed.

(e) Application. An application for a Certificate of Appropriateness shall be filed with the Planning Department, c/o the Preservation Planner. The application shall be considered filed

when it is stamped “accepted” by the Preservation Planner. The timelines applicable in sub. (g) below shall not begin until an application is filed. Every application shall include at least the following information unless otherwise indicated by the Preservation Planner:

1. Completed Application document.
2. Narrative Description of the project.
3. Scalable drawing set reduced to 11” x 17” which includes floor plans, elevations and details to convey relevant information.
4. Any other information requested by the Preservation Planner to convey the aspects of the project.

(f) Public Hearings. The Commission shall hold a Public Hearing according to Subsection (6) of this ordinance for applications involving the following:

1. Demolition or removal of all or part of a landmark;
2. Demolition or removal of a structure in an historic district;
3. Construction of a new principal structure in an historic district;
4. Construction of an accessory structure with a footprint larger than one hundred (100) square feet, not including decks and open porches, in an historic district; and
5. Exterior alteration of a structure in an historic district that increases the footprint of the structure more than one hundred (100) square feet, not including decks and open porches.

(g) Issuance of Certificate of Appropriateness. The Landmarks Commission shall approve or deny a Certificate of Appropriateness, based upon the applicable standards in Subsection (12) of this ordinance, within sixty (60) days of the filing of an accepted application. Failure to approve a Certificate of Appropriateness within sixty (60) days shall be deemed a denial, effective on the last day of the determination period. The determination period may be extended an additional sixty (60) days by written agreement of the applicant. Upon approval of the Certificate by the Commission, the Preservation Planner or designee shall issue a Certificate of Appropriateness.

(h) Penalty for Work Done Without, or in Violation of, a Certificate of Appropriateness. In addition to any other penalty provided in this section, the Landmarks Commission, may order the removal or modification of any alteration, construction or other work that was performed without a required Certificate of Appropriateness, or that was not performed in compliance with the conditions of a lawfully issued Certificate of Appropriateness, when such work does not meet the applicable standards for a Certificate under Subsection (12) of this ordinance, or under the Additional Preservation Restriction specific to that landmark. Alternatively, the Commission may order renovation to make such work comply with those standards.

(i) Two-Year Deadline. A Certificate of Appropriateness shall expire two (2) years from the date of issuance unless a building permit is obtained within such period.

(12) Standards for Certificate of Appropriateness.

(a) For Exterior Alteration or Construction. The Landmarks Commission shall approve a Certificate of Appropriateness for exterior alteration of a landmark or a structure within an historic district, or for construction on a landmark site or in an historic district, only if:

1. In the case of a designated landmark the proposed work would not destroy or adversely affect any significant exterior architectural feature of the improvement upon which said work is to be done, or significantly degrade the historic fabric of the landmark; and

2. In the case of construction or alteration of a new structure upon a landmark site, the exterior of such improvement would not adversely affect or fail to harmonize with the external appearance of other neighboring improvements on such site, evaluated using the standards ~~in sub. (9)(c)~~ of this ordinance; and

3. In the case of any property located in an historic district, the proposed new structure or exterior alteration conforms to the adopted standards ~~for said district of this ordinance.~~

(b) For Demolition or Removal. In determining whether to approve a Certificate of Appropriateness for any demolition or removal of any landmark or structure within an historic district, the Landmarks Commission shall consider ~~and may give decisive weight to~~ any or all of the following:

1. Whether the structure is of such architectural or historic significance that its demolition or removal would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;

2. Whether the structure, although not itself a landmark structure, contributes to the distinctive architectural or historic character of the historic district as a whole and therefore should be preserved for the benefit of the people of the City and the State;

3. Whether demolition or removal of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and/or to the objectives of the historic preservation plan for the applicable historic district as duly adopted by the Common Council;

4. Whether the structure is of such old and unusual or uncommon design, texture and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense;

5. Whether retention of the structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;

6. The condition of the property, provided that any deterioration of the property which is self-created or which is the result of ~~any failure to maintain the property in good repair~~ demolition by neglect under sub. 10(e) of this ordinance cannot qualify as a basis for the issuance of a Certificate of Appropriateness for demolition or removal;

7. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the structures and environment of the historic district in which the subject property is located, or if outside a historic district, compatible with the mass and scale of buildings within two hundred (200) feet of the boundary of the landmark site; and,

8. Documentation of demolished structures. Prior to approving a Certificate of Appropriateness for demolition, the Landmarks Commission may require the applicant to provide documentation of the structure. Documentation shall be in the form required by the Commission.

(c) For Signs. The commission shall approve a Certificate of Appropriateness for signs, unless it finds that the size, number, design, or placement of the sign(s) would adversely affect a significant architectural feature of the structure or degrade the historic fabric of the district; that the sign(s) fails to comply with Chapter 31 of the Madison General Ordinances; or that the

sign(s) fails to comply with specific Standards or Guidelines for signs adopted in each historic district under this ordinance.

(d) For Alterations under Additional Preservation Restriction. The commission shall approve a Certificate of Appropriateness for an alteration under an additional historic preservation restriction unless it finds the alteration would adversely affect a significant architectural feature of the structure.

(e) For Land Divisions and Combinations. The commission shall approve a Certificate of Appropriateness for a land division or combination involving a landmark site or in an historic district unless it finds that the action would adversely affect a significant architectural feature of the structure or degrade the historic fabric of the district.

(f) For Abrasive Cleaning Methods. The commission may approve the use of abrasive cleaning methods on a landmark or in an historic district only if it finds the action would not adversely affect the structure or degrade the historic fabric of the district.

(13) Appeal.

(a) An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness may be taken to the Common Council by the applicant for the Certificate, the Alderperson of the district in which the subject property is located, or by the owners of twenty percent (20%) of the parcels of property within two hundred (200) feet of the subject property.

(b) Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. The Council shall hold a public hearing with Class 1 public notice.

(c) The Council may, by favorable vote of two-thirds (2/3) of its members, reverse or modify the decision of the Landmarks Commission, with or without conditions, or refer the matter back to the Commission with or without instructions.

(d) In making its determination under (c), the Council shall:

1. Consider the Standards and Guidelines specified in this ordinance, and the appropriate application of those Standards and Guidelines by the Commission; and,
2. Balance the public interest in preserving the subject property with the public interest in approving or denying the Certificate of Appropriateness, considering the Purpose and Intent of this ordinance. In balancing the public interests, the Council shall take into account whether the owner or applicant has failed to meet requirements to maintain the property in accordance with this ordinance and the commission has made a finding of demolition by neglect.

(14) Conditions Dangerous to Life, Health or Property. Nothing contained in this section shall prohibit the making of necessary construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an historic district pursuant to order of any governmental agency or pursuant to any court judgment, for the purpose of remedying emergency conditions

determined to be dangerous to life, health or property. In such case, no approval from the Commission shall be required.

(15) Waivers.

(a) Authority. Under (b) or (c) below, the Landmarks Commission may waive one or more standards for review for a Certificate of Appropriateness only upon its determination that doing so will not destroy a significant architectural feature of an existing structure or adversely affect the historic character of the ~~visual related area~~district.

(b) Waiver for Economic Hardship of Income Property. In determining whether to grant a waiver due to undue economic hardship regarding an income property, the commission shall hold a public hearing to consider evidence of:

1. The property's current level of economic return;
2. The property's marketability;
3. Options for economically valid alternative uses for the property;
4. The condition of the property, and the cost for compliance with the standards for review;
5. Whether the property was subject to demolition by neglect ~~or inadequate maintenance~~;
6. The availability of economic incentives for full compliance.

For the purposes of this provision, income property does not include income property that is owner-occupied.

(c) Waiver for Alternative Design. The commission may waive the standards of this ordinance in favor of alternative designs for alterations or new structures.

(d) The commission shall adopt policies defining the evidence to be provided under (b) and (c).

(16) Harmonization of Regulations. The provisions of this Chapter are intended to harmonize with other ordinances, including Chapter 28 (Zoning Code) and Chapter 29 (Building Code), and shall be interpreted in harmony to the extent possible. Where the regulations imposed by the landmarks ordinance are either more or less restrictive than regulations in other ordinances or laws, including Chapter 28, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.

(17) Computation of Time. In computing any period of time prescribed by this ordinance, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. When the period of time prescribed or allowed is less than eleven (11) days, Saturdays, Sundays and holidays shall be excluded from the computation.

(18) Separability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

(2) Definitions. In this section, unless the context clearly requires otherwise:

Abrasive cleaning method means a cleaning procedure that uses any of the following materials or tools:

(a) Abrasive materials, including, but not limited to, sand, glass beads, ground slag, volcanic ash, crushed nutshells, rice husks, ground corncobs or crushed eggshells, carried in high pressure air or water; or

(b) High pressure water.

Commission means the Landmarks Commission created under this section.

Demolition by Neglect. The process of allowing landmarks, landmark sites or properties in historic districts to decay, deteriorate, become structurally defective, or otherwise fall into disrepair through non-compliance with the standards under Section 10(c) of this ordinance.

Development means any new structure or exterior alteration to an existing structure.

Guideline means a principle put forward to help determine a course of action. Under this ordinance, Guidelines adopted in an historic district shall serve as a collective set of principles to promote architectural compatibility of new construction and exterior alterations in an historic district.

Historic district is an area designated by the Common Council pursuant to this ordinance which contains improvements with architectural, cultural, or historic significance.

Improvement means any structure, place, landscape, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Landmark means

(a) Any improvement which has architectural, cultural, or historic character or value reflecting the development, heritage or cultural characteristics of the City, state or nation and which has been designated as a landmark pursuant to the provisions of this section, or

(b) Any land of historic significance due to a substantial value in tracing the history of humankind, or upon which an historic event has occurred, and which has been designated as a landmark pursuant to the provisions of this section.

Landmark site means any lot, or part thereof, on which is situated a landmark and any abutting lot, or part thereof, used as and constituting part of the premises on which the landmark is situated.

Person means any individual, association, corporation or business entity. ~~For purposes of repeated violations of the provisions of this chapter, any association, corporation or business entity is considered the same as another association, corporation or business entity if they share at least one (1) officer.~~

Standard means a rule that is required. Under this ordinance, all Standards adopted

in an historic district must be complied with in every instance of development in that district.

Structure means anything constructed or erected, the use of which requires more or less permanent location on the ground, and in the case of flood areas, in the stream bed or lake bed.

Visually Related Area (VRA) means properties constructed during the period of significance (Mansion Hill: 1850-1930; Third Lake Ridge: 1850-1929; University Heights: 1893-1928; Marquette Bungalows: 1924-1930; First Settlement: 1850-1920) that are within two hundred (200) feet of the boundary of a lot. The VRA shall not include the building proposed to be demolished as part of any application for which VRA is being calculated. Outside of an historic district, no property other than a landmark, or landmark site shall be evaluated in the application of the VRA.