

26 January, 2015

**TO: Ad Hoc Landmarks Ordinance Review Committee**  
**FROM: Madison Trust for Historic Preservation**  
**RE: Recommended revision to sections 13-18 of the draft Landmarks Ordinance.**

*Note: These edits of section 13 replace our earlier proposed edits of section 13*

(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, **and the identity and address(es) of the petitioner(s)** 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 application of those Standards and Guidelines by the Commission; and,
  2. Balance the public interest in ~~preserving~~ **conserving the cultural value [definition below]** of the subject property with the public interest in approving or denying the Certificate of Appropriateness. In balancing the public interests, the Council shall:
    - a. take into account whether the owner or applicant **has been in consistent compliance with** ~~has failed to meet requirements to maintain the property in accordance with section (10) of this ordinance, and;~~
    - b. **take into account whether the proposed alterations to the property would add value to the city that outweighs the cultural value that would be lost if the alterations were executed, and;**
    - c. **take into account whether the Landmarks Commission's decision was inconsistent with applicable standards, or improperly exercised its discretion.**

*[cultural value - The extent to which a property conveys its associations to important people, events, design ideals, or patterns of a community's history through the presence and integrity of its materials, design, and physical context.*

(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 **enable the destruction or removal of** ~~destroy any significant architectural character-defining architectural or landscape feature of an existing structure~~ **a landmark site**, or adversely affect the historic character of the visual related area.
- (b) Waiver for Economic Hardship of Income Property. In determining whether to grant a waiver ~~due to~~ **relieve** undue economic hardship **regarding in the case of** an income-producing historic 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 *<Define>*;

3. Options for economically valid **viable** alternative uses for the property;
4. The condition of the property, and the cost for compliance with the standards for review;
5. Whether the **current condition of property is due to** ~~was subject to~~ 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 a designs that is differentiated from the characteristics of the visually related area, but is compatible with the historic materials, features, size, scale, proportion and massing of the visually related area.** ~~alterations or new structures.~~

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

(16) Harmonization of Regulations. 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.