

DATE: October 6, 2014

TO: Madison City Council, Ad Hoc Committee on Landmarks Ordinance Revision  
Amy Scanlon, Preservation Planner  
John Strange, Assistant City Attorney

FROM: James Matson, Member, Ordinance Committee of the Madison Alliance for  
Historic Preservation

**SUBJECT: Comments on Draft Landmarks Ordinance**

I would like to offer the following preliminary comments on sections (6) to (9) of the draft Landmarks Ordinance, which the Ad Hoc Committee may consider on October 9, 2014. I would also like to offer some general comments, including possible suggestions to improve the overall organization and clarity of the ordinance. Our voluntary citizen committee has had preliminary discussions on these topics, and I believe that the following comments and appendices reflect the general sense of the committee. But our committee has not yet had time, as a group, to meet on and specifically endorse these comments and appendices. So, for now, these comments and appendices are my own proposals informed by committee member comments, and not the final recommendations of our full committee.

### **General Comments**

1. Our committee remains concerned about the timetable for the ordinance review process. There should be more time for careful review and comment, to ensure a high quality product. We need to look at all the parts, and then at how the parts fit together. Some parts of the ordinance revision process may also be premature in relation to the City's planning process. It is usually best to plan and *then* draft, rather than vice-versa.
2. It is hard to draft a solid, state-of-the-art historic preservation ordinance when that ordinance is shoe-horned into a single section of the general ordinance chapter on "Boards, Commissions and Committees." This ordinance represents an entire framework of historic preservation that goes far beyond the Landmarks Commission itself. The current ordinance forces too much substantive material into an inadequate vessel (ordinance section 33.19). That diminishes the visibility of the ordinance, and makes it hard to organize it into a clear, orderly and readable form. It would make more sense to create a new ordinance chapter 41, entitled "Historic Preservation," comparable to existing chapters on Housing Code, Zoning Code, Building Code, HVAC Code, Sign Control, Landlord-Tenant, Fire Prevention, etc. The attached materials show how such a chapter might be organized (see *Appendix A*). Section 33.19 would then simply create the Landmarks Commission, and reference its duties under the new chapter 41. Finally, the ordinance should be re-drafted to make it more clear and readable. These things should be done regardless of the ultimate contents of the ordinance.

### **Comments on Subsections (6) to (9)**

The following comments pertain to subsections (6) to (9) of the current draft ordinance. I have attached draft language (see *Appendix B*) to show how these sections could be made more clear and readable. Under a proposed chapter 41 format, current draft subsections (6) to (9) would be numbered as sections 41.05, 41.06, 41.07 and 41.09, respectively.

### **Subsection 6 (proposed section 41.05, “Public Hearings and Notices”)**

The attached redraft clarifies current language, organization and procedures, but does not make significant substantive changes.

### **Subsection 7 (proposed section 41.06, “Designating Landmarks”)**

The attached redraft clarifies current standards and procedures, and makes the following substantive changes:

1. It clarifies that a site may be designated as a landmark if it has important archaeological or anthropological significance, or likely significance (based, for example, on preliminary archaeological studies).
2. It clarifies who may request a landmark designation (an adult resident or group of adult residents of the City of Madison).
3. It allows the Common Council, upon recommendation of the Landmarks Commission, to supplement the original landmark designation in order to enhance landmark protection (the procedure would be the same as for original designation). This is a slightly more flexible version of current subsection (7)(f), which is seldom if ever used.

### **Subsection 8 (proposed section 41.07, “Rescinding a Landmark Designation”)**

The attached redraft clarifies current standards and procedures, and makes the following substantive changes:

1. It provides that the Common Council may not rescind a landmark designation over the objection of the Commission, except by a two-thirds vote (a majority vote is sufficient if the Landmarks Commission recommends the rescission).
3. It clarifies who may request rescission (the landmark owners, all of whom must join in the request).
4. It clarifies the current grounds (“hardship” or “changed appearance”) on which rescission may be justified:
  - a. The attached redraft leaves the current “hardship” rescission option intact, although this option may be unnecessary. “Hardship” issues can be adequately addressed elsewhere in the ordinance, by carefully defined “variance” provisions.
  - b. The attached redraft expands the “changed appearance” option to some degree, by allowing the Commission to consider a substantial change in the appearance or condition of the landmark, or in the circumstances that prompted the original landmark designation, such that the landmark no longer reasonably qualifies for landmark designation. Neither this draft nor the current draft allows rescission based on a change caused by owner action or neglect.

## **Subsection 9 (proposed section 41.09, “Designating and Amending Historic Districts”)**

The attached redraft does all of the following:

1. It revises the ordinance draft to clarify current procedures and standards. Under this proposed redraft (as under the current draft), the Common Council establishes historic districts by ordinance after considering the recommendations of the Landmarks Commission and the City Plan Commission (the Landmarks Commission prepares a recommended draft ordinance for Common Council consideration). This redraft adds that district boundaries must be reasonably drawn in relation to the area of historic significance, and it clarifies the procedure by which the Landmarks Commission and City Plan Commission coordinate their recommendations to the Common Council.
2. It allows for the amendment of a historic district designation. Amendments may include boundary amendments, or amendments to district-specific development standards. Amendments must be adopted by ordinance, subject to the same standards and procedures that apply to the initial designation of a historic district.
3. It eliminates current references to “guidelines” (although the Commission may still consider guidelines established by the U.S. Department of Interior, and may still publish “suggested best practices” for owners of historic properties). An ordinance should deal in legal standards, not “guidelines” that can result in vagueness, inconsistency, weak compliance and potential abuse of administrative authority.
4. It avoids creating “one-size-fits-all” prescriptive standards for development in historic districts, since every district is somewhat different. This redraft provides the following general standard of compatibility:

Development in a historic district shall be compatible with the historic character of the district. Development shall be sensitive in size, scale, proportion, location and appearance to the historic character of the district, and shall not diminish that historic character.

Under this redraft, an ordinance creating a historic district must spell out development standards for that district. The Commission must develop draft standards in consultation with a committee of affected citizens nominated by the neighborhood association and Alder. The district-specific standards must implement and be consistent with the general standard above. This redraft also identifies various *kinds* of development standards that may be considered for each district. But it stops short of specifying prescriptive standards that apply to all districts.

5. It clarifies that an area may qualify for historic district designation if it has important archaeological or anthropological significance, or likely significance (for example, based on a preliminary archaeological investigation).
6. It clarifies who may request the designation or amendment of a historic district (a group of 5 or more adult residents of the proposed historic district, or of the existing historic district that they propose to amend).

7. It requires the Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments to coordinate their activities in order to call public attention to designated historic districts, and to preserve and where possible enhance the historic character and ambience of the districts. It also requires the Landmarks Commission to work with other City commissions and departments to ensure that historic preservation is an integral consideration in city planning, zoning and operating practice. This is an expansion of the current draft, which merely requires the Landmarks Commission to assist other City planning efforts to visually define and highlight historic districts.

Thank you for your consideration.

Please see APPENDICES attached:

*Appendix A: Proposed Outline of New Ordinance Chapter 41*

*Appendix B: Proposed Redraft of Ordinance Subsections (6) to (9),  
shown in new Chapter 41 format*

## ***APPENDIX A***

### **OUTLINE OF NEW ORDINANCE CHAPTER**

#### **Chapter 41 – Historic Preservation**

##### **Subchapter I – General Provisions**

- 41.01 – Policy and Purpose
- 41.02 – Definitions
- 41.03 – Other General Provisions

##### **Subchapter II – Landmarks Commission**

- 41.03 Authority and Duties; General
- 41.04 Preservation Planner
- 41.05 Hearings and Public Notices

##### **Subchapter III – Historic Landmarks**

- 41.06 Designating Landmarks
- 41.07 Rescinding a Landmark Designation
- 41.08 Maintaining Landmarks

##### **Subchapter IV – Historic Districts; General**

- 41.09 Designating and Amending Historic Districts
- 41.10 Maintaining Historic Districts

##### **Subchapter V – Education, Assistance, Coordination and Outreach**

- 41.11 Education, Assistance, Coordination and Outreach

##### **Subchapter VI – Designated Historic Districts**

- 41.12 Mansion Hill Historic District
- 41.13 Third Lake Ridge Historic District
- 41.14 University Heights Historic District
- 41.15 Marquette Bungalows Historic District
- 41.16 First Settlement Historic District

## ***APPENDIX B***

### **Proposed redraft of subsections (6)-(9), shown in new Ch. 41 format**

#### **41.05 PUBLIC HEARINGS AND NOTICES.**

**(1) General.** The Commission shall hold a public hearing whenever a hearing is required by this chapter, and may hold other public hearings related to matters under its jurisdiction. The Commission shall give public notice of each hearing, at least 10 days prior to the hearing. The notice shall specify all of the following:

- (a) The time, place and purpose of the hearing.
- (b) If the hearing pertains to a specific landmark site or improvement, the location of that landmark site or improvement.
- (c) If the hearing pertains to the proposed designation of a new historic district, the proposed boundaries of that district.
- (d) If the hearing pertains to the amendment of an existing historic district, the boundaries of that district. If the amendment would change the boundaries of the existing district, the hearing notice shall also specify the proposed new boundaries.

*[DEFINITION COMMENT: In "Definitions" section, re-define "improvement" to mean "a building, structure or other fixture attached to land." Re-define "landmark site" to include an existing or proposed landmark site.]*

**(2) Newspaper publication of some hearing notices.** Notice of the following hearings shall be given by a Class 2 Notice in the official City newspaper under Wis. Stat. § 985.07:

- (a) Hearings on the proposed designation of a landmark, or on the proposed modification or rescission of a landmark designation.
- (b) Hearings on proposed variances for which a public hearing is required under this chapter.
- (c) Hearings on proposed certificates of appropriateness for which a public hearing is required under this chapter.
- (d) Hearings on the proposed designation of a historic district, or on the amendment of an existing historic district designation.

**(3) Supplementary mail notice for some hearings.** In addition to publishing a hearing notice under sub. (1), the Commission shall mail an equivalent notice to the following persons, under the following circumstances, at least 10 days prior to the hearing date:

- (a) If the hearing pertains to a specific site or improvement identified in the hearing notice:
  - 1. The owners of record of each tax parcel on which that site or improvement is located.
  - 2. The owners of record of each tax parcel located within 200 feet of a tax parcel on which the site or improvement is located.

(b) If the hearing pertains to the designation of a historic district, or to the amendment of an existing historic district designation:

1. All owners of record of tax parcels located wholly or in part within the historic district.
2. The Alder of each Aldermanic District in which any part of the historic district is located.

(c) If the hearing pertains to a proposed waiver or certificate of appropriateness, to the Alder in whose Aldermanic District the affected site or improvement is located.

### **Subchapter III Historic Landmarks**

#### **41.06 DESIGNATING LANDMARKS.**

**(1) Common Council may designate.** The Common Council, after considering the recommendation of the Landmarks Commission, may designate a landmark according to this section.

*[DEFINITION COMMENT: Re-define "Landmark" to mean "a site, improvement, or site with improvements that is designated as a landmark under s. 41.06" (remove current substantive material, which largely duplicates designation standards, from definition). Define "Landmarks Commission," or "Commission," to mean the commission created under s. 33.19.]*

**(2) Designation standards.** A site, improvement, or site with improvements may be designated as a landmark if any of the following apply:

- (a) It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
- (b) It is associated with important events or the lives of important persons in national, state or local history.
- (c) It has important archaeological or anthropological significance, or likely significance.
- (d) It embodies the distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, or method of construction, or for the study of indigenous materials or craftsmanship.
- (e) It is representative of the work of a master builder, designer or architect.

**(3) Requesting designation.** An adult resident or group of adult residents of the City of Madison may request that a site, improvement, or site with improvements located in this City be designated as a landmark. The requesters shall submit their request to the Landmarks Commission on a landmark nomination form provided by the Commission. The request shall clearly identify and delineate the proposed landmark, and shall clearly explain and document why it qualifies under sub. (2) for designation as a landmark. The Commission may ask the requesters to submit additional relevant information and documentation as needed.

**(4) Commission review and public hearing.** When the Commission determines that a request under sub. (3) is complete, it shall review and hold a public hearing on the request. The Commission shall give prior notice of the hearing as provided in s. 41.05. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the request. The Commission may subpoena relevant witnesses and evidence if necessary.

**(5) Commission action.**

(a) After the Commission completes its review and holds a public hearing under sub. (4), it shall make and submit to the Common Council a recommendation supporting or opposing the requested landmark designation. The Commission may support the requested designation in a modified form recommended by the Commission, subject to recommended terms and conditions that are consistent with this chapter. The Commission shall provide the Common Council with a written report that explains its recommendation.

(b) The Commission, upon submitting its recommendation to the Common Council under par. (a), shall give public notice of its recommendation in the same manner that it gave notice of the public hearing under sub. (3). The Commission shall give the notice within 10 days after it submits its recommendation to the Common Council, and at least 10 days before the Common Council takes action on the recommendation.

**(6) Common Council action.**

(a) The Common Council, after considering the Landmarks Commission report and recommendation under sub. (5) shall do one of the following:

1. Designate the landmark according to the Commission's recommendations, subject to any modifications that the Common Council may deem appropriate consistent with this chapter.
2. Decline to designate the requested landmark.

(b) The City Clerk shall promptly notify the City Building Inspection Division and the City Assessor of any landmark designation under par. (a), and shall record the landmark designation at City expense with the Dane County Register of Deeds.

**(7) Supplementary terms and conditions.** At the request of one or more City residents, and upon recommendation of the Commission, the Common Council may at any time supplement the terms of a landmark designation to enhance the preservation and protection of the landmark. The procedure for supplementing the landmark designation shall be the same as for designating a landmark under this section.

**(8) Landmark plaque.**

(a) After the Common Council designates a landmark under this section, the Commission shall cause a plaque to be placed on the landmark at City expense. The plaque shall be easily visible to passing pedestrians, and shall identify and briefly indicate the historical significance of the landmark. The plaque shall include the accepted name and construction date of the landmark, if applicable, and may contain other information that the Commission considers appropriate.

(b) No plaque is required under par. (a) if the Commission determines that, because of the landmark's ecological or cultural sensitivity, a plaque would be inappropriate.

(c) The plaque under par. (a) is, and remains, City property. No person may remove a plaque placed on a landmark under par. (a) without the approval of the Preservation Planner.

**41.07 RESCINDING A LANDMARK DESIGNATION.**

**(1) Common Council may rescind.** The Common Council, after considering the recommendation of the Commission under sub. (4), may rescind a landmark designation according to this section. The Common Council may not rescind a landmark designation contrary to the recommendation of the Commission, except by a two-thirds vote of the entire Common Council.



**(2) Requesting rescission.** The owners of a landmark may, at any time, request the rescission of a landmark designation. The owners shall submit the request to the Commission, on a form provided by the Commission. The request shall be signed by all of the owners of record of every tax parcel on which the landmark is wholly or partly located. The request shall explain the reasons for the proposed rescission, and shall include clear documentation showing that the proposed rescission qualifies under sub. (5).

**(3) Commission review and public hearing.** If the Commission determines that a request under sub. (2) is complete, it shall review and hold a public hearing on the request. The Commission shall give prior notice of the hearing as provided in s. 41.05. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the request. The Commission may subpoena relevant witnesses and evidence if necessary.

**(4) Commission recommendation.**

(a) After the Commission completes its review and holds a public hearing under sub. (3), the Commission shall make and submit to the Common Council a recommendation supporting or opposing rescission of the landmark designation. The Commission shall provide the Common Council with a written report that explains its recommendation.

(b) The Commission, upon submitting its recommendation to the Common Council under par. (a), shall give public notice of its recommendation in the same manner that it gave notice of the public hearing under sub. (3). The Commission shall give the notice within 10 days after it submits its recommendation to the Common Council, and at least 10 days before the Common Council takes action on the recommendation.

**(5) Rescission standards.** A landmark designation may not be rescinded unless one of the following applies:

(a) The landmark owners demonstrate by clear and persuasive evidence that they are unable, despite good faith efforts, to find a buyer who is willing to preserve the landmark. Evidence may include the current real estate listing and disclosure statements for the landmark; comparable real estate listings showing current market values; evidence showing the original real estate listing date for the landmark, and the dates of real estate showings; evidence showing the original listing amount and any subsequent changes; evidence showing the current assessed value of the landmark, the value of improvements made by the owners, and the routine costs of maintenance; and evidence showing all purchase offers and their amounts.

(b) The landmark owners demonstrate all of the following by clear and persuasive evidence:

1. That there has been a substantial change in the physical appearance or condition of the landmark, or in the circumstances that prompted the original landmark designation, such that the landmark no longer reasonably qualifies for landmark designation under s. 41.06(5).

2. That the change under subd. 1 was not the result of any owner action or neglect, such as a failure to maintain the landmark.

**(6) Notice of rescission.** If the Common Council rescinds a landmark designation according to this section, the City Clerk shall promptly notify the City Building Inspection Division and the City Assessor of the rescission, and shall record the rescission at City expense with the Dane County Register of Deeds.

**Subchapter IV  
Historic Districts; General**

**41.09 DESIGNATING AND AMENDING HISTORIC DISTRICTS.**

**(1) Common Council and Commission roles.** (a) *Common Council.* The Common Council, after considering the recommendations of the Landmarks Commission and the City Plan Commission under this section, may by ordinance do any of the following according to this section:

1. Designate a clearly defined geographic area as a historic district.
2. Amend the designation of an existing historic district. An amendment may include a boundary amendment or an amendment of standards specific to that historic district, provided that the amendment complies with this section.

*[DEFINITION COMMENT: Re-define "historic district" to mean "an area designated as a historic district under subch. IV or subch. VI" (remove, from the current definition, substantive material that largely duplicates ordinance standards for designating historic districts). Under our proposed reorganization, subch. IV relates to the designation or amendment of historic districts, and sub. VI codifies existing historic districts.]*

(b) *Landmarks Commission.* The Landmarks Commission shall review each request for the designation or amendment of a historic district, and shall submit its recommendation to the Common Council according to this section. Before the Landmarks Commission refers its final recommendation to the Common Council, it shall submit its draft recommendation for review by the City Plan Commission.

(c) *City Plan Commission.* The City Plan Commission shall review the Landmarks Commission's draft recommendation for the designation or amendment of a historic district, and shall submit to the Landmarks Commission its recommendation for or against the designation or amendment. The Landmarks Commission shall refer the Plan Commission's recommendation, together with the Landmarks Commission's response and final recommendation, to the Common Council according to this section.

**(2) Historic significance and boundaries.** An ordinance designating a historic district shall recite the basis for that designation. The recitation shall briefly explain how the historic district meets the following standards:

- (a) A historic district shall be an area of particular historic, architectural, or cultural significance to the City of Madison, and shall meet at least one of the following criteria:
1. It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
  2. It is associated with important events or the lives of important persons in national, state or local history.
  3. It is associated within an area of particular archaeological or anthropological significance, or likely significance.
  4. It embodies the distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, or method of construction, or of indigenous materials or craftsmanship.
  5. It is representative of the work of a master builder, designer or architect.

(b) The boundaries of a historic district shall be clearly defined, and shall be reasonable in relation to the area of historic significance under par. (a).

**(3) Development in a historic district.**

(a) *General.* Development in a historic district shall be compatible with the historic character of the district. Development shall be sensitive in size, scale, proportion, location and appearance to the historic character of the district, and shall not diminish that historic character.

*[DEFINITION COMMENT: The current ordinance draft defines “development” as “any new structure or exterior alteration to an existing structure.”]*

(b) *District-specific standards.* An ordinance designating a historic district shall include specific standards for development in that district. The Commission shall develop draft standards, for inclusion in its proposed ordinance designating the historic district, in consultation with an ad hoc committee of district residents nominated by the neighborhood association and Alders that represent the historic district. The standards shall implement and be consistent with the general standard under par. (a), and may include standards related to any of the following:

1. Architectural elements.
2. Height, mass, density and gross volume.
3. Street façade width and height proportions.
4. Proportions and relationships between doors and windows in street facades.
5. The rhythm of solids to voids, created by openings between street facades.
6. Colors, patterns, textures and materials used on street facades.
7. Roof designs.
8. Landscape treatments.
9. The amount, shape, and pattern of open spaces.
10. The directional expression of street facades.
11. Other matters that the Commission and Common Council deem appropriate to protect the character and assets of the historic district, consistent with this section.

**(4) Requesting a historic district designation or amendment.** A group of 5 or more adult residents of the City of Madison may request the designation or amendment of a historic district within the City, provided that all of those residents reside in the proposed historic district or in the existing historic district that they propose to amend. The requesters shall submit the request to the Landmarks Commission on a form provided by the Commission. The request shall clearly describe the proposed historic district or amendment, and shall clearly explain and document why the proposed historic district designation or amendment qualifies and should be approved under this section. The Commission may ask the requesters to submit additional information and documentation as needed.

**(5) Landmarks Commission review and public hearing.** If the Commission determines that a request under sub. (4) is complete, it shall review and hold a public hearing on the request. The hearing shall be preceded by public notice as provided in s. 41.05. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the request. The Commission may subpoena relevant witnesses and evidence if necessary.

**(6) Recommendations and referrals.**

(a) *Landmarks Commission; draft recommendation.* After the Commission completes its review and holds a public hearing under sub. (5), it shall issue a draft recommendation for or against the adoption or amendment of a historic district designation. The Commission may recommend adoption or amendment in the form proposed by the requesters, or in a modified form recommended by the Commission. The Commission shall include all of the following in its draft recommendation:

1. A report explaining and documenting its recommendation.
2. A draft ordinance implementing its recommendation, if the Commission recommends a new or amended historic district designation.

(b) *Referral to Plan Commission.* The Landmarks Commission shall refer a copy of its draft recommendation under par. (a) to the Plan Commission, for review under par. (c).

(c) *Plan Commission recommendation.* Within 60 days after the Plan Commission receives a copy of the Landmarks Commission's draft recommendation under par. (a), the Plan Commission shall make a recommendation that does one of the following:

1. Concurs with the Landmarks Commission recommendation.
2. Concurs with the Landmarks Commission recommendation, subject to specified changes.
3. Opposes the Landmarks Commission recommendation.

(d) *Landmarks Commission; final recommendation and referral.* After reviewing the Plan Commission's recommendation under par. (c), the Landmarks Commission shall issue a final draft recommendation and submit that recommendation to the Common Council. The final draft recommendation shall include all of the following:

1. The materials required under par. (a).
2. The Plan Commission's recommendation under par. (c).
3. The Landmarks Commission's response to the Plan Commission's recommendation, including an identification of any changes made in response to the Plan Commission's recommendation.

(e) *Notice of final draft referral.* The Landmarks Commission, upon referring its final draft recommendation to the Common Council under par. (d), shall do all of the following:

1. Mail to the requesters under sub. (4) a written notice of the referral. The Commission shall mail the notice within 10 days after the referral, and at least 30 days before the Common Council takes any action on the Commission's recommendation.
2. Give public notice of the referral, in the same manner that it gave notice of the public hearing under sub. (5), at least 30 days before the Common Council takes action on the recommendation.

**(7) Common Council action.** The Common Council, after receiving the Landmarks Commission referral under sub. (6)(d), shall hold a public hearing on the Commission's recommendation. The hearing shall be preceded by notice consistent with s. 41.05. Following public hearing, the Common Council shall do one of the following:

(a) Adopt the ordinance recommended by the Commission, subject to any modifications that the Common Council may deem appropriate consistent with this chapter.

(b) Decline to adopt an ordinance.

**(8) Coordination related to historic districts and historic preservation.** The Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments shall coordinate their activities in order to call public attention to designated historic districts, and to preserve and where possible enhance the historic character and ambience of the districts. The Landmarks Commission shall also work with other City commissions and departments to ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.