

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: August 11, 2014

**MEMORANDUM**

TO: Landmarks Ordinance Review Committee

FROM: John W. Strange, Assistant City Attorney

RE: Policy Statements in the Proposed Landmarks Ordinance

At the conclusion of the last Landmarks Ordinance Review Committee (LORC) meeting, it was suggested that I write a brief memorandum highlighting areas in the proposed Landmarks Ordinance that contain specific policy statements or implications. This memorandum outlines those provisions. This is intended to aid in the LORC's review of the proposed ordinance, but is not an exhaustive policy discussion. Further discussion can be had at subsequent LORC meetings.

Section 33.19(1), Purpose and Intent, declares as a "matter of public policy that the preservation, protection, enhancement, perpetuation and use of improvements of architectural, archaeological, and anthropological significance; historical interest; special character; and cultural value is a public necessity to foster the health, prosperity, safety and welfare of the people." The section goes on to lay out six specific purposes intended to carry out this public policy.

Various sections throughout the ordinance, including 33.19(7)(c) and 33.19(9)(a), reiterates the policy stated in Section 33.19(1) to preserve sites or structures with architectural, archaeological, and anthropological significance; historical interest; special character; and cultural value. The phrase "anthropological significance" is not in the current Landmarks Ordinance. The Commission received significant input from the public about the significance of anthropological sites (e.g., effigy mounds) in the Madison area. Thus, the addition of this phrase to the proposed ordinance under review creates a policy acknowledging the importance of preserving sites or structures with anthropological significance.

Section 33.19(10) creates a new section regarding the obligation to maintain landmark sites and prevent demolition by neglect: "it is in the public interest to preserve and maintain landmarks, landmarks sites, and improvements in an historic district, and to vigorously enforce the provisions of this and other ordinances against those who allows such sites and structures to decay, deteriorate, become structurally defective or otherwise fall into disrepair." Thus, this section creates a policy in favor of maintaining a landmark and historic structure, and against demolition by neglect. This Section goes on to provide penalties for the failure to maintain properties, and procedures whereby the Commission can make a finding of demolition by neglect and report that finding to the Common Council.

Section 33.19(15), Waivers, provides an avenue for property owners to apply for a waiver from the conditions of the ordinance in cases of economic hardship and alternative design. This will allow property owners who do not maintain their property in accordance with 33.19(10) to formerly petition the commission for a waiver, instead of just letting the structure fall into increasingly poor disrepair (i.e., being demolished by neglect). If a property owner fails to apply for a waiver, and thus lets their property fall into disrepair, it will then be reasonable to later ask the property owner why they did not take advantage of this section.

Section 33.19(13), Appeal, changes the standard by which the Common Council considers appeals, allowing the Common Council to balance the public's interest in preserving the subject property with the public interest in approving or denying the Certificate of Appropriateness. With the more clearly stated policies in favor of preservation and against demolition by neglect discussed above, this standard allows the Council to ultimately balance those public interests with the public interests in approving or denying a Certificate of Appropriateness.

As stated above, this memorandum is not meant to be an exhaustive discussion of the public policy behind the proposed Landmarks Ordinance. Rather, it highlights those sections of the ordinance committee members may wish to review as they consider policy questions during the review process.