

Date: July 21, 2014

To: Members of the Ad Hoc Landmarks Ordinance Review Committee
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From: David Mollenhoff

Subject: Explanation of Packet Contents

Since Madison passed its Landmarks Ordinance 44 years ago, the practice of historic preservation has become much more sophisticated. Although the Madison ordinance has been amended numerous times, the Landmarks Commission and the Common Council have decided to repeal and rewrite its ordinance. I am concerned that in the rewriting of this ordinance Madison decision makers become familiar with state-of-the-art practices.

For the last several months I have attempted to learn as much as I could about such best practices. In this quest I have studied some of the literature on model ordinances and talked with experts at the National Trust for Historic Preservation and the National Alliance of Preservation Commission, and studied about 20 model ordinances.

In this process I have learned some things that I want to share with the Ad Hoc Committee. They consist of 5 documents:

1. What standards should be used to evaluate local historic preservation ordinances.
2. Advantages of having a generic template during the rewrite process
3. Toward a state-of-the-art historic preservation ordinance outline
4. Observations on the purpose and intent sections of selected model ordinances
5. Comparison of purpose and intent sections of model ordinances

I hope you find these documents helpful.

What standards should be used to evaluate local historic preservation ordinances?

dvm, 07-20-14

How would citizens, elected officials, and all other interested parties know if their city had a high quality, state-of-the-art ordinance? Such *overall* standards are especially important when a city goes through an ordinance repeal and rewrite process. Here is an outline of several standards that could be useful:

1. Completeness of coverage

Local ordinances are remarkably similar in content. In fact, a study of model ordinances shows that they share a generic template, and such a template can be used as a checklist to determine whether an ordinance is complete.

2. Protection strength

Local ordinances vary in *how effectively* they protect historic resources. Some ordinances provide weak protection while others are strong, and this fact allows ordinance writers to select an appropriate protection level as they revise or create ordinances. That said, the effectiveness of an ordinance is also a function of enforcement.

3. Coherent, logical, and transparent organization

How easily can a person who is unfamiliar with the ordinance find answers to what he or she wants? Ordinances vary dramatically on this standard. For example, ordinances can be made more user-friendly by including clear, descriptive titles for all sections and subsections and by providing a table of contents.

4. Clarity

Historic preservation ordinances are complex legal and technical documents, but that does not mean that they cannot be clearly written. Insurance companies have learned that their jargon-saturated policies are no longer acceptable to customers and have therefore “translated” these policies into plain English. Writers of historic preservation ordinances should strive to do the same.

5. Integration with all other chapters in the municipal code.

Historic preservation ordinances must be clearly and completely integrated with the body of municipal law known as the municipal code. For example, the relationship between zoning and historic preservation must be clearly stated in the ordinance.

6. Cooperation with other city staff

Effective historic preservation requires cooperation between city staff including planners, building inspectors, and city attorneys. These reciprocal relationships must be explicitly acknowledged in the ordinance.

Advantages of having a generic template during the Madison ordinance rewrite process

dvm, 07-21-14

In the United States there are more than 2000 historic preservation ordinances. Each is unique because it is adapted for local conditions. However, local ordinances are remarkably similar in content. This is because each must address a common list of issues. My study of model ordinances showed that these common issues can be distilled into a generic template composed of the following sections:

1. Purpose and intent
2. Enabling authority
3. Definitions
4. Composition, powers, terms, and procedures of preservation commissions
5. Procedures and standards for designating landmarks, historical districts, and other historic resources
6. Procedures and standards for reviewable actions by the commission
7. Special procedures for public safety threats, economic hardship, and special merit projects
8. Obligation to maintain and repair property
9. Enforcement and penalties
10. Management of historic resources
11. Procedures and standards for appeals to commission actions
12. Severability

A more detailed outline using this framework is attached.

So, if all ordinances are different, will a generic template really help the Ad Hoc Committee? My answer is “yes.” And for at least two reasons.

1. One test of a good ordinance is its completeness, and the only way we can know whether the Madison ordinance is complete is to compare it to a generic template. In this sense the template can be used as *a detailed checklist*.
2. Another advantage of having a generic template is that it can help improve the *coherence, logic, and transparent organization of an ordinance*.

That said, a caveat is in order: With the possible exception of the now-being-finalized New York State model ordinance, no single ordinance comes close to embodying *all* state-of-the-art elements. To find best practices, you must drill down to the section and sub-section level, and then only among some ordinances.

Does this require additional effort? Yes. But among lawyers who specialize in historic preservation ordinances, these sections and sub-sections are known.

One last point on the generic template is in order. Are there other ways to summarize and sequence the key components of a historic preservation ordinance? Yes! However, I think you will find my template to be representative and complete.

Sources consulted

To prepare the attached generic template, I used about 20 documents, some of which are noted below.

“The Historic Preservation Ordinance” prepared by the National Trust for Historic Preservation and published in the *Preservation Law Reporter* in 2004.

Drafting Effective Historic Preservation Ordinances, prepared by Clarion Associates for the Office of Historic Preservation, State of California, June 2005.

“Model Landmarks Preservation Local Law for New York State Municipalities,” jointly authored by the Preservation League of New York State and the State Historic Preservation Office, June 2014 draft.

“Ten Key Components of a Preservation Ordinance” in *A Layperson’s Guide to Historic Preservation Law*, by Julia H. Miller, National Trust for Historic Preservation, 2008.

Other state model ordinances consulted included: Oregon; Texas; Virginia; Georgia; Louisiana; and Pennsylvania

Other city ordinances consulted included: Milwaukee, WI; Pasadena, CA; Los Angeles, CA; Denver, CO; St. Paul, MN; Washington D.C.; Charleston, SC; and Savannah, GA.

Toward a State-of-the-Art Historic Preservation Ordinance Outline

dvm, 05-10-14, 06-02-14, 06-18-14, 07-21-14

1: PURPOSE AND INTENT

2. ENABLING AUTHORITY

3: DEFINITIONS

4: COMPOSITION, POWERS, TERMS, AND PROCEDURES OF PRESERVATION COMMISSION

- Number of Members
- Appointment Process and Term
 - Qualifications and Composition
- Method of Filling Vacancies
- Reappointment
- Compensation
- Training and Attendance Requirements
- Commission Powers and Duties
 - General and Advisory Powers
 - Administrative Reviews
 - Designation of Historic Districts
- Nature of Final Review Authority (exclusive or shared power models)
- Disclosure of Pecuniary Interests and Conflicts of Interest
- Organization
 - Chairperson Designation and duties
 - Secretary
 - Meetings Schedule and Special Meetings
 - Quorum
- Records, Open Meeting Law and Annual Reports
- Promulgation of Regulations and By-Laws
- Cooperation of City Departments
- Relationship between Landmarks and Zoning Ordinance

5: PROCEDURES AND STANDARDS FOR DESIGNATING LANDMARKS, HISTORICAL DISTRICTS, AND OTHER HISTORIC RESOURCES

- Identification of historic resources covered by this section
 - Individual Landmarks
 - Historic Districts
 - Interior Landmarks
 - Scenic Landmarks
 - Archeological Sites
 - Procedure for Properties Less than 50 Years Old
- Notice and Hearing Requirements for Proposed Designation
- Standards for the Designation of Landmarks, Historic Districts, and Other Resources

6: PROCEDURES AND STANDARDS FOR REVIEWABLE ACTIONS BY COMMISSION

- Actions Regarding Landmarks and Historic Districts that Require Commission Review
 - Alterations
 - New construction
 - Demolition
 - Removals
 - Demolition by Neglect
- Actions that May be Approved by Staff
- Scope of Powers for Reviewable Actions
- Standards for Issuing a Certificate of Appropriateness
- Certificate of Appropriateness Application Procedure
- Certificate of Appropriateness Public Notice Requirements
- Recommendation on a Temporary Moratorium of Land Use Approvals
- Expiration of Approval and Extension of Approval

7: SPECIAL PROCEDURES FOR PUBLIC SAFETY THREATS, ECONOMIC HARDSHIP, AND SPECIAL MERIT PROJECTS

- Limited Availability of Special Procedures
- Public Safety (Structure that is Deemed an Imminent Threat to Public Health, Safety, and Welfare)
- Economic Hardship
 - Limited to Denial of a COA for Demolition, Removal, and Relocation of Buildings
 - Procedural Requirements
 - Application Requirements
 - Public Hearing
 - Standards for Granting A COA for Demolition, Removal, or Relocation
- Special Merit Exception

8. OBLIGATION TO MAINTAIN AND REPAIR PROPERTY

- Affirmative Obligation to Maintain
- Definition of owner
- Maintenance Standards
- Commission Role in Evaluating Nature of Work Needed
- Coordination of Historic Preservation with Building Code Enforcement
- Demolition by Neglect Prohibited

9: ENFORCEMENT AND PENALTIES

- Work to Conform to Codes and Special Requirements
- Restoration to Good Condition
- Cooperation of Commission, Building Inspector, and City Attorney for Violations
- Penalties
 - First Offense
 - Second Offense
 - Third Offense

10. MANAGEMENT OF HISTORIC RESOURCES

- Recognition of Landmarks
 - Plaques
 - Administration and Funding
- Recognition of Historic Districts
 - Special Markers and Signage
 - Administration and Funding
- Surveys and Inventories of Historic Resources
- Education of Property Owners, City Staff and Elected Officials, and the Public
- Encouragement of Heritage Tourism
- Commission Responsibility for City-wide Preservation Plan (City Comprehensive Plan)
- Incentives for Historic Preservation
- Technical Assistance to Property Owners

11: PROCEDURES AND STANDARDS FOR APPEALS TO COMMISSION ACTIONS

- Identification of Who May Appeal to What Body for What Actions
- Process for Appeals
- Review Limited to the Same Criteria Used by Commission
- Availability of Judicial Appeal

12: SEVERABILITY

Observations on the Purpose and Intent Sections of Selected Model Ordinances

dvm, 07-21-14

1. Madison's new draft compares favorably with other model ordinances.
2. The overlap between sections is substantial because as cities created and revised ordinances, they borrowed and adapted language from older, model ordinances. I have shown the obvious copying by drawing circles around these sections and connecting them with lines.
3. There are several cases where model ordinances contain *new* elements that Madison should consider adding to its ordinance, and I have highlighted them in yellow.
4. This type of side-by-side comparisons can be a very useful to Ad Hoc Committee members they:
 - A. allow quick and easy comparisons between ordinances; and
 - B. provide alternative methods and language

I would suggest that the Committee use this technique for other sections as you move through Madison's new ordinance draft.

Comparison of Purpose and Intent Sections for Model Ordinances

<p>Draft NY State ordinance</p> <p>Section 2. Purpose. The purpose of this local law is to promote the general welfare by providing for the identification, protection, enhancement, perpetuation, and use of buildings, structures, signs, features, improvements, sites, and areas within the (Village/Town/City) that reflect special elements of the (Village/Town/City)'s historical, architectural, cultural, economic or aesthetic heritage for the following reasons:</p> <p>(a) To foster public knowledge, understanding, and appreciation of the beauty and character of the city) and in the accomplishments of the past.</p> <p>(b) To ensure the harmonious, orderly, and efficient growth and development of the city);</p> <p>(c) To enhance the visual character of the city by encouraging new design and construction that complements the city's historic buildings.</p> <p>(d) To project and promote the economic benefits of historic preservation by the city), its inhabitants and visitors;</p> <p>(e) To promote and encourage continued private ownership and stewardship of historic structures; (f) To identify as early as possible and resolve conflicts between the preservation of historic landmarks/districts and alternative land uses; and</p> <p>(g) To conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.</p>	<p>Pasadena, CA</p> <p>17.62.010 Purpose of Chapter</p> <p>The purpose of this Chapter is to specify significance criteria for the designation of historic resources, procedures for designation, and review procedures to:</p> <p>(a) Encourage and promote the adaptive reuse of the City's historic structures;</p> <p>(b) Enhance, perpetuate, and preserve architecturally and historically significant structures and promote revitalization of historic neighborhoods and historic areas;</p> <p>(c) Ensure that the rights of owners of historic resources and owners of properties adjacent to historic resources are safeguarded;</p> <p>(d) Foster civic pride in the beauty and noble accomplishments of the past by promoting stewardship of historic resources that represent these accomplishments;</p> <p>(e) Fulfill the city's responsibilities as a CLG...</p> <p>(f) Promote the identification, documentation, and evaluation of the significance of individual historic resources and districts;</p> <p>(g) Implement the historic preservation goals, policies, and programs of the General Plan;</p> <p>(h) Promote the City as a destination for tourists and as a desirable location for business.</p> <p>(i) Promote public awareness of the restoration and maintenance of the existing housing building stock as a means to conserve reusable material and energy resources.</p>	<p>Washington D.C.</p> <p>101 INTENT AND PURPOSES</p> <p>101.1 The intent of these regulations is to promote the protection and enhancement of historical, cultural, and general welfare of the city and of aesthetic merit in the interests of the health, prosperity, and welfare of the people of the District of Columbia.</p> <p>101.2 The intent of the regulations is further to promote the following expressed purposes of the Historic Protection Act:</p> <p>(a) Effect and accomplish the protection enhancement, and perpetuation of historic landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political and architectural history;</p> <p>(b) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;</p> <p>(c) Foster civic pride in the accomplishments of the past;</p> <p>(d) Project and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and</p> <p>(e) Promote the use of landmarks and historic districts for the education, pleasure, and welfare of the people of the District of Columbia.</p>	<p>Charleston, SC</p> <p>Sec. 54-230. Purpose of creating districts.</p> <p>In order to promote the economic and general welfare of the city and of the harmonious, orderly and efficient growth and development of the municipality, it is deemed essential by the city council of the city that the qualities relating to the history of the city and a harmonious outward appearance of structures which attract tourist and residents alike be preserved;</p> <p>some of these qualities being the continued existence and preservation of historic areas and structures;</p> <p>continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between structures of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and district neighborhoods which impart a beauty and noble accomplishments of the past.</p> <p>(a) Effect and accomplish the protection, enhancement and use of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political, archaeological, and architectural history.</p> <p>(b) Safeguard the City's historic and cultural, archaeological and anthropological heritage, as embodied and reflected in such landmarks and historic districts.</p> <p>(c) Stabilize and improve property values.</p> <p>(d) Foster civic pride in the beauty and noble accomplishments of the past.</p> <p>(e) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry, thereby strengthening the economy of the City.</p> <p>(f) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City.</p>	<p>Madison (new draft ord.)</p> <p>(1) Purpose and Intent. It is hereby declared 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 purpose of this section is to:</p> <p>(a) Effect and accomplish the protection, enhancement and use of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political, archaeological, and architectural history.</p> <p>(b) Safeguard the City's historic and cultural, archaeological and anthropological heritage, as embodied and reflected in such landmarks and historic districts.</p> <p>(c) Stabilize and improve property values.</p> <p>(d) Foster civic pride in the beauty and noble accomplishments of the past.</p> <p>(e) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry, thereby strengthening the economy of the City.</p> <p>(f) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City.</p>
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