

DATE: January 26, 2015

TO: Madison Common Council, Ad Hoc Committee on Landmarks Ordinance Revision

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

SUBJECT: **Criteria for a Fair and Effective Landmarks Ordinance**

Over the past months, our citizen committee has tried to assist your Committee in developing a fair and effective Landmarks Ordinance for the City of Madison. This is a hard task, involving many complicated legal, policy and drafting issues. But we believe that there is a clear path forward, based on the following basic principles:

- 1. The Ordinance should provide a clear mandate, and a clear ongoing process, for identifying and protecting Madison's important historic resources.** Our historic resources tell the unique story of our community, and set us apart from an increasingly generic world. They are valuable community assets, and they occupy less than 1% of the city's land area. Once lost, they cannot be recovered. They should not be sacrificed to neglect, short-term thinking, or a rush of unplanned development.
- 2. Historic preservation should be an integral part of the City's land use planning, zoning, and building approval process.** Historic districts should be carefully designed, based on thoughtful land use plans. Preservation standards should provide clear, effective, reliable protection for historic resources that the City plans to preserve. Historic preservation can coexist with well-planned, sensitive development. It can also add value to that development.
- 3. The Common Council should establish clear preservation standards for each historic district that it establishes.** District-specific standards should be adopted by ordinance, with input from the Landmarks Commission and the public. The standards should be carefully designed and drafted, so they can be applied in a consistent and predictable way. The Landmarks Commission should faithfully apply the standards as written. Decisions on individual projects should be based on clear and consistent legal standards, not vague "guidelines" or unfettered administrative discretion. People should know what to expect.
- 4. The standard-setting process should be flexible.** The general Ordinance should *not* try to spell out detailed, "one-size-fits all" standards for all historic districts, because every district is different. The Common Council should be free to craft nuanced ordinance standards that vary within and between districts, to address different local conditions and planning goals. The Council should also be free to amend district-specific standards, as conditions warrant.
- 5. The standard-setting process should be forward-looking and transparent.** Standards should be designed with the future in mind. A thoughtful standard-setting process, informed by sound planning, citizen input and Landmarks Commission recommendations, will promote public confidence, and facilitate consistent and efficient administration. It will also avoid arbitrary and capricious decisions, and help prevent costly and divisive "train wrecks."
- 6. Standards should provide reasonable certainty.** Property owners, neighborhood residents, developers and investors need reasonable consistency and predictability as they plan and invest for the future. They should not be at the mercy of hopelessly vague language, or arbitrary and unfettered administrative discretion.

7. **Standards, once established, should be honored.** People should not have to guess whether standards “really” apply, or whether they will be enforced. If experience reveals problems with existing standards, the Common Council can amend those standards by ordinance. But standards should not be ignored, and compliance should not be optional.
8. **The Ordinance should clearly distinguish between the treatment of *landmarks* and *historic districts* (which are often confused):**
 - A. ***Landmarks*** are individual properties that the Common Council specifically designates as historic landmarks. A landmark may be located anywhere in the city (not just in a historic district). Landmarks must be maintained to certain basic standards. A landmark may not be demolished, by action or neglect, while its landmark designation remains in effect. The Common Council may rescind a landmark designation only for certain limited reasons. Landmark alterations require a “certificate of appropriateness” from the Landmarks Commission.
 - B. ***Historic districts*** are local areas or groups of properties that the Common Council, by ordinance, designates for preservation. Historic districts may vary in size and focus. A historic district may include a substantial number and variety of individual properties (which may or may not include *landmark* properties). The properties within a historic district may vary in historic importance, but the goal is to preserve key properties *and* the overall historic character of the district. All properties in the district must be maintained to certain basic standards. Some development is typically allowed, and some (less historically important) properties may conceivably be demolished and replaced over time – provided that development is consistent with district standards. Development standards are set by the Common Council, and may vary within and between historic districts. (For example, the Council might establish different building height or style restrictions for different districts, or for different parts of a single district.) Properties may not be substantially altered or demolished without a “certificate of appropriateness” certifying that the action complies with applicable district-specific standards.
9. **The Ordinance should allow the Landmarks Commission to grant limited variances from preservation standards.** Variances should be allowed when strict literal application of a standard would cause unreasonable and unnecessary hardship, or would unreasonably restrict superior design alternatives (provided that the variance is consistent with the purpose of the standard). Variances should meet specific Ordinance criteria, and should be based on unique conditions applicable to specific properties, so as not to undermine overall preservation standards. Sweeping “waivers” of established standards (a “worst practice,” according to the National Trust for Historic Preservation) should be avoided.
10. **Landmarks Commission decisions should be appealable to the Common Council, but the scope of review should be carefully defined.** The Council should use the same ordinance standards that apply to Commission decisions, and a 2/3 vote should be required to overturn the Commission. Appeals should not become vehicles for unfettered “waivers” of preservation standards (a “worst practice” that could undermine the expert role of the Commission, prompt a flood of contentious appeals, and threaten the entire structure of historic preservation).

- 11. The Ordinance should clarify the Landmarks Commission’s role, and encourage a more coordinated City approach to historic preservation.** The Ordinance should spell out clear administrative procedures, and clear remedies for ordinance violations. It should clarify the enforcement responsibilities of the Landmarks Commission and the Building Inspection Division, and should direct other City departments to take supportive steps within their jurisdiction.

- 12. The Ordinance should be created as a new chapter of the Madison General Ordinances.** The current Ordinance is shoe-horned into a single obscure ordinance section. A new chapter would provide greater visibility, and a more adequate platform for this important program. The Ordinance should be reorganized and re-drafted to modern standards, to ensure greater clarity, readability, transparency, internal consistency and ease of reference.

We have offered you a complete draft Ordinance that reflects these basic principles (see “Plain Language Summary” attached). We believe that this “state of the art” Ordinance would improve historic preservation, facilitate sound planning and development, and reduce unnecessary conflict and uncertainty. Madison deserves nothing less. We hope that you will look to this draft Ordinance as a model, on matters of form *and* substance, as you move forward.

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