

## LEGISTAR #50890 – Substitute Body – Version 2

DRAFTER'S ANALYSIS: The Historic Preservation Ordinance requires owners of historic resources to maintain them. Failure to do so leads to prosecution for violations and, possibly, to a finding of demolition by neglect. In some cases, such as when a zero lot line is involved, the ability to maintain one's property is dependent on the cooperation of the neighboring property owner. If, for example, a neighbor refuses to allow access for maintenance purposes, the property owner attempting to maintain their property cannot do so.

This ordinance amends Sec. 41.14 to do two things. First, it creates Sec. 41.14(1)(d), which places an obligation on all owners of property in historic districts to refrain from engaging in behavior that causes or may cause exterior decay or deterioration of a neighboring property. Engaging in such behavior could result in a notice of violation from the Building Inspector. Second, this amendment creates Sec. 41.14(3), which adds a process for property owners who have a duty to maintain their property to request that the Landmarks Commission acknowledge, through a public hearing, that they have made efforts to maintain their property but have been prevented from doing so by a neighbor. Such a finding by the Landmarks Commission can be used to defend a notice of violation or charge of demolition by neglect related to that specific maintenance issue.

This substitute was necessary to add sub. (e), which more clearly provides a requirement to refrain from unreasonably preventing the owner of a landmark, improvement on a landmark site, or improvement in a historic district from maintaining their property and to allow a property owner to seek relief from the Landmarks Commission even if they have not yet received a citation from the Building Inspector for failing to maintain their property.

\*\*\*\*\*

The Common Council of the City of Madison do hereby ordain as follows:

Section 41.14 entitled "Maintenance Obligation; Enforcement; Penalties" of the Madison General Ordinances is amended to read as follows:

### 41.14 - MAINTENANCE OBLIGATION; ENFORCEMENT; PENALTIES.

- (1) Maintenance Obligation. Every owner of a landmark, improvement on a landmark site, or improvement in a historic district shall do all of the following:
  - (a) Protect the improvement against exterior decay and deterioration.
  - (b) Keep the improvement free from structural defects.
  - (c) Maintain interior portions of the improvement, the deterioration of which may cause the exterior portions of such improvement to fall into a state of disrepair.
  - (d) Refrain from actions that cause or may cause exterior decay and deterioration of a landmark, improvement on a landmark site, or improvement in a historic district that is located on a directly abutting property.
  - (e) Refrain from unreasonably preventing the owner of a landmark, improvement on a landmark site, or improvement in a historic district that is located on a directly abutting property from maintaining its property.
- (2) Enforcement.
  - (a) The Building Inspector or designee is authorized to enforce the provisions of this chapter.
  - (b) The Building Inspector may issue an official written notice to a property owner, requiring the property owner to correct a violation of [Sec. 41.14\(1\)](#) above by a date specified in the notice, and may issue an official written notice to a property owner who is in violation of Sec. 41.14(1)(d) or (e) above.
  - (c) The Building Inspector shall notify the Preservation Planner of all official compliance notices issued to owners of landmarks or improvements in historic districts. The Building Inspector shall further notify the Preservation Planner whenever a property owner fails to correct a violation by the compliance date specified in an official notice.
  - (d) City agencies or commissions responsible for enforcing Chapters 18, 27, 29, 30 and 3, MGO, or, in the absence of such city agency or commission, the Building Inspector, may grant individual variances from those chapters to facilitate historic preservation and maintenance under this chapter, provided that such variance does not endanger public health or safety or vary any provisions of this chapter.
- (3) Public Hearing. A property owner may file a request with the Landmarks Commission for a public hearing if the property owner has made attempts to maintain their property as required

by this ordinance but has been prevented from doing so by a neighbor whose property directly abuts that of the property owner seeking relief. Upon receiving such a request, the Landmarks Commission shall issue a hearing notice under Sec. 41.06 and hold a public hearing. If, after a public hearing, the Landmarks Commission finds that the property owner seeking relief has made efforts to correct the alleged violation but has been prevented from doing so by a directly abutting property owner, the Landmarks Commission shall find that reasonable efforts to maintain have been made. In considering whether efforts to maintain have been made under this section, the Landmarks Commission shall take into account whether the property owner seeking relief has also prevented his or her directly abutting neighbors from maintaining their own property. If such a finding is made, the enforcement of any maintenance notice or citation shall be suspended as to that violation and the finding may be used as a defense to a charge of Demolition by Neglect under Sec. 41.15. Furthermore, upon making such a finding, the Landmarks Commission shall report its finding to the Building Inspector for the issuance of a citation under Sec. 41.14(1)(d) or (e) above. A Landmarks Commission decision under this section that one neighbor is unreasonably preventing the owner of a directly abutting property from maintaining their property is prima facie evidence of a violation of sub. (1)(e) above for purposes of any municipal court or civil court action. An owner that is affected by the decision of the Landmarks Commission under this subsection may appeal as provided in Wis. Stat. § 62.23(7)(em)3.

- (34) Penalties. Violations of the provisions in this ordinance shall be subject to a minimum forfeiture of two hundred fifty dollars (\$250) and a maximum forfeiture of five hundred dollars (\$500) for each separate violation. A second violation within thirty-six (36) months shall be subject to a minimum forfeiture of five hundred dollars (\$500) and maximum forfeiture of one thousand dollars (\$1000) for each separate violation. A third violation within thirty-six (36) months shall be subject to a minimum forfeiture of one thousand dollars (\$1000) and maximum forfeiture of two thousand dollars (\$2000) for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate violation. All fines imposed under this ordinance shall be tripled if the Court makes an additional finding that the subject property is undergoing demolition by neglect as defined by this ordinance. A finding of demolition by neglect by the Landmarks Commission as provided in [Sec. 41.15](#) below shall be prima facie evidence of demolition by neglect for purposes of any civil court action.”