

Date: November 17, 2014  
To: Members of the Ad Hoc Landmarks Ordinance Review Committee  
From: David Mollenhoff, Ordinance Committee, Madison Alliance for Historic Preservation  
Subject: Documents for the November 20 Meeting

From the beginning of this ordinance revision process, we have struggled with an effective method of providing our recommendations to you. Up to this point, we have given our recommendations to you in a Chapter 41 format with justifications for changes we have made to the Chapter 33.19 language.

However, since you get suggestions from several individuals and organizations, you have the unenviable task to comparing them and selecting the best language.

Although this problem is inherent in the LORC assignment, we believe we can do something to make your work easier. We can provide our recommendations to you in a three column format where the left column contains the 33.19 text, the middle column our recommended Chapter 41 text, and the right column our comments on how the two versions compare.

The advantage of this format is that it allows you to see corresponding sections side-by-side. And in this situation where every word, phrase, sentence, and section sequence makes a difference, we believe this format will greatly simplify your analysis. Your strong affirmation of the Chapter 41 format at the November 6 meeting is another reason why the columnar format makes sense.

For your meeting on November 20, we are attaching the following documents:

- 3-column analysis of 33.19(10)Obligation to Maintain...compared to Chapter 41
- 3-column analysis of 33.19(11) and (12), Certificates of Appropriateness compared to Chapter 41

We look forward to meeting with you on Thursday.

cc: Alder Ledell Zellers  
Stuart Levitan  
Amy Scanlon  
John Strange  
Ordinance Committee

**Section 33.10(10), Obligation to Maintain Landmark Sites and Historic Districts, Compliance with Regulations, Penalties for Violations, Demolition by Neglect.  
Compared to Chapter 41**

Prepared by the Ordinance Committee of Madison Alliance for Historic Preservation (11-17-14)

Section 33.19(10)	Chapter 41	Comments
<p><b><u>33.19(10) Obligation to Maintain Landmarks, Landmark Sites and Historic Districts, Compliance with Regulations, Penalties for Violation, Demolition by Neglect</u></b></p>		<ul style="list-style-type: none"> <li>• As indicated by its complex title, s. 33.19(10) covers a jumble of different topics. It also lumps landmark requirements together with historic district requirements, making it hard to tell which requirements apply to each.</li> <li>• Chapter 41 rearranges topics in a more orderly fashion, under several different sections, with clear section titles and cross-references. It also separates landmark requirements from historic district requirements, for greater ease of reference.</li> </ul>
<p><u>33.19(10)(a) Public Interest in Preservation and Maintenance.</u> The Common Council finds it is in the public interest to preserve and maintain landmarks, landmark sites, and improvements in an historic district, and to vigorously enforce the provisions of this and other ordinances against those who allow such sites and structures to decay, deteriorate, become structurally defective or otherwise fall into disrepair.</p>		<ul style="list-style-type: none"> <li>• Section 33.19(10)(a) is a statement of policy or purpose, rather than a substantive ordinance standard. It should be moved to the general POLICY AND PURPOSE section, or deleted. Its presence here implies that the enforcement of other ordinance provisions (which have no comparable policy statement) may be somehow less important.</li> <li>• Chapter 41 includes a simplified POLICY AND PURPOSE section (41.01) aimed at reducing potential confusion, overlap and conflict with ordinance text.</li> <li>• We would simply delete s. 33.19(10)(a), because we doubt that it will have any impact on enforcement. Fair and effective enforcement depends on clear ordinance standards, effective enforcement tools, effective administration, sustained public interest, and adequate compliance budgets and staffing.</li> </ul>
<p><u>33.19(10)(b) Obligation to Maintain.</u> Every owner or such other person who may have legal possession, custody, and control of an improvement on a landmark site or in an historic district shall protect against exterior decay and deterioration, keep any structure free from structural defects, and maintain all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to fall into a state of disrepair. This provision shall be in addition to all other provisions of this ordinance and other ordinances, laws, or regulations requiring the maintenance of such improvements.</p>	<p><b>41.09 MAINTAINING LANDMARKS.</b>  <b>(1) Requirements.</b> Persons who own or control a landmark shall do all of the following:          (a) Protect the landmark against exterior decay, deterioration and reasonably foreseeable damage.          (b) Keep the landmark free of structural defects.          (c) Maintain interior portions of the landmark that, if not maintained, may create a casualty risk to the landmark or cause exterior portions of the landmark to fall into disrepair.          (d) Comply with applicable provisions of ch. 18 (plumbing code), ch. 27 (minimum housing and property maintenance code), ch. 29 (building code), ch. 30 (heating, ventilating and air conditioning code) and ch. 31 (sign control) of the Madison general ordinances.</p>	<ul style="list-style-type: none"> <li>• Chapter 41 separates landmarks requirements from historic district requirements, for greater clarity and ease of reference. That is one of the most important features of the ch. 41 format. Although maintenance requirements are basically the same for landmarks and historic districts, other requirements differ.</li> <li>• Chapter 41 clarifies, but does not significantly alter, current maintenance requirements.</li> <li>• Section 41.09(1) clearly identifies the maintenance requirements that apply to landmarks, including requirements found in other chapters.</li> </ul>

	<p>(2) <b>Variances.</b> City agencies responsible for enforcing chs. 18, 27, 29, 30 and 31 of the Madison general ordinances may grant individual variances from those chapters, as appropriate to facilitate historic preservation under this chapter. Variances granted for whatever reason under ch. 18, 27, 29, 30 or 31 do not affect the requirements under sub. (1)(a) to (c).</p> <p><b>41.13 MAINTAINING STRUCTURES IN HISTORIC DISTRICTS.</b></p> <p>(1) <b>Requirements.</b> Persons who own or control a structure in a historic district shall do all of the following:</p> <p>(a) Protect the structure against exterior decay, deterioration and reasonably foreseeable damage.</p> <p>(b) Keep the structure free of structural defects.</p> <p>(c) Maintain interior portions of the structure which, if not maintained, may create a casualty risk to the structure or cause exterior portions of the structure to fall into disrepair.</p> <p>(d) Comply with applicable provisions of ch. 18 (plumbing code), ch. 27 (minimum housing and property maintenance code), ch. 29 (building code), ch. 30 (heating, ventilating and air conditioning code) and ch. 31 (sign control) of the Madison general ordinances.</p> <p>(2) <b>Variances.</b> City agencies responsible for enforcing chs. 18, 27, 29, 30 and 31 of the Madison general ordinances may grant individual waivers or variances from those chapters, as appropriate to facilitate historic preservation under this chapter. Waivers or variances granted for whatever reason under ch. 18, 27, 29, 30 or 31 do not affect the requirements under sub. (1)(a) to (c).</p>	<ul style="list-style-type: none"> <li>• <i>Section 41.09(2) authorizes other City agencies to grant variances from the codes that they administer, as appropriate for historic preservation. It also clarifies that variances granted under other codes do not affect the basic landmark maintenance requirements under s. 41.09(1)(a) to (c).</i></li> <li>• <i>Section 41.13(1) clearly identifies the maintenance requirements that apply to structures in historic districts, including requirements found in other chapters.</i></li> <li>• <i>Section 41.13(2) authorizes other City agencies to grant variances from the codes that they administer, as appropriate for historic preservation. It also clarifies that variances granted under other codes do not affect the basic historic district maintenance requirements under s. 41.13(1)(a) to (c).</i></li> </ul>
<p><u>33.19(10)(c) Enforcement.</u> The Director of the Building Inspection Division of the Department of Planning &amp; Community &amp; Economic Development or designee is authorized to enforce the provisions of this ordinance. Upon written official notice of the Director of the Building Inspection Division or designee, the owner or such other person who may have legal possession, custody, and control of an improvement, shall repair such decay, deterioration, or structural defects to bring the improvement into compliance with this ordinance. Insofar as they are applicable to a landmark, landmark site or improvement in an historic district, designated under this section, any provision of Chapters 18 (Plumbing Code), 27 (Minimum Housing and Property Maintenance Code), 29 (Building Code), 30 (Heating, Ventilating and Air Conditioning Code) and 31 (Sign Control Ordinance) of the Madison General</p>	<p><b>41.20 ENFORCEMENT AND PENALTIES.</b></p> <p>(1) <b>General.</b></p> <p>(a) The Commission shall administer and enforce this chapter, except that:</p> <p>1. Both the Commission and the City Building Inspection Division shall enforce the maintenance requirements under ss. 41.09(1)(a) to (c) and 41.13(1)(a) to (c).</p> <p>2. Sections 41.09(1)(d) and 41.13(1)(d) shall be enforced by the City agencies having jurisdiction, rather than by the Commission. The enforcing agencies shall notify the Commission whenever they find material violations of s. 41.09(1)(a) to (c) or 41.13(1)(a) to (c).</p> <p>(b) In the exercise of its enforcement responsibilities under par. (a), the Commission or its authorized agents may inspect properties, issue warning notices and compliance orders, and refer cases to the City Attorney for court enforcement.</p>	<p><i>Section 41.20(1) clarifies all of the following:</i></p> <ul style="list-style-type: none"> <li>• <i>That the Landmarks Commission (not the City Building Inspection Division) is primarily responsible for enforcing the Landmarks Ordinance.</i></li> <li>• <i>That the Landmarks Commission and the Building Inspection Division have joint authority to enforce certain maintenance requirements for landmarks and historic districts.</i></li> <li>• <i>That, for the purpose of enforcing maintenance requirements under its jurisdiction, the Commission may inspect properties, issue warning notices and compliance orders, and refer cases to the City attorney for court enforcement.</i></li> <li>• <i>That applicable maintenance requirements found in other chapters of the Madison General Ordinances are enforced by the City agencies that have jurisdiction over those chapters (not by the Commission). Enforcing agencies must notify the Commission of material violations that also violate historic preservation requirements.</i></li> </ul>

<p>Ordinances may be varied or waived, on application, by the appropriate board having such jurisdiction over such chapter or, in the absence of such board, by the Director of the Building Inspection Division, provided such variance or waiver does not endanger public health or safety. However, the Building Inspector or designee may not waive the provisions of this Ordinance.</p> <p><u>33.19(10)(d) Penalties for Violations.</u> 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). A third violation within thirty-six (36) months shall be subject to a minimum forfeiture of one thousand dollars (\$1000). Each and every day during which a violation continues shall be deemed to be a separate offense.</p>	<p><b>(2) Remedial orders.</b> The Commission may issue remedial orders as provided under s. 41.10(4), 41.11(4) and 41.14(4).</p> <p><b>(3) Court injunctions.</b> The City Attorney, on behalf of the Commission, may petition a court of competent jurisdiction to issue an injunction to prohibit a continued violation of this chapter or a lawful order issued by the Commission under this chapter. The City Attorney may petition the court to issue an ex parte restraining order or temporary injunction pending the issuance of a permanent injunction, and may ask the court to grant other relief as appropriate.</p> <p><b>41.20(4) Penalties.</b> A person who violates this chapter or a lawful order issued under this chapter is subject to a court-ordered forfeiture of not less than \$250 nor more than \$500 per violation; except that a violation committed within 36 months after an initial forfeiture judgment is subject to a forfeiture of not less than \$500 nor more than \$1,000 per violation, and a violation committed within 36 months after a second forfeiture judgment is subject to a forfeiture of at least \$1,000 per violation. Each day of violation, and each violation of a separate provision of this ordinance, constitutes a separate violation.</p>	<ul style="list-style-type: none"> <li>• <i>Section 41.20(2) clarifies that the Commission may issue remedial orders to reverse damage caused by certain violations [compare s. 33.19(11)(h)].</i></li> <li>• <i>Section 41.20(3) clarifies that the Commission may seek court injunctions to restrain continuing violations.</i></li> </ul> <p><i>Section 41.20(4) clarifies that:</i></p> <ul style="list-style-type: none"> <li>• <i>Penalties apply to violations of lawful Commission orders issued under the ordinance, as well as to direct violations of the ordinance.</i></li> <li>• <i>Although each day of a continuing violation constitutes a separate offense (for which a separate penalty may be imposed), it does not automatically constitute a “repeat” offense requiring a higher penalty than the preceding day’s offense. The penalty amount per offense increases only for violations committed after a forfeiture judgment is entered. That makes the penalty schedule clearer, fairer and less arbitrary, compared to s. 33.19(10)(d).</i></li> </ul>
<p><u>33.19(10)(e) Demolition by Neglect.</u> In addition to the penalties imposed in (d) above, if the owner or such other person who may have legal possession, custody, and control of an improvement, fails to repair the improvement upon written official notice of the Building Inspector or designee, the Building Inspector or designee shall report to the Landmarks Commission whether he or she believes that the structure is undergoing demolition by neglect.</p> <p>1. Upon receiving a report from the Building Inspector or designee stating that a structure is undergoing demolition by neglect, the Landmarks Commission shall, within ten (10) days of receiving such a report, issue and serve upon the owner or such other person a complaint stating the charge of demolition by neglect and setting a time, date, and place for a public hearing. Notice shall be given according to Subsection (6) of this ordinance. The</p>	<p><b>Demolition of landmarks “by neglect:”</b></p> <ul style="list-style-type: none"> <li>• <b>Section 41.09 (Maintaining landmarks)</b> effectively prohibits the demolition of a landmark “by neglect” (see above).</li> <li>• <b>Section 41.11 (Demolishing landmarks)</b> provides as follows: <ul style="list-style-type: none"> <li><b>(1) Demolition prohibited.</b> No person may intentionally demolish any part of a landmark, by action or neglect, while its landmark designation remains in effect. A landmark is presumed to be demolished by neglect if its owner intentionally fails to take legally required action within the owner’s control to prevent it from decaying, deteriorating, becoming structurally defective, or otherwise falling into serious disrepair, regardless of whether the owner has been specifically warned of that failing.</li> <li><b>(2) Notice to Commission.</b> The City Building Inspection Division shall promptly notify the Landmarks Commission whenever it finds conditions that may constitute, or may imminently result in, the demolition of a landmark by neglect.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <i>Chapter 41, in various places, clearly prohibits “demolition by neglect” (see cited provisions at left).</i></li> <li>• <i>Chapter 41 also provides a variety of possible enforcement options including warning notices [41.20(1)(b)], remedial orders [41.20(2)], court injunctions [41.20(3)], and court-ordered forfeitures [41.20(4)].</i></li> <li>• <i>The Commission may pursue any of these enforcement options without first holding a public hearing.</i></li> <li>• <i>Chapter 41 deletes the public hearing requirement under s. 33.19(10)(e), because such a hearing may serve no purpose. However, the Commission may hold a hearing and subpoena evidence if it believes that there is a need for such a hearing [see ss. 41.06(1) and (4)].</i></li> <li>• <i>If the Landmarks Commission pursues formal enforcement, the defendant will naturally be entitled to a court trial or administrative hearing.</i></li> </ul>

<p>public hearing shall take place not less than thirty (30) nor more than sixty (60) days after the serving of such a complaint. The purpose of the hearing is to receive evidence concerning the charge of ongoing demolition by neglect and to ascertain whether the owner or other such person wishes to petition the Landmarks Commission for a waiver under Subsection (15) of this ordinance.</p> <p>2. If after notice and hearing, the Landmarks Commission determines that the structure is undergoing demolition by neglect, the Landmarks Commission shall state in writing the findings of fact in support of such a determination, serve a copy of its decision to the owner or other such person, and provide a copy of its decision to the Common Council. In the event that the owner or other such person states an interest to pursue a waiver, the Landmarks Commission decision shall be stayed until after the Landmarks Commission's determination in accordance with Subsection (15) of this ordinance.</p>	<p><b>Demolition of structures in historic districts “by neglect:”</b></p> <ul style="list-style-type: none"><li>• <b>Section 41.13</b> (see above) spells out maintenance requirements that effectively prohibit demolition of any structure in a historic district “by neglect.”</li><li>• <b>Section 41.14(1)(c)</b> prohibits demolition of any structure in a historic district without a “certificate of appropriateness.”</li><li>• <b>Section 41.17(2)</b> provides that: “If a proposed action involves the demolition or removal of any structure in a historic district, both the demolition or removal and each proposed replacement structure shall comply with applicable standards for the historic district. The Commission may not issue a certificate of appropriateness for the demolition or removal of a structure based solely on conditions caused by the owner’s malfeasance or neglect.</li></ul>	<ul style="list-style-type: none"><li>• <i>Chapter 41 does not allow demolition of a landmark pursuant to a “certificate of appropriateness” (owner must seek rescission of landmark designation).</i></li><li>• <i>Chapter 41 separates landmark regulations and historic district regulations, for greater ease of reference. But in both cases, it clearly prohibits “demolition by neglect.” The same penalties and remedies apply (see above).</i></li></ul>
---	--	---

**Section 33.19(11) and (12) Certificates of Appropriateness compared to Chapter 41**

Prepared by the Ordinance Committee of the Madison Alliance for Historic Preservation, November 17, 2014

Chapter 33.19 (11) Certificates of Appropriateness	Chapter 41	Comments
<p><b>Chapter 33.19(11) Certificates of Appropriateness</b></p>		<ul style="list-style-type: none"> <li>● <i>Section 33.19(11) packs too much material into one subsection. It also lumps landmark requirements together with historic district requirements, making it hard to tell which requirements apply to which.</i></li> <li>● <i>Chapter 41 rearranges topics in a more orderly fashion, under several different sections, with clear section titles and cross- references. It also separates landmark requirements from historic district requirements, for greater ease of reference.</i></li> <li>● <i>The chapter 41 format allows for greater clarity and specificity related to certificates of appropriateness.</i></li> </ul>
<p>33.19(11)                      (a) <u>Certificate of Appropriateness Required.</u> A Certificate of Appropriateness, approved by the Landmarks Commission, is required for the following:                      1. Exterior alteration of a designated landmark or structure within an historic district.                      2. Construction of new structure on a landmark site or in an historic district.                      3. Demolition or removal of all or part of a landmark or structure in an historic district.                      4. Erecting or affixing a sign on a landmark site or in an historic district.                      5. Alteration of part of a landmark designated as an Additional Preservation Restriction.                      6. Land divisions and combinations involving a landmark site or in an historic district.                      7. Sandblasting or other types of cleaning methods using abrasive or corrosive products of any exterior surface of an improvement on a landmark site or in an historic district.</p> <p>(b) <u>Permits.</u> The Director of the Building Inspection Division shall not issue a permit allowing alteration, construction, demolition, removal, or for any other action for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission and issued by the Preservation Planner or designee.</p>	<p><b>41.10 ALTERING LANDMARKS. (1) Certificate of appropriateness required.</b> Except as provided in sub. (2), no person may do any of the following without a certificate of appropriateness issued under subch. V:                      (a) Materially alter the exterior of a landmark.                      (b) Add a new structure to a landmark site.                      (c) Move a landmark, or a material portion of a landmark, to a different location.                      (d) Install a sign on the exterior of a landmark, or on a landmark site.                      (e) Divide any tax parcel comprising all or part of a landmark site, or voluntarily grant any easement on that tax parcel if the easement may impair the preservation, maintenance, exterior appearance or historic character of the landmark.                      (f) Use a cleaning method on an exterior landmark surface that is susceptible to being damaged or degraded by that cleaning method.</p> <p><b>(2) Exemption.</b> Subsection (1) does not apply to an action that is specifically ordered by a government agency or court to remedy an imminent hazard to life, health or property.</p> <p><b>(3) No permit without certificate of appropriateness.</b> No City agency may issue a permit for an action requiring a certificate of appropriateness under sub. (1) unless the Commission has issued a certificate of appropriateness for that action within 2 years prior to the permit date.</p>	<ul style="list-style-type: none"> <li>● <i>Chapter 41 separates certificate requirements for landmarks and historic districts, for greater ease of reference. Note that requirements for landmarks are somewhat different than those for historic districts.</i></li> <li>● <i>Chapter 41 does NOT allow the demolition of a landmark pursuant to a “certificate of appropriateness,” because that poses an inherent contradiction (destroying a landmark to preserve its historic character). A person who wishes to demolish a landmark must instead seek rescission of the landmark designation under s. 41.08.</i></li> <li>● <i>The Commission may authorize demolition of a non-landmark structure in a historic district IF the demolition meets district-specific demolition standards (district-specific standards may prohibit demolition of some or all structures, depending on how the district is designed).</i></li> </ul>

(c) Prohibition. No owner, operator, or person in charge of a landmark, landmark site or structure within an historic district shall cause or permit any painting of signs, alteration, construction, demolition or removal for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission.

33.19(11)(d) Administrative Approval. The Landmarks Commission may authorize the Preservation Planner, or other designee(s) to approve certain projects, provided that the Commission shall first adopt written policies establishing which projects can be administratively approved, and the process to be followed.

**41.11 DEMOLISHING LANDMARKS.**

**(1) Demolition prohibited.** No person may intentionally demolish any part of a landmark, by action or neglect, while its landmark designation remains in effect.

**41.14 CONSTRUCTING, ALTERING, RELOCATING OR DEMOLISHING PROPERTIES IN HISTORIC DISTRICTS.**

**(1) Certificate of appropriateness required.** Except as provided in sub. (2), no person may do any of the following in a historic district without a certificate of appropriateness issued under subch. V:

- (a) Construct a new structure.
- (b) Materially alter the exterior of an existing structure.
- (c) Demolish or relocate an existing structure.
- (d) Install a sign.
- (e) Divide any tax parcel, consolidate any tax parcels, or voluntarily grant any easement on a tax parcel if the easement may detract from the historic character of the district.

**(2) Exemption.** Subsection (1) does not apply to an action that is specifically ordered by a government agency or court to remedy an imminent hazard to life, health or property.

**(3) No permit without certificate of appropriateness.** No City agency may issue a permit for an action requiring a certificate of appropriateness under sub. (1) unless the Commission has issued a certificate of appropriateness for that action within 2 years prior to the permit date.

**41.15 CERTIFICATES OF APPROPRIATENESS; GENERAL.**

**(1) Authority.** The Commission may issue a certificate of appropriateness for a proposed action under s. 41.10(1) or 41.14(1). The Commission shall grant or deny a certificate of appropriateness according to this subchapter. The Commission may grant a certificate subject to reasonable terms and conditions specified by the Commission.

**(2) Limited delegation of authority.**  
(a) The Commission may authorize the Preservation Planner to grant or deny certificates of appropriateness for proposed actions, other than actions for which a hearing is required under sub. (5), without specific review or approval by the Commission. The authorization shall be in writing, and shall clearly describe the types of proposed actions to which it applies.

(b) The Preservation Planner shall exercise the

• *Chapter 41 spells out process and authority in more transparent detail. Chapter 41 clarifies, but does not significantly alter, the role of the Preservation Planner.*

33.19(11)(e) Application. An application for a Certificate of Appropriateness shall be filed with the Planning Department, c/o the Preservation Planner. The application shall be considered filed when it is stamped “accepted” by the Preservation Planner. The timelines applicable in sub. (g) below shall not begin until an application is filed. Every application shall include at least the following information unless otherwise indicated by the Preservation Planner:

1. Completed Application document.
2. Narrative Description of the project.
3. Scalable drawing set reduced to 11” x 17” which includes floor plans, elevations and details to convey relevant information.
4. Any other information requested by the Preservation Planner to convey the aspects of the project.

authority delegated under par. (a) according to the same standards that apply to the Commission under this subchapter, except that the Preservation Planner may not grant a variance under s. 41.18. The Preservation Planner shall provide the Commission with periodic reports on the nature and number of decisions made pursuant to the Preservation Planner’s delegated authority under par. (a).

(c) If the Preservation Planner denies an application for a certificate of appropriateness, the applicant may appeal the denial to the Commission according to a procedure established by the Commission.

**(3) Applying for a certificate.** To obtain a certificate of appropriateness for a proposed action, a person shall apply in writing on a form approved by the Commission. The person shall submit the application to the City Planning Department, to the attention of the Preservation Planner. The application shall include all of the following:

- (a) The name and address of the applicant, and the nature of the applicant’s interest in the property to which the proposed action pertains.
- (b) The location of the property to which the proposed action pertains.
- (c) A clear description of the proposed action for which a certificate of appropriateness is requested.
- (d) Detailed construction plans, where relevant. Except as otherwise agreed, the plans shall include a scalable set of drawings reduced to 11” x 17,” and shall include relevant floor plans, elevations and details.
- (e) Other information reasonably required by the Commission on the application form.
- (f) Information reasonably requested by the Preservation Planner for the purpose of clarifying or completing information required under this subsection.

**(4) Review and action by Preservation Planner.**

- (a) As soon as reasonably possible, and within 60 days after the Preservation Planner receives an application under sub. (3), the Preservation Planner shall determine whether the application is complete. If the application is incomplete, the Preservation Planner shall give the applicant oral or written notice of the information needed to complete the application. If the applicant fails to provide the information within 60 days after the Preservation Planner gives the notice, the Preservation Planner may deny the application for lack of completeness.
- (b) When the Preservation Planner finds that an application under sub. (3) is complete, the Preservation Planner shall stamp the application with the date of the

- *Chapter 41 spells out the application and initial review process in more transparent detail, and provides deadlines for action by Preservation Planner*



33.19(11)(f) **Public Hearings.** The Commission shall hold a Public Hearing according to Subsection (6) of this ordinance for applications involving the following:

1. Demolition or removal of all or part of a landmark;
2. Demolition or removal of a structure in an historic district;
3. Construction of a new principal structure in an historic district;
4. Construction of an accessory structure with a footprint larger than one hundred (100) square feet, not including decks and open porches, in an historic district; and
5. Exterior alteration of a structure in an historic district that increases the footprint of the structure more than one hundred (100) square feet, not including decks and open porches.

completeness finding and shall do one of the following:

1. Promptly refer the complete application to the Commission.
2. Grant or deny the complete application as soon as reasonably possible, and within 60 days of the completeness finding, if the Preservation Planner is authorized under sub. (2) to grant or deny the application. The Preservation planner shall issue the decision in writing. If the Preservation Planner denies the application, the decision shall include the reasons for denial and a notice of the applicant’s right to appeal to the Commission according to a procedure prescribed by the Commission.

**(5) Public hearing.**

(a) *Required hearing; landmark.* The Commission shall hold a public hearing on a complete application referred to it under sub. (4)(b)1. if the applicant proposes to do any of the following:

1. Construct a new structure on a landmark site that has no structures.
2. Construct a new structure on a landmark site, if the new structure will have a footprint larger than 100 square feet not counting decks and open porches.
3. Make an exterior alteration to a landmark if the alteration will change the footprint of the landmark by more than 100 square feet not counting decks and open porches.
4. Move all or part of a landmark.

(b) *Required hearing; non-landmark structures in historic district.* The Commission shall hold a public hearing on a complete application referred to it under sub. (4)(b)1. if the applicant proposes to do any of the following:

1. Construct a new structure in a historic district, on a tax parcel that has no structures.
2. Construct a new structure in a historic district, if the structure will have a footprint larger than 100 square feet not counting decks and open porches.
3. Demolish or remove a structure in a historic district, if the structure has a footprint larger than 100 square feet not counting decks and open porches.
4. Make an exterior alteration to any structure in a historic district if the alteration will increase the footprint of the structure by more than 100 square feet, not counting decks and open porches.

(c) *Discretionary hearing.* The Commission may elect to hold a public hearing on any application under sub. (3), regardless of whether a hearing is required under par. (a) or (b).

- *Chapter 41 clarifies the situations in which the Commission is required to hold a public hearing on a proposed “certificate of appropriateness,” and makes minor substantive changes. It provides greater clarity by separating hearing requirements for landmarks vs. historic districts.*

33.19(11)(g) Issuance of Certificate of Appropriateness. The Landmarks Commission shall approve or deny a Certificate of Appropriateness, based upon the applicable standards in Subsection (12) of this ordinance, within sixty (60) days of the filing of an accepted application. Failure to approve a Certificate of Appropriateness within sixty (60) days shall be deemed a denial, effective on the last day of the determination period. The determination period may be extended an additional sixty (60) days by written agreement of the applicant. Upon approval of the Certificate by the Commission, the Preservation Planner or designee shall issue a Certificate of Appropriateness.

33.19(11)(h) Penalty for Work Done Without, or in Violation of, a Certificate of Appropriateness. In addition to any other penalty provided in this section, the Landmarks Commission, may order the removal or modification of any alteration, construction or other work that was performed without a required Certificate of Appropriateness, or that was not performed in compliance with the conditions of a lawfully issued Certificate of Appropriateness, when such work does not meet the applicable standards for a Certificate under Subsection (12) of this ordinance, or under the Additional Preservation Restriction specific to that landmark. Alternatively, the Commission may order renovation to make such work comply with those standards.

(d) *Hearing notice.* The Commission shall give prior notice of each hearing under this subsection, as provided in s. 41.06.

**(6) Commission decision.** The Commission shall grant or deny an application referred to it under sub. (4)(b)1. within 60 days after the Preservation Planner determines that the application is complete, except that the Commission may extend the review period with the written agreement of the applicant. The Commission shall issue its decision in writing. If the Commission denies an application, its decision shall include the reasons for denial and a notice appeal rights under s. 41.19.

**41.10(4) Remedial order.** If a person alters a landmark or landmark site without a certificate of appropriateness required under sub. (1), or contrary to the terms of such a certificate, the Commission may order that person to restore the landmark or landmark site as nearly as possible to its pre-alteration state. This remedy is in addition to any other penalties and remedies that may apply.

**41.14(4) Remedial order.** If a person demolishes any part of a landmark in violation of sub. (1), the Commission may order that person to restore the landmark as nearly as possible to its pre-demolition state. This remedy is in addition to any other penalties and remedies that may apply.

**41.14(4) Remedial order.** If a person takes any action *[in a historic district]* under sub. (1) without a required certificate of appropriateness, or contrary to the terms of such a certificate, the Commission may order that person to reverse the action to the maximum extent possible. This remedy is in addition to any other penalties and remedies that may apply.

**41.10(3) No permit without certificate of appropriateness.** No City agency may issue a permit for an action requiring a certificate of appropriateness under sub. (1) unless the Commission has issued a certificate of appropriateness for that action within 2 years prior to the permit date.

- *Chapter 41 simplifies language and requires notice of appeal rights.*

- *Chapter 41 provides separate remedial order provisions for landmarks [41.10(4) and 41.11(4)] and historic districts [41.14(4)], for greater clarity and ease of reference. These remedial order provisions are cross-referenced in s. 41.20, Enforcement and Penalties [see s. 41.20(2)].*

- *Chapter 41 provides separate provisions for landmarks and historic districts, for greater clarity and ease of reference.*

33.19(11)(i) Two-Year Deadline. A Certificate of Appropriateness shall expire two (2) years from the date of issuance unless a building permit is obtained within such period.

33.19(12) Standards for Certificate of Appropriateness.

(a) For Exterior Alteration or Construction The Landmarks Commission shall approve a Certificate of Appropriateness for exterior alteration of a landmark or a structure within an historic district, or for construction on a landmark site or in an historic district, only if:

1. In the case of a designated landmark the proposed work would not destroy or adversely affect any significant exterior architectural feature of the improvement upon which said work is to be done, or significantly degrade the historic fabric of the landmark; and

2. In the case of construction or alteration of a new structure upon a landmark site, the exterior of such improvement would not adversely affect or fail to harmonize with the external appearance of other neighboring improvements on such site, evaluated using the standards in sub. (9)(c) of this ordinance; and

3. In the case of any property located in an historic district, the proposed new structure or exterior alteration conforms to the adopted standards for said district.

(b) For Demolition or Removal In determining whether to approve a Certificate of Appropriateness for any demolition or removal of any landmark or structure within an historic district, the Landmarks Commission shall consider and may give decisive weight to any or all of the following:

1. Whether the structure is of such architectural or historic significance that its demolition or removal would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State.

2. Whether the structure, although not in itself a landmark structure, contributes to the distinctive architecture or historic character of the historic district as a whole and therefore should be preserved for the benefit of the people of the City and State.

3. Whether demolition or removal of then subject property would be contrary to the purpose and intent of this chapter as set forth in Section 33.19 and/or to the objectives of historic preservation plan for the applicable historic district as duly adopted by the Common Council.

4. Whether the structure is of such old and unusual or uncommon design, texture and/or material that could not be reproduced or be reproduced only with great difficulty and/or

**41.14(3) No permit without certificate of appropriateness.** No City agency may issue a permit for an action requiring a certificate of appropriateness under sub. (1) unless the Commission has issued a certificate of appropriateness for that action within 2 years prior to the permit date.

**41.16 LANDMARKS; STANDARDS FOR CERTIFICATES OF APPROPRIATENESS.**

**(1) General.** The Commission shall issue a certificate of appropriateness for a proposed action under s. 41.10(1) if the proposed action meets all of the standards under this section that apply to that action. The Commission shall deny a certificate if the proposed action fails to meet any applicable standard under this section, unless the Commission grants a variance from that standard under s. 41.18. The Commission may issue a certificate subject to reasonable terms and conditions specified by the Commission.

**(2) Exterior alteration of a landmark.** The exterior alteration of a landmark may not destroy or adversely affect any significant feature of the landmark, or significantly degrade or alter the historic character or fabric of the landmark. Surface structures, materials and features shall be consistent in style and appearance with the historic character of the landmark.

**(3) Construction on a landmark site.** No construction or exterior alteration of a structure on a landmark site may detract from, or fail to harmonize with, the appearance or historic character of the landmark.

**(4) Signs on a landmark or landmark site.** Signs installed on a landmark or landmark site may not do any of the following:

(a) Detract from, or fail to harmonize with, the appearance or historic character of the landmark.

(b) Fail to comply with ch. 31 of the Madison General Ordinances (sign control).

**(5) Landmark site divisions and easements.** Landmark site divisions and easements may not threaten or impair the preservation, maintenance, exterior appearance or historic character of the landmark.

**(6) Cleaning methods.** A person may not use a cleaning method on an exterior landmark surface that is susceptible to damage or degradation from that cleaning method.

**(7) Moving a landmark.**

(a) Except as provided in par. (b), no landmark or externally visible portion of a landmark may be moved if the

- *Chapter 41 separates “certificate of appropriateness” standards for landmarks(s. 41.16) and historic districts (s. 41.17).*
- *Section 41.16 clarifies standards for issuing “certificates of appropriateness” related to landmarks. Chapter 41 clarifies that a landmark may not be demolished pursuant to a “certificate of appropriateness,” because that would pose an inherent contradiction (destroying a landmark to preserve its historic character).*
- *Using boldface subsection titles causes key points to be seen more quickly and easily.*

expense.

5. Whether retention of the structure would promote the general welfare of the people of the City and the State by encouraging the study of American culture and heritage.

6. The condition of the property, provided that any deterioration of the property which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness for demolition or removal.

7. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the structures and environment of the historic district in which the subject property is located, or if outside a historic district, compatible with the mass and scale of buildings within two hundred (200) feet of the boundary of the landmark site; and

8. Documentation of demolished structures. Prior to approving a Certificate of Appropriateness for demolition, the Landmarks Commission may require the applicant to provide documentation of the structure. Documentation shall be in the form required by the Commission.

(c) For Signs. The commission shall approve a Certificate of Appropriateness for signs, unless it finds that the size, number, design, or placement of the sign(s) would adversely affect a significant architectural feature of the structure or degrade the historic fabric of the district; that the sign(s) fails to comply with Chapter 31 of the Madison General Ordinances; or that the sign(s) fails to comply with specific Standards or Guidelines for signs adopted in each historic district under this ordinance.

(d) For Alterations under Additional Preservation Restriction. The commission shall approve a Certificate of Appropriateness for an alteration under an additional historic preservation restriction unless it finds the alteration would adversely affect a significant architectural feature of the structure.

(e) For Land Divisions and Combinations. The commission shall approve a Certificate of Appropriateness for a land division or combination involving a landmark site or in an historic district unless it finds that the action would adversely affect a significant architectural feature of the structure or degrade the historic fabric of the district.

(f) For Abrasive Cleaning Methods. The commission may approve the use of abrasive cleaning methods on a landmark or in an historic district only if it finds the action would not adversely affect the structure or degrade the historic fabric of the district.

landmark’s current location is fundamental to its historic significance, the movement presents a material risk of damage to the landmark, or the movement will materially detract from the historic character or fabric of the landmark.

(b) Paragraph (a) does not apply to any of the following:

1. A temporary movement that is incidental to the repair or maintenance of the landmark.
2. A movement that is needed to protect the landmark from damage or destruction from causes outside the control of the landmark owner.

**41.17 HISTORIC DISTRICTS; STANDARDS FOR CERTIFICATES OF APPROPRIATENESS.** The Commission shall issue a certificate of appropriateness for a proposed action under s. 41.14(1) if the proposed action meets all applicable standards adopted under subch. IV or VIII for the historic district in which the subject property is located. The Commission shall deny a certificate if the proposed action fails to meet any of those applicable standards, unless the Commission grants a variance from that standard under s. 41.18. The Commission may issue a certificate subject to reasonable terms and conditions specified by the Commission. If the proposed action involves the demolition or removal of any structure in a historic district, both the demolition or removal and each proposed replacement structure shall comply with applicable standards for the historic district.

• *Rather than trying to establish “one-size-fits-all” standards for “certificates of appropriateness” in historic districts, s. 41.17 refers to the district-specific standards spelled out in the ordinance creating each historic district. A proposed action must meet all of those district-specific standards before it may qualify for a “certificate of appropriateness.”*