

PLANNING DIVISION STAFF REPORT

January 12, 2021



PREPARED FOR THE LANDMARKS ORDINANCE REVIEW COMMITTEE

Legistar File ID # [56918](#), Draft Historic Preservation Ordinance:

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Subject: Staff Response to Questions and Issues Raised at Recent LORC Meetings

The purpose of this memo is to respond to questions and clarify issues raised at recent LORC meetings by members of the Committee or the public. The Current Draft Ordinance (aka the “staff draft”) referred to herein is the version dated October 26, 2020. The topics below are in no particular order.

Unified Ordinance

It has been frequently suggested that the LORC 1 process did not anticipate replacing the standards unique to each of the five local historic districts with a unified standards and that the current (LORC 2) effort is straying from its mission in considering an alternative model. While a unified ordinance may not have been anticipated when the initial ordinance revision process began in 2014, through the process of evaluating the current requirements, the consultant recommended this approach to meet project goals of clarity and consistency. This conclusion is consistent with the mission of LORC 2 in positioning Madison’s local historic district standards for the future. The City hired a consultant team to objectively evaluate the historic districts with a fresh perspective. Coupled with experiences working in other communities and industry best practices, the consultant team suggested an approach it felt would most appropriately apply to the local situation. Staff agree with that recommended approach.

Maintenance and Repair Sections

The Current Draft Ordinance includes provisions for maintenance and repair of structures in the historic districts. Some feel that these sections are not necessary because the Minimum Housing Standards enforced through the Building Inspection Division cover these levels of intervention. However, the Minimum Housing Standards are truly bare minimums and are insufficient to protect the structures in historic districts. Staff believe that the first priority for the long-term integrity of historic districts should be on preserving what exists and not letting resources deteriorate over time.

It has been suggested that since such work does not generally require a Certificate of Appropriateness (CoA), these provisions should not be included in the ordinance. Under the current ordinance, the majority of the approvals granted for work in historic districts are granted administratively for an easier and quicker permitting process. All ordinance standards still must be followed.

Some of the work detailed in the Maintenance and Repair sections of the Current Draft Ordinance would require a building permit if the project is valued at more than \$500. This is often the case in undertakings of property owners to address work orders from Building Inspection. Staff regularly issues CoAs for work described in the Maintenance and Repair sections, with those projects also securing building permits when required.

It has also been suggested that the Maintenance and Repair sections should be removed from the ordinance and included in the Landmarks Commission Policies and Procedures Manual. The manual serves as an operations guide for the Landmarks Commission and the Preservation Planner and is not law. If LORC believes it is important to strengthen basic maintenance standards in historic districts beyond the minimum housing code, they need to be part of the Ordinance.

New Construction Section

Many feel that new construction is the biggest threat facing historic districts and that the ordinance revision process should focus on new construction standards. As demonstrated at a recent LORC meeting, new construction projects account for a small percentage of projects in historic districts, therefore constitute a small percentage of the work of the Preservation program. A separate memo for the January 12, 2021 LORC meeting provides several options for moving forward with new construction standards.

Coordinating Historic Preservation and Zoning Ordinances

Each of the five local historic districts was established prior to the enactment of the current Zoning Ordinance in 2012. The prior Zoning Ordinance (1966) was in effect when the historic districts were created between 1975 and 2004, and none have been notably updated.

The 1966 Zoning Ordinance was based on a suburban development model typical across the country at the time. That ordinance did not fit very well with many existing developed areas of the city—including the historic districts. Many of the very specific standards in the current historic district ordinances, notably bulk standards, were a response to an inadequate Zoning Ordinance and attempted to address design considerations that are more appropriate to the Zoning Ordinance. The same is true for the recommendations in neighborhood plans adopted under the 1966 Zoning Ordinance, including the Williamson Street BUILD Plan.

The current Zoning Ordinance includes a wider array of zoning districts with requirements more reflective of the developed nature of these areas. For clarity, consistency, and ease of use, “like” requirements should be in “like” ordinances. For example, bulk requirements (maximum building heights, building setbacks, etc.) are more appropriately left to the Zoning Ordinance and do not need to be addressed in the Historic Preservation Ordinance. This can lead to a sometimes conflicting and confusing set of requirements in multiple ordinances.

Plan Commission Work Session

On December 16, 2020, the Plan Commission held a work session on better coordinating the Zoning and Historic Preservation Ordinances. The Plan Commission directed staff to move forward on the following ordinance drafts/analysis and return those items to Plan Commissioners for formal action:

- 1) Change the Downtown Height Map in the Zoning Ordinance to reflect the changes recommended in the Lamp House Plan.
- 2) Map the building heights proposed in the Williamson Street BUILD I and II Plans in the Zoning Ordinance.
- 3) Analyze mapping setbacks and/or stepbacks in Mansion Hill as suggested in the Downtown Plan.
- 4) Delete the definition of "Height (of a Building)" in Section 41.02 of the Historic Preservation Ordinance and rely on the Zoning Ordinance definitions.
- 5) Add a footnote (or something equivalent) to the Downtown Height Map in the Zoning Ordinance for lots in the Mansion Hill Local Historic District along the lines of: "In the Mansion Hill Local Historic District properties on which there currently is a building constructed during the period of significance, the maximum allowed height shall not exceed the height of the historic resource." Commissioners also requested that staff do a comparison showing an example of this approach vs. the approach of having a height maximum of 3 stories for the whole Mansion Hill Local Historic District.

District Character vs. Individual Structures

The purpose of historic districts is to preserve the historic qualities and character of the area. Historic districts are comprised of a collection of individual structures and it is through the sensitive treatment of these individual structures that the district maintains its integrity. For nearly 50 years, Madison's local historic districts have been applying standards to individual properties for the benefit of the district and it is through that same application of standards to individual properties that the district character will be maintained in the future. Moreover, because the Current Draft Ordinance is based on visual compatibility with historic resources in the immediate vicinity for new structures, the uniqueness of each district will be maintained even though it proposes a unified set of standards. The historic assets and cultural resources of a historic district are what gives it the unique character. Having the same process for protecting and supporting those resources also protects and supports the historic district.

Structure Types and Uses

Staff continues to believe that the Current Draft Ordinance will work well regardless of the type of structure or use. Some of the current historic districts have requirements based on use or zoning classification. Uses and zoning often change over time, while the building may remain relatively unchanged. For example, a building on a commercial street may have been originally constructed as a house then later used as a business. The structure is still substantially the same and what may be a historically appropriate alteration would be based on the style of the structure, not its use. Similarly, the use of that property may not have changed from its original use, but because it is on a commercial street it may carry a commercial zoning classification. Again, what may be a historically appropriate alteration would be based on the style of the structure, not its zoning. Uses and zoning can change over time, but the intent of the ordinance should be to preserve the resource's form/style.

Level of Detail

A challenge in drafting ordinances is striking the right balance between being too general or too specific. Although there have been some concerns that the Current Draft Ordinance is too specific, it is staff's experience that more detailed ordinances are generally more clear, easier to use and administer, and result in a more predictable outcome. If one looks at Madison's more recent Zoning, Urban Design, or Historic District Ordinances, the more contemporary ones are often more detailed.

Future Historic Districts

The mission of LORC 2 is to draft a set of new standards for the five existing local historic districts—not for hypothetical new districts. However, staff believe that the Current Draft Ordinance is flexible enough to accommodate a variety of potential future districts without having to write a set of standards specific to that district. As with the Current Draft Ordinance, if there are necessary exceptions unique to a district, those can be included.

Conclusion

It is not possible to draft an ordinance that addresses all potential circumstances. Creating the best ordinance possible while “doing no harm” has long been goal of this process. In concluding this effort, focusing on the content instead of the form, process, and hypotheticals will be most productive. In retrospect, staff believe that the form, process, and hypotheticals often get intertwined in the discussion making it hard to focus on the content of the ordinance.

The Madison Alliance for Historic Preservation suggested an approach based on its ten Preservation Principals while maintaining the current district standards and allowing the Preservation Planner to suggest ordinance changes. While the Preservation Planner has always had this ability, staff is concerned that will result in a piecemeal approach over many years and sew confusion and inequitable approaches and timing for updating district ordinances. It should be noted that the Preservation Planner believes that the Current Draft Ordinance is the appropriate approach.

A separate memo for the January 12, 2021 LORC meeting provides several options for moving forward with new construction standards. Staff believe that once a direction is chosen, it is appropriate to release a “LORC Draft Ordinance” for public comment. This will provide the Committee with a broader range of perspectives to inform the final draft ordinance.