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MEMORANDUM

TO: Ad Hoc Landmarks Ordinance Review Committee

FROM: Jeff Vercauteren

SUBJECT: Overview of Proposed Revisions to Draft Ordinance

DATE: January 27, 2015

1. Policy Statement.

A renewed Landmarks Ordinance should encourage investment and vibrancy in local historic districts by providing the following:

- a. Clarity and consistency so that all stakeholders know what to expect in the process, *e.g.*, clear definitions and objective standards to the extent possible.
- b. A recognition that cities grow, change, and develop over time, and local historic districts are part of the evolving urban fabric and cultural landscape.
- c. The inclusion of local historic districts in the overall goals of the city to encourage economic development, improve quality of life, and support business and employment growth.

2. Primary Issues.

a. Purpose and Intent. The ordinance should recognize that local historic districts are not museums, but are instead living, breathing entities. They represent the cultural landscapes of our city and redevelopment can and should occur to the extent it is compatible with the character of the local historic district.

The current ordinance focuses primarily on protection and preservation—the stated purpose is to (a) protect historic districts, (b) safeguard the city’s heritage, (c) stabilize and improve property values, (d) foster civic pride, (e) serve as a support and stimulus to business and industry, (f) strengthen the economy, and (g) promote the use of historic districts. *Madison Ord. 33.19(1)*. The ordinance essentially treats historic districts as museums that cannot change.

Other cities recognize the importance of new construction and redevelopment in healthy, vibrant neighborhoods. Portland’s ordinance includes “encouraging new development to sensitively

incorporate historic structures and artifacts.” *Portland Ord. 33.846.030(A)*. Lexington’s ordinance includes “ensuring complementary, orderly, and efficient growth and development.” *Lexington Ord. 13-1(a)*. Charleston’s ordinance includes “insuring the harmonious, orderly and efficient growth and development of the municipality.” *Charleston Ord. 54-230*.

b. Compatibility. Compatibility should be based on the proposal’s relationship with the character of the local historic district as a whole, taking into consideration variations in building size and design within the district, and the evolving cultural landscape of the district. The compatibility standard should be the same for all districts even though the specific design standards should vary among districts (*e.g.*, an individual district should not have a more restrictive visually related area standard).

In determining whether a new proposal is compatible with the historic district, the current ordinance focuses on whether the proposal is “visually compatible” with structures within an arbitrary 200-foot area, based on height, gross volume, width, doors and windows, rhythm of solids to voids, masses and spaces, materials, texture, colors and patterns, roof, landscape plan, street façade, and architectural details. *Madison Ord. 33.19(2), (6)(d)*.

Other cities focus more broadly on compatibility of the new proposal with the entire district, considering the character of the district rather than the design of any specific building. Riverside’s ordinance considers whether the proposal is “compatible with existing adjacent or nearby cultural resources and their character-defining elements.” *Riverside Ord. 20.25.050*. Portland’s ordinance states the proposal should be primarily compatible with the original resource, secondarily with adjacent properties, and finally with the district. *Portland Ord. 33.846.060(G)(10)*. Charleston’s ordinance considers whether the proposal is in harmony with the prevailing character of the historic district. *Charleston Ord. 54-240*.

c. Approval and Appeal. The ordinance should require the Landmarks Commission to issue a Certificate of Appropriateness if the character of the local historic district will not be adversely affected and where other factors are met, such as the state of repair of the existing building, the reasonableness of the cost of restoration, and existing or potential usefulness. The Council should have broader review authority subject to a well-defined standard such as a finding of abuse of discretion.

To appeal a decision of the Landmarks Commission under the current ordinance, the Common Council requires a two-thirds vote to overturn upon a finding that the decision will “preclude any and all reasonable use of the property” or “will cause serious hardship for the owner.” *Madison Ord. 33.19(5)(f)*. Other cities have a lower standard of review. Savannah’s ordinance allows reversal upon a finding of abuse of discretion or procedural error. *Savannah Ord. 8-3030(o)*.

d. Landmark Designation. The standard for local landmark designation needs to be consistent with national standards evaluating age, integrity, and significance. Also, if a property is not a designated landmark one year before an application has been filed for a project involving the building, the Landmarks Commission cannot designate it as a landmark.

The current ordinance allows the Commission to designate a new landmark, with or without the consent of the building owner, if it finds that the structure exemplifies cultural history, is identified with important events or people, embodies characteristics of an architectural type, or is representative of the work of a notable builder, designer, or architect. *Madison Ord. 33.19(4)*.

e. Demolition by Neglect. A finding of demolition by neglect should be based on the demonstrated failure of a property owner to maintain a property in compliance with the building code following a work order from the city related to a condition that substantially impacts the structure, subject to a reasonable cost standard. The standard should be objective and treat all properties and property owners equally.

The current ordinance requires every owner of a landmark or structure in a historic district to keep it in good repair, comply with all building codes, and refrain from abrasive exterior cleaning. *Madison Ord. 33.19(8)*. Some have interpreted that provision to prohibit “demolition by neglect,” and the current draft would incorporate that concept in the ordinance. As proposed, a finding of demolition by neglect by the Landmarks Commission would prevent a building owner from constructing a new building in place of the deteriorated building.

Other municipalities better define “demolition by neglect” by stating that a building owner has met its maintenance obligation by keeping the building in compliance with applicable codes. In Milwaukee, demolition by neglect means the failure to maintain a landmark or building within a historic district in accordance with the general building code. *Milwaukee Ord. 320-21-3-d-e*.

f. Commission Membership. The Commission should include professionals with demonstrated education and experience in their field, including a construction professional.

The ordinance currently establishes a seven-member Landmarks Commission consisting of one registered architect, one historian, one real estate broker, one alder, and three citizens. *Madison Ord. 33.19(3)*. Other municipalities include more qualified professionals under established national historic preservation standards. Stockton’s ordinance establishes a nine-member commission including one real estate professional, one construction professional, one architect, one historian, and one archaeologist. *Stockton Ord. 16.220.040*.