

DATE: November 3, 2014

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

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

SUBJECT: **Draft Landmarks Ordinance**

On behalf of the Ordinance Committee of the Madison Alliance for Historic Preservation, I am pleased to offer you a *complete* proposed redraft of the City's current landmarks ordinance. A copy of the proposed redraft, with "plain language summary," is attached.

This proposed ordinance is drafted in the new chapter 41 format, which you have tentatively endorsed. We think you will like this new format. We are also confident that this ordinance will make life easier, by providing greater readability, transparency, predictability and certainty. It offers greater flexibility to design appropriate district-specific standards for individual historic districts, and it allows people to plan and invest with reasonable confidence. That means better planning, more investment, and fewer "train wrecks" that sap time, money and program support.

We respectfully ask that you read this draft ordinance, or at least the "plain language summary," and ask yourselves these questions:

- Is this the state-of-the-art ordinance that we have been looking for?
- If this ordinance does *not* reflect our intent, how should it be changed?

This package will allow you to survey the overall program structure, and see how the individual pieces fit together. One point becomes evident, and that is that the Common Council retains clear ultimate control over the historic preservation program. The Council ultimately designates landmarks and rescinds landmark designations. The Council hears appeals from key Landmarks Commission decisions. But even more importantly, the Council establishes the standards that apply in the historic districts that it creates.

The Council can establish separate standards for each historic district, based on the conditions that apply in that particular district. Standards can be amended over time, as needed. A thoughtful standard-setting process, informed by sound planning, citizen input, and Landmarks Commission recommendations, is critical for success. Carefully designed standards can protect reasonable expectations, encourage investment and appropriate development, and avoid unnecessary conflict. Consistent, well-crafted standards are far better than sweeping *ad hoc* waivers that can destroy public confidence, invite a flood of appeals, and undermine the entire structure of historic preservation.

We think that waivers or variances (we prefer the term variances, because it has a more site-specific connotation) should be carefully defined and limited. They should not become vehicles for arbitrary, open-ended assaults on established ordinance standards. Citizens, property owners and investors need clear, consistent standards that they can rely on. If experience reveals problems with existing standards, those standards can be amended by the open, deliberate process spelled out in this draft ordinance.

We hope that this package is helpful, and we thank you for your consideration.

Cc: Stuart Levitan, Landmarks Commission Chair  
Alder Ledell Zellers  
Amy Scanlon, Preservation Planner  
John Strange, Asst. City Attorney

## **Proposed Landmarks Ordinance**

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### ***Plain Language Summary***

This ordinance repeals and recreates Madison's current landmarks ordinance, creating a new chapter 41 of the Madison General Ordinance entitled "Historic Preservation." It reorganizes and re-formats the current ordinance, and updates current ordinance language to provide greater clarity, readability and ease of reference. It also makes several substantive changes. The new chapter is designed to provide greater transparency, predictability and certainty for all those affected by the ordinance, including property owners and investors.

The new chapter is divided into subchapters, and provides section headings and cross-references so that readers can more easily find and integrate relevant ordinance provisions. It includes subchapters related to the Landmarks Commission; Historic Landmarks; Historic Districts; Certificates of Appropriateness; Enforcement and Penalties; and Planning, Coordination and Outreach. The new ordinance simplifies the current statement of Policy and Purpose, to avoid confusion and potential conflicts with ordinance text. It also simplifies and clarifies current definitions, to avoid confusion and potential conflicts with ordinance text.

### **Landmarks Commission**

The Landmarks Commission ("Commission") is a 7-member commission that administers the City's historic preservation program. The Common Council designates landmarks and historic districts after considering Commission recommendations. Certain Commission decisions may be appealed to the Common Council. This ordinance clarifies, but does not significantly alter, the current roles of the Commission and the Common Council.

The Mayor appoints Commission members for staggered 3-year terms, subject to confirmation by the Common Council. This ordinance makes slight changes to current Commission membership requirements. Under this ordinance, one member must be a historian; one member must be a licensed architect; one member must be a licensed real estate professional; one member must be an alderperson; and 3 members must be citizen members, at least one of which must have expertise in construction. Each member must have, to the highest extent practicable, a known interest in historic preservation. At least 2 members must have professional qualifications, set by the United States Secretary of the Interior, related to historic preservation.

Under this ordinance, as under the current ordinance, the Commission may delegate certain functions to a Preservation Planner named by the City Planning Division, subject to Commission oversight. This ordinance clarifies, but does not significantly alter, the role and responsibilities of the Preservation Planner. This ordinance also clarifies, but does not significantly alter, current requirements related to Commission hearings and hearing notices.

### **Landmarks**

#### **Designating landmarks**

Under this ordinance, as under the current ordinance, the Common Council designates landmarks based on Commission recommendations. Any person may nominate a property for landmark designation. The person must submit the nomination to the Preservation Planner, on a form approved by the Commission. The nomination must document the basis for the proposed landmark designation. When the Preservation Planner finds that the nomination is complete, the Preservation Planner refers the nomination to the Commission.

The Commission must hold a public hearing on a proposed landmark designation. Following public hearing, the Commission may recommend designation if the proposed landmark meets at least one of the following standards (this ordinance does not significantly alter current standards):

- It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
- It is associated with important events or the lives of important persons in national, state or local history.
- It has important archaeological or anthropological significance.
- It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.
- It is representative of the work of a master builder, designer or architect.

The Commission must refer its recommendation to the Common Council, and must publish a public notice of the referral. The Common Council, after considering the Commission's recommendation, may designate a landmark by a favorable vote of a majority of members present. If the Common Council votes to designate a landmark:

- The City Clerk must notify the City Building Inspection Division and the City Assessor, and must record the landmark designation at City expense with the Dane County Register of Deeds.
- The Commission must place a landmark plaque on the landmark, to inform the public about the landmark.

### **Rescinding a landmark designation**

This ordinance modifies current ordinance provisions related to the rescission of a landmark designation. Under the current ordinance, the Common Council may rescind a landmark designation after considering the Commission's recommendation. A landmark designation may currently be rescinded if one of the following standards is met:

- The landmark owner is unable (despite diligent effort) to sell the landmark (at a fair market price), solely because of its landmark status.
- There has been a substantial change in the appearance (or condition) of the landmark due to causes beyond the owner's control, such that it no longer reasonably qualifies for landmark status.

This ordinance clarifies the current grounds for rescission (see parenthetical language above), and creates one new ground. Under this ordinance, a landmark designation may also be rescinded if the landmark owner has been deprived of a reasonable return on the owner's reasonable investment in the landmark property, solely as a result of the landmark designation. A landmark owner is not deprived of a reasonable return merely because the owner is prevented from making a higher rate of return.

Under this ordinance, the landmark owner must provide clear, credible, and persuasive evidence to show that a rescission standard is met. Unlike the current ordinance, this ordinance does not try to list the specific kinds of evidence required, because relevant evidence may vary from case to case. However, this ordinance authorizes the Commission to issue evidentiary guidelines to assist landmark owners and help ensure adequate documentation.

This ordinance clarifies the procedure for rescinding a landmark designation. The landmark owner must file a written request with the Preservation Planner, on a form approved by the Commission. The request must document that the proposed rescission meets one of the applicable standards. The Preservation Planner reviews each request for completeness (but not for evidentiary strength), and refers each complete request to the Commission. The Commission must then review and hold a public hearing on the request.

Within 90 days after the Commission receives a complete request, it must refer a written recommendation to the Common Council (the deadline may be extended with the agreement of the landmark owner) and publish a public notice of the referral. The Commission may recommend rescission if the request meets one of the 3 alternative standards for rescission. After reviewing the Commission's recommendation, the Common Council may grant or deny the rescission request.

The Common Council may rescind a landmark designation according to the Commission's recommendation, by a favorable vote of a majority of members present. But the Common Council may not rescind a landmark designation against the Commission's recommendation, except by a favorable vote of two-thirds of all members. A landmark designation, once rescinded, may not be reinstated for at least 5 years except with the agreement of the landmark owner.

### **Maintaining landmarks**

This ordinance clarifies, but does not significantly alter, current landmark maintenance standards. Under this ordinance, persons who own or control a landmark must do all of the following:

- Protect the landmark against exterior decay, deterioration and reasonably foreseeable damage.
- Keep the landmark free of structural defects.
- 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.
- 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.

### **Altering landmarks**

This ordinance clarifies, but does not significantly alter, current ordinance provisions related to the alteration of landmarks. This ordinance prohibits a person from doing any of the following without a "certificate of appropriateness" from the Commission (unless the alteration is ordered by a government agency or court, to address an imminent hazard):

- Materially altering the exterior of a landmark.
- Adding a new structure to a landmark site.
- Moving a landmark, or a material portion of a landmark, to a different location.
- Installing a sign on the exterior of a landmark, or on a landmark site.
- Using a cleaning method on an exterior landmark surface that is susceptible to being damaged or degraded by that cleaning method.
- Dividing any tax parcel comprising all or part of a landmark site, or voluntarily granting any easement on that tax parcel if the easement may impair the preservation, maintenance, exterior appearance or historic character of the landmark.

A "certificate of appropriateness" is different from a building permit, sign permit or zoning permit, and is not a substitute for those permits. A "certificate of appropriateness" merely certifies that the proposed action is acceptable from a landmark preservation standpoint. This ordinance spells out standards for issuing "certificates of appropriateness" (see below). The Commission may grant limited "variances" from those ordinance standards, as appropriate (see below).

The City may not issue a building permit, sign permit or zoning permit for an action requiring a "certificate of appropriateness" until the Commission issues that certificate. If a person alters a landmark or landmark site without a required "certificate of appropriateness," the Commission may order the person to restore the landmark or landmark site as nearly as possible to its pre-alteration state (this remedy is in addition to other penalties and remedies that may apply).

## **Demolishing landmarks**

This ordinance changes current ordinance provisions related to the demolition of landmarks. This ordinance prohibits the intentional demolition of a landmark, by action or neglect, while its landmark designation remains in effect. A landmark is presumed to be demolished by neglect if the 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 failure. The City Building Inspection Division must promptly notify the Commission whenever it finds conditions that may constitute, or may imminently result in, the demolition of a landmark by neglect. An alteration made pursuant to a "certificate of appropriateness" does not constitute a demolition.

The City may not issue a demolition permit for a designated landmark while its landmark designation remains in effect. If a person illegally demolishes a designated landmark, the Landmarks 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).

This ordinance does not authorize the Commission to issue a "certificate of appropriateness" for demolition of a designated landmark, because that would pose an inherent contradiction (destroying a landmark to preserve its historic character). An owner who wishes to demolish a landmark must instead seek rescission of the landmark designation (see above).

## **Historic Districts; General**

### **Designating and Amending Historic Districts**

The Common Council may currently designate historic districts after considering the recommendations of the Landmarks Commission and the City Plan Commission. Historic districts are individually designated by ordinance. To date, the Common Council has designated 5 historic districts (Mansion Hill, Third Lake Ridge, University Heights, Marquette Bungalows and First Settlement). This ordinance incorporates those current historic districts without change, but provides that the Common Council may amend an existing historic district by the same process used under this ordinance to designate a new historic district.

This ordinance clarifies current standards and procedures for the designation of historic districts, and makes minor substantive changes. An ordinance designating or amending a historic district must briefly recite the basis for that designation or amendment. A historic district must be an area of particular historic, architectural, or cultural significance to the City of Madison, and must meet at least one of the following standards:

- It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
- It is associated with important events or the lives of important persons in national, state or local history.
- It is an area of particular archaeological or anthropological significance.
- It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.
- It is representative of the work of a master builder, designer or architect.

The ordinance designating a historic district must specify district boundaries (this ordinance clarifies that the boundaries must be reasonably drawn in relation to the historic resources that the district is intended to preserve). It must also spell out standards for development within the district (new construction, as well as alteration or demolition of existing structures).

This ordinance clarifies that development standards may vary between districts, because each district is different (this ordinance does not establish “one-size-fits-all” standards for all historic districts). This ordinance also clarifies that the Common Council may amend historic district boundaries and development standards by the same process used to designate a historic district.

Under this ordinance, any person may request a historic district designation or amendment. The Landmarks Commission must review and hold a public hearing on each complete request. After the Commission completes its review, it must recommend approval or disapproval. The Commission may recommend approval subject to modifications recommended by the Commission.

If the Landmarks Commission recommends approval, it must prepare a proposed ordinance to implement that recommendation. The Commission must refer its draft recommendation and proposed ordinance for review by the City Plan Commission before submitting its final recommendation and proposed ordinance to the Common Council. The City Plan Commission has 90 days to review and make a recommendation on the Landmarks Commission proposal. The Landmarks Commission must include, with its final recommendation to the Common Council, the City Plan Commission’s recommendation and its own response.

The Common Council must hold its own public hearing on the proposed historic district ordinance, after receiving the recommendations of the Landmarks Commission and the City Plan Commission. The Common Council may adopt the proposed ordinance by a favorable vote of a majority of members present. The Common Council may adopt the proposed ordinance subject to modifications that are consistent with this general ordinance.

#### **Development standards for historic districts**

An ordinance creating a historic district must include standards to ensure that new structures and alterations to existing structures within that district are compatible with the purpose of the district; that they are compatible with nearby structures (other than “non-contributing” structures, identified in the district ordinance, which are located in the district but not consistent with the district’s historic character); that they are compatible with the overall historic character of the district; and that they do not diminish the historic character of the district.

The Commission must propose district-specific development standards as part of its proposed ordinance designating a historic district. The Commission must develop the proposed standards in consultation with an *ad hoc* advisory committee appointed by the Commission. The advisory committee must consist of interested and knowledgeable persons, a majority of whom must be residents of the proposed district.

District-specific development standards take effect only when incorporated into a final district-specific ordinance adopted by the Common Council (the Common Council may modify standards proposed by the Commission). A district-specific ordinance may include standards related to any of the following:

- Architectural features.
- Height, scale and gross volume.
- Width and height proportions of publicly visible facades.
- Proportions and relationships between doors and windows in publicly visible facades.
- The rhythm of solids to voids, created by openings in and between publicly visible facades.
- Textures and materials used on publicly visible facades.
- Roof configurations.
- Landscape treatments.
- The amounts, shapes, and patterns of open spaces and setbacks.
- The directional expression of publicly visible facades.
- The demolition, movement or removal of structures.
- Other matters that the Commission and Common Council deem appropriate to protect the character and assets of the historic district, consistent with this general ordinance.

This ordinance deletes current references to Commission “guidelines” governing historic districts. However, the Commission may still publish voluntary “best practices” for preservation of historic properties throughout the City. The Commission may also consider U.S. Department of Interior guidelines when developing proposed district-specific standards for historic districts.

### **Maintaining structures in historic districts**

This ordinance clarifies, but does not significantly alter, current maintenance standards for structures in historic districts. Under this ordinance, persons who own or control a structure in a historic district must do all of the following:

- Protect the structure against exterior decay, deterioration and reasonably foreseeable damage.
- Keep the structure free of structural defects.
- Maintain interior portions of the structure that, if not maintained, may create a casualty risk to the structure or cause exterior portions of the structure to fall into disrepair.
- 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.

### **Constructing, altering, relocating or demolishing properties in historic districts**

This ordinance clarifies, but does not significantly alter, current provisions related to the construction, alteration, relocation or demolition of properties in historic districts. This ordinance prohibits a person from doing any of the following in a historic district without a “certificate of appropriateness” from the Commission (unless the action is ordered by a government agency or court, to address an imminent hazard):

- Building a new structure.
- Materially altering the exterior of an existing structure.
- Demolishing or relocating an existing structure.
- Installing a sign.
- Dividing any tax parcel, consolidating any tax parcels, or voluntarily granting any easement on a tax parcel if the easement may detract from the historic character of the district.

A “certificate of appropriateness” is different from a building permit, demolition permit, sign permit or zoning permit, and is not a substitute for those permits. A “certificate of appropriateness” merely certifies that the proposed action is acceptable from a historic district preservation standpoint. This ordinance spells out standards for issuing “certificates of appropriateness” (see below). The Commission may grant limited variances from those ordinance standards, if conditions warrant (see below).

The City may not issue a building permit, demolition permit, sign permit or zoning permit for an action requiring a “certificate of appropriateness” until the Commission issues that certificate. If a person builds, alters or demolishes a structure without a required “certificate of appropriateness,” the Commission may order the person to restore the structure or site as nearly as possible to its pre-alteration state (this remedy is in addition to other penalties and remedies that may apply).

## **Certificates of Appropriateness**

### **General**

This ordinance, like the current ordinance, prohibits a person from doing any of the following without a “certificate of appropriateness” from the Commission:

- Making certain kinds of changes to a landmark or landmark site (see above).
- Building a new structure, demolishing or relocating an existing structure, dividing or consolidating tax parcels, or making certain kinds of changes to an existing structure in a historic district (see above).



Under this ordinance, the Commission must issue a “certificate of appropriateness” for a proposed action that meets ordinance standards (see below). The Commission must deny a certificate for a proposed action that fails to meet an applicable standard, unless the Commission grants a “variance” from that standard (see below). The Preservation Planner may issue “certificates of appropriateness” for relatively minor actions that do not require a public hearing (decisions may be appealed to the Commission), but may not grant “variances” from ordinance standards.

### **Procedure**

A property owner who wishes to obtain a “certificate of appropriateness” must submit a written application to the Preservation Planner, on a form approved by the Commission. The application must clearly describe the proposed action for which a “certificate of appropriateness” is sought. When the Preservation Planner determines that the application is complete, the Preservation Planner must do one of the following:

- Refer the complete application to the Commission.
- Grant or deny the complete application, if the Preservation Planner is authorized to do so (decision may be appealed to the Commission). The Preservation Planner must make the decision as soon as reasonably possible, and within 60 days.

“Certificates of appropriateness” for more significant actions require a public hearing. This ordinance clarifies, but does not significantly alter, the types of actions for which a hearing is currently required. Only the Commission (not the Preservation Planner) may grant or deny a “certificate of appropriateness” for actions that require a public hearing.

The Commission must hold a public hearing, and either grant or deny a “certificate of appropriateness” application, within 60 days after the Preservation Planner finds that the application is complete (deadline may be extended if the applicant agrees). The Commission may issue a certificate subject to reasonable terms and conditions prescribed by the Commission. If the Commission denies an application, the decision must specify the reasons and must include a notice of appeal rights.

### **Appeal to Common Council**

This ordinance clarifies current procedures for Common Council review of Commission decisions granting or denying “certificates of appropriateness.” Under this ordinance, any of the following persons may ask the Common Council to reverse or modify a Commission decision granting or denying a “certificate of appropriateness.”

- The person who applied for the certificate.
- The Alder for the district in which the subject property is located.
- The owner of a tax parcel located within 200 feet of the tax parcel on which the subject property is located.

The person must file the appeal with the City Clerk within 10 days after the date on which the Commission issues its decision. The appeal petition must state, among other things, the grounds for appeal. The Common Council must hold a public hearing on the appeal.

The Common Council may, by a favorable vote of two-thirds of all members, reverse or modify the Commission’s decision if it finds that the decision is inconsistent with ordinance standards, or represents an inappropriate exercise of discretion by the Commission.

### **Landmarks; standards for “certificates of appropriateness”**

This ordinance modifies current standards for issuing “certificates of appropriateness” for actions affecting landmarks. Under this ordinance, the Commission must issue a “certificate of appropriateness” for a proposed action affecting a landmark if the proposed action meets all of the following standards that apply. The Commission must deny a “certificate of appropriateness” if the proposed action fails to meet any applicable standard, unless the Commission grants a “variance” from

that standard (see below).

- *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 must be consistent in style and appearance with the historic character of the landmark.
- *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.
- *Signs on a landmark or landmark site.* Signs installed on a landmark or landmark site may not detract from, or fail to harmonize with, the appearance or historic character of the landmark. Signs must also comply with the City sign ordinance.
- *Landmark site divisions and easements.* Landmark site divisions and voluntarily granted easements may not threaten or impair the preservation, maintenance, exterior appearance or historic character of the landmark.
- *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.
- *Moving a landmark.* A landmark may not be moved if its location is important 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. This does not prohibit a temporary movement incidental to repair or maintenance, or a movement that is essential to protect a landmark from damage or destruction from causes outside the control of the landmark owner.

#### **Historic districts; standards for “certificates of appropriateness”**

This ordinance clarifies current standards for “certificates of appropriateness” affecting properties in historic districts. Under this ordinance, the Commission must issue a “certificate of appropriateness” for a proposed action that meets applicable district-specific standards (see above). The Commission must deny a certificate for a proposed action that fails to meet an applicable district-specific standard, unless the Commission grants a “variance” from that standard (see below).

The Commission may issue a “certificate of appropriateness” subject to reasonable terms and conditions specified by the Commission. If the proposed action involves the demolition or removal of an existing structure, the proposed replacement structure must also comply with district-specific standards.

#### **“Variances” from ordinance standards**

This ordinance clarifies the standards and procedures by which the Commission may grant an individual “variance” from an ordinance standard that would otherwise preclude the issuance of a “certificate of appropriateness.”

##### *When allowed*

The Commission may grant a “variance” from one or more ordinance standards governing a “certificate of appropriateness” (see above) if all of the following “variance” standards are met:

- The “variance” applies to a specifically identified landmark or landmark site, or a specifically identified property in a historic district.
- The property owner files a “variance” request for the purpose of obtaining a “certificate of appropriateness.” The property owner must explain why the “variance” is justified, and must provide supporting evidence.

- The Commission holds a public hearing on the requested “variance” (possibly as part of the hearing on the proposed “certificate of appropriateness” to which it pertains).
- The “variance” provides relief from an ordinance standard that, if strictly applied to the subject property, would unreasonably and unnecessarily do any of the following:
  - Prevent the use of the property for an otherwise permitted purpose.
  - Deny the property owner a reasonable return on the owner’s reasonable property investment. (An ordinance standard does not deny a property owner a reasonable return merely because it prevents the owner from achieving a higher return.)
  - Preclude a superior design or method.
- The conditions justifying the “variance” are all of the following:
  - Unique to the property for which the “variance” is granted, and not typical of other landmarks or other properties in the same historic district.
  - Outside the control of the property owner.
  - Documented by clear, credible and persuasive evidence. The property owner has the burden of providing financial records or other relevant documentation to justify the “variance” request. This ordinance does not try to list the specific types of evidence required, because relevant evidence may vary from case to case. However, it does authorize the Commission to adopt evidentiary guidelines to assist applicants and help ensure adequate documentation.
- The “variance” meets all of the following requirements:
  - It is consistent with the general purpose of the ordinance standard to which it pertains.
  - It preserves or enhances the historic character and ambience of the landmark or historic district.
  - It will not have a significant adverse effect on any property located on a tax parcel that is within 200 feet of the tax parcel on which the subject property is located.
  - It is no broader than reasonably necessary, based on the conditions that justify the “variance.”

The Commission must grant a “variance” in writing. The “variance” must identify the specific ordinance standard(s) to which it pertains, and may specify any limiting terms and conditions. The Commission may require the property owner to meet with the Commission, the Preservation Planner, or other expert or affected persons, to discuss possible “variance” terms, conditions and alternatives.

*Commission decision*

The Commission must grant or deny a complete “variance” request within 60 days (deadline may be extended if property owner agrees). If the Commission denies a “variance” request, its decision must include the reasons for denial and a notice of appeal rights.

*Appeal to Common Council*

Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify the Commission’s decision to grant or deny a “variance.”

- The property owner who requested the variance.
- The Alder for the district in which the subject property is located.
- The owner of a tax parcel located within 200 feet of the tax parcel on which the subject property is located.

The person must file the appeal with the City Clerk within 10 days after the date on which the Commission issued its decision. The appeal petition must state the grounds for the appeal. The Common Council must hold a public hearing on the appeal.

The Common Council may, by favorable vote of two-thirds of all members, reverse or modify the decision of the Commission if it finds that the Commission's decision is inconsistent with ordinance standards, or represents an inappropriate exercise of discretion by the Commission.

### **Enforcement and Penalties**

This ordinance reorganizes and clarifies current provisions related to ordinance enforcement and penalties for ordinance violations (it does not significantly alter current penalties). This ordinance also clarifies and coordinates the enforcement responsibilities of the Commission and the City Building Inspection Division. This ordinance adds a new provision authorizing the City to seek a court injunction to halt continuing violations. It also clarifies the Commission's current authority to issue a restoration order to a property owner who acts without a required "certificate of appropriateness" (see above).

A person who violates this ordinance 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.

Under this ordinance, the City Attorney on behalf of the Commission may petition a court of competent jurisdiction to issue an injunction prohibiting a continuing violation of this ordinance. 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.

### **Planning, Coordinating and Promoting Historic Preservation**

This ordinance creates a new subchapter entitled "Planning, Coordinating and Promoting Historic Preservation," and consolidates several existing ordinance provisions in that new subchapter. This ordinance also creates several new provisions in the same subchapter, to encourage a more robust planning, coordination and promotional effort related to historic preservation.

Under this ordinance, the Commission is authorized and directed to do all of the following:

- Promote and facilitate historic preservation in the City of Madison. The Commission may accept gifts and grants for the purpose of historic preservation, and must deposit those gifts and grants to a City fund specifically designated for that purpose. (This ordinance deletes current ordinance provisions that authorize the Commission to engage in active lobbying and fund solicitation.)
- Work with others to promote public information, education and tourism related to the historic heritage of the City.
- Prepare, implement and periodically update historic preservation plans, surveys and inventories.
- Compile, organize and maintain records of historic resources within the City.
- Work with other City agencies to install signs identifying designated historic districts.
- Work with state officials representing National Register of Historic Places to promote historic preservation, and to facilitate the designation of Madison landmarks as national landmarks when appropriate.
- Provide information and assistance related to the preservation of historic properties throughout the City. This may include suggestions related to voluntary preservation practices, and available sources of funding and technical assistance.

This ordinance directs the Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments to coordinate their activities in order to do all of the following:

- Ensure effective administration and enforcement of this ordinance.
- Ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.

- Identify and preserve important historic resources.
- Call public attention to designated landmarks and historic districts.
- Preserve and where possible enhance the historic character and ambience of designated landmarks and historic districts.

### **Existing Historic Districts**

This ordinance incorporates current historic districts (including existing boundaries and district-specific development standards) without change; but it provides that the Common Council may amend an existing historic district by the same process used under this ordinance to designate a new historic district. The City contemplates a planning effort to provide the groundwork for possible updates to existing historic districts.

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***The Common Council of the City of Madison ordains as follows:***

**SECTION 1.** Section 33.19 of the Madison General Ordinances, entitled “Landmarks Commission,” is repealed and recreated to read:

**33.19 LANDMARKS COMMISSION. (1) Creation and membership.** There is hereby created a Landmarks Commission consisting of 7 members. One member shall be a historian; one member shall be a licensed architect; one member shall be a licensed real estate professional; one member shall be an alderperson; and 3 members shall be citizen members, at least one of which shall have expertise in construction. Each member shall have, to the highest extent practicable, a known interest in historic preservation. At least 2 members shall meet the Professional Qualifications Standards established by the United States Secretary of the Interior for History, Archeology, Architectural History, Architecture, or Historic Architecture. The Mayor shall appoint members for staggered 3-year terms, subject to confirmation by the Common Council.

**(2) Powers and Duties.** The Landmarks commission shall have the authority and duties assigned to it under chapter 41 of the Madison General Ordinances.

**SECTION 2.** Chapter 41 of the Madison General Ordinances is created to read:

## **CHAPTER 41 HISTORIC PRESERVATION**

### **Subchapter I – General Provisions**

- 41.01 – Policy and purpose
- 41.02 – Definitions
- 41.03 – Other general provisions

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- 41.20 Planning, Coordinating and Promoting Historic Preservation

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### **Subchapter I General Provisions**

**41.01 POLICY AND PURPOSE.** The Common Council recognizes that the City of Madison contains important historic resources, including buildings, structures, signs, features, sites and districts that have significant architectural, archeological, anthropological, historical and cultural value. The Common Council recognizes that these historic resources represent the City's unique heritage and character; that they are of great interest to City residents and visitors; that they are important economic, social, cultural and community assets; that they are a source of civic pride; and that they foster appreciation of our civic heritage, and of the beauty and noble accomplishments of the past. The Common Council therefore declares as a matter of public policy that the identification, preservation, protection, promotion, conservation and use of significant historic resources within the City is a public necessity to foster the health, prosperity, safety and welfare of the people. The purpose of this chapter is to implement this policy in a clear, effective, fair and systematic way.

*[COMMENT: This ordinance simplifies the current statement of policy. This ordinance substitutes the final sentence for the current detailed list of "purposes." There is no need, in the "Policy and Purpose" section, to summarize all of the things that the ordinance purports to do. There is a danger of missing some things, or creating conflicts or ambiguities between the list of "purposes" and the ordinance text. That tends to foster, rather than prevent, conflicting ordinance interpretations. The ordinance text should speak for itself.]*

**41.02 DEFINITIONS.** In this chapter:

(1) “Historic district” means a district designated as a historic district under subch. IV or VII.

(2) “Landmark” means a site, structure, or site with structures that is designated as a landmark under s. 41.07, or that was designated as a landmark under s. 33.13 of the Madison General Ordinances prior to *[insert effective date of this ordinance]*.

(3) “Landmark site” means the tax parcel or parcels on which a landmark is located.

(4) “Landmarks Commission,” or “Commission” means the commission created under s. 33.19 of the Madison General Ordinances.

(5) “Non-contributing structure” means a structure that is located in a historic district but is, for purposes of s. 41.12(3)(a), specifically identified in an ordinance creating or amending that district as being inconsistent with the overall historic character of the district.

(6) “Person” means an individual, corporation, partnership, limited liability company, cooperative, trust, association or business entity.

(7) “Preservation Planner” means the person designated under s. 41.05.

(8) “Structure” means a building or other improvement attached to land.

*[COMMENT: This ordinance simplifies and clarifies current definitions; deletes definitions of terms that are no longer used in the ordinance text; and adds some new definitions. It eliminates substantive material that duplicates or conflicts with ordinance text, and moves some substantive material from definitions to ordinance text. Technical terms used in s. 41.12(3)(c) could also be defined here, as necessary (they could also be defined, with greater local specificity, in the district-specific ordinances that establish development standards for individual historic districts).]*

**41.03 OTHER GENERAL PROVISIONS.**

(1) **Harmonizing ordinances.** Except as otherwise specifically provided by ordinance:

(a) This chapter supplements, and does not alter, other provisions of the Madison General Ordinances.

(b) Other provisions of the Madison General Ordinances supplement, and do not alter, this chapter.

(2) **Computing time.** Whenever this chapter prescribes a time period consisting of a number of days following an action or event, the prescribed time period starts at the beginning of the first day following the date of the action or event, and expires at the end of the last day of the prescribed time period. Saturdays, Sundays and holidays are counted in the prescribed time period unless the time period is less than 11 days, in which case they are excluded.

(3) **Separability.** A court decision invalidating any provision or application of this chapter does not invalidate any other provision or application of this chapter, except as specifically provided by law or court order.

## Subchapter II Landmarks Commission

**41.04 LANDMARKS COMMISSION; AUTHORITY AND DUTIES.** The Landmarks Commission shall do all of the following:

- (1) Administer this chapter with advice from the Preservation Planner.
- (2) Perform the responsibilities assigned to it under ss. 28.144 and 28.185(7)(a)4. of the Madison General Ordinances.
- (3) Adopt operational policies and procedures as necessary, consistent with this chapter, to carry out its responsibilities.

*[COMMENT: This section directs the Commission to implement ch. 41 ("Historic Preservation"). References to duties described elsewhere in ch. 41 are removed from this section, because they are redundant. This section retains references to duties that are not covered in ch. 41 – namely, those prescribed in sections 28.144 and 28.185(7)(a)4. of the Madison General Ordinances. Those sections direct the Commission to review and prepare advisory reports to the City Plan Commission and Urban Design Commission on proposed construction projects adjacent to landmarks, and on all proposed building demolitions, to identify possible historic preservation concerns.]*

**41.05 PRESERVATION PLANNER.** The City Planning Division shall designate a member of the Planning Division to serve as the City Preservation Planner. The Preservation Planner shall staff the Landmarks Commission and carry out those duties that the Commission delegates to the Preservation Planner, consistent with this chapter. In carrying out those duties, the Preservation Planner shall exercise his or her own professional judgment and expertise consistent with this chapter.

*[COMMENT: Section 41.05 simplifies, but does not significantly alter, the current description of the Preservation Planner's role.]*

### **41.06 PUBLIC HEARINGS AND NOTICES.**

**(1) General.** The Landmarks Commission shall hold a public hearing whenever a hearing is required by this chapter, and may hold other public hearings related to matters under its jurisdiction. The Commission shall give public notice of each hearing, at least 10 days prior to the hearing. The notice shall specify all of the following:

- (a) The time, place and purpose of the hearing.
- (b) If the hearing pertains to a specific site or structure, the location of that site or structure.
- (c) If the hearing pertains to the proposed designation of a new historic district, the proposed boundaries of that district.
- (d) If the hearing pertains to the amendment of an existing historic district, the existing boundaries of that district. If the amendment would change the boundaries of the existing district, the hearing notice shall also specify the proposed new boundaries.

**(2) Newspaper publication of some hearing notices.** Notice of the following hearings shall be given by a Class 2 Notice in the official City newspaper under Wis. Stat. § 985.07:

- (a) Hearings on the proposed designation of a landmark, or on the proposed amendment or rescission of a landmark designation.
- (b) Hearings on the proposed designation of a historic district, or on the amendment of an existing historic district designation.



(b) Hearings on proposed certificates of appropriateness or variances for which a public hearing is required under this chapter.

**(3) Supplementary mail notice for some hearings.** In addition to publishing a hearing notice under sub. (1), the Commission shall mail an equivalent notice to the following persons, under the following circumstances, at least 10 days prior to the hearing date:

(a) If the hearing pertains to a specific site or structure identified in the hearing notice:

1. The owners of record of each tax parcel on which that site or structure is located.
2. The owners of record of each tax parcel located within 200 feet of a tax parcel on which the site or structure is located.

(b) If the hearing pertains to the designation of a historic district, or to the amendment of an existing historic district designation:

1. All owners of record of tax parcels located wholly or in part within the historic district.
2. The Alder of each aldermanic district in which any part of the historic district is located.

(c) If the hearing pertains to a proposed certificate of appropriateness or variance, to the Alder in whose aldermanic district the affected site or structure is located.

**(4) Subpoena authority.** When necessary to carry out its responsibilities under this chapter, the Commission may subpoena witnesses and evidence relevant to matters pending before the Commission.

*[COMMENT: Section 41.06 clarifies, but does not significantly alter, current hearing and notice requirements. The Commission currently has subpoena authority, but seldom if ever uses that authority. Subpoenaed evidence may, on occasion, be needed to resolve factual disputes.]*

### **Subchapter III Landmarks**

#### **41.07 DESIGNATING LANDMARKS.**

**(1) Common Council may designate a landmark.** The Common Council, after considering the recommendation of the Commission, may designate a landmark according to this section.

**(2) Standards for designating a landmark.** A site, improvement, or site with improvements in this City may be designated as a landmark if it meets any of the following standards:

(a) It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.

(b) It is associated with important events or the lives of important persons in national, state or local history.

(c) It has important archaeological or anthropological significance.

(d) It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.

(e) It is representative of the work of a master builder, designer or architect.

**(3) Nomination.** Any person may nominate a site, improvement, or site with improvements for designation as a landmark. The person shall submit the nomination to the City Planning Department, to the attention of the Preservation Planner, on a nomination form approved by the Commission. The nomination shall clearly identify and delineate the proposed landmark, and shall clearly explain and document why it qualifies under sub. (2). The Preservation Planner may ask the person to submit additional information and documentation, as needed to complete or clarify the nomination. When the Preservation Planner determines that the nomination is complete, the Preservation Planner shall refer the nomination to the Commission.

**(4) Commission review and public hearing.** When the Commission receives a complete nomination under sub. (3), it shall review and hold a public hearing on the nomination. The Commission shall give prior notice of the hearing as provided in s. 41.06. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the nomination.

**(5) Commission action.**

(a) After the Commission holds a public hearing and completes its review under sub. (4), it shall submit to the Common Council a recommendation supporting or opposing landmark designation. The Commission may support landmark designation subject to terms and conditions that are consistent with this chapter. The Commission shall include a brief written report explaining its recommendation.

(b) The Commission, upon submitting its recommendation to the Common Council under par. (a), shall give public notice of its recommendation in the same manner that it gave notice of the public hearing under sub. (4). The Commission shall give the notice within 10 days after it submits its recommendation to the Common Council, and at least 10 days before the Common Council takes action on the recommendation.

**(6) Common Council action.** The Common Council, after considering the Landmarks Commission report and recommendation under sub. (5), shall grant or deny a proposed landmark designation. The Common Council may designate a landmark by a favorable majority vote of members present, subject to terms and conditions that are consistent with this chapter. The City Clerk shall promptly notify the City Building Inspection Division and the City Assessor whenever the Common Council designates a landmark, and shall record the landmark designation at City expense with the Dane County Register of Deeds.

**(7) Supplementary terms.** The Common Council may at any time supplement the terms of a landmark designation pursuant to an agreement between the landmark owner and the Commission, in order to enhance the preservation and protection of the landmark.

**(8) Landmark recognition.**

(a) After the Common Council designates a landmark under this section, the Commission shall cause a plaque to be placed on the landmark at City expense. The plaque, which shall be easily visible to passing pedestrians, shall identify the landmark and briefly explain its historical significance. The plaque shall include the accepted name and construction date of the landmark, if applicable, and may contain other information that the Commission considers appropriate.

(b) No plaque is required under par. (a) if the Commission determines that, because of the landmark's ecological or cultural sensitivity, a plaque would be inappropriate.

(c) A landmark plaque under par. (a) is, and remains, City property. No person may remove a plaque without the approval of the Preservation Planner.

**[COMMENT: Section 41.07 clarifies, but does not significantly alter, the current process for designating landmarks. It intentionally does not specify a time deadline for Commission action on a landmark nomination.]**

#### **41.08 RESCINDING A LANDMARK DESIGNATION.**

**(1) Common Council may rescind.** The Common Council, after considering the recommendation of the Commission under sub. (4), may rescind a landmark designation if the rescission qualifies under sub. (5). The Common Council may rescind a landmark designation according to the Commission's recommendation by a favorable majority vote of members present. The Common Council may not rescind a landmark designation against the Commission's recommendation except by a favorable vote of two-thirds of all members.

#### **(2) Requesting rescission.**

(a) A landmark owner may, at any time, request the rescission of a landmark designation. The owner shall submit the request to the City Planning Department, to the attention of the Preservation Planner, on a form approved by the Commission. The request shall explain the grounds for the proposed rescission, and shall include documentation to show that the proposed rescission qualifies under sub. (5). The Preservation Planner may ask the landmark owner to submit additional information, as needed, to complete or clarify the request.

(b) When the Preservation Planner finds that a request under par. (a) is complete, the Preservation Planner shall stamp the request with the date of that completeness finding and shall promptly refer the request to the Commission. For purposes of a completeness finding, the Preservation Planner may consider whether the landmark owner has provided supporting documentation, but may not consider the sufficiency of that documentation under sub. (5).

**(3) Commission review and public hearing.** The Commission shall review and hold a public hearing on a complete request referred to it under sub. (2)(b). The Commission shall give prior notice of the hearing as provided in s. 41.06. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the request.

#### **(4) Commission recommendation.**

(a) After holding a public hearing and completing its review under sub. (3), the Commission shall submit to the Common Council a written recommendation supporting or opposing the rescission request. The Commission shall include a brief report explaining its recommendation.

(b) The Commission shall submit its recommendation under par. (a) within 90 days after the Preservation Planner finds that the rescission request is complete, except that the Commission may extend that deadline with the written agreement of the landmark owner.

(c) The Commission, upon submitting its recommendation under par. (a), shall give public notice of its recommendation in the same manner that it gave notice of the public hearing under sub. (3). The Commission shall give the notice within 10 days after it submits its recommendation to the Common Council, and at least 10 days before the Common Council takes action on the recommendation.

**(5) Rescission standards.** A landmark designation may be rescinded if the landmark owner documents one of the following by clear, credible and persuasive evidence:

(a) *Owner unable to sell at fair market price.* The landmark owner is unable, despite diligent good faith efforts, to sell the landmark at a fair market price solely because of its landmark status.

(b) *Owner deprived of reasonable investment return.* The landmark owner is prevented from obtaining a reasonable return on the owner's reasonable investment in the landmark property, solely because of its landmark status. A landmark designation does not prevent the landmark owner from obtaining a reasonable return on investment merely because it prevents the owner from achieving a higher return.

(c) *Changed appearance or condition.* There has been a substantial change in the physical appearance or condition of the landmark, resulting from causes outside the control of any landmark owner, such that the landmark no longer reasonably qualifies for landmark designation under s. 41.07.

**(6) Evidence.** The Commission may publish evidentiary guidelines to assist landmark owners and ensure adequate documentation for Commission findings under sub. (5). The guidelines may suggest the specific kinds of information that may be useful in documenting conditions under sub. (5) by clear, credible and persuasive evidence.

**(7) Notice of rescission.** If the Common Council rescinds a landmark designation under sub. (1), the City Clerk shall promptly notify the City Building Inspection Division and the City Assessor of the rescission, and shall record the rescission at City expense with the Dane County Register of Deeds.

**(8) Re-designation.** A landmark designation, once rescinded under this section, may not be reinstated for at least 5 years following the effective date of the rescission, except with the agreement of the landmark owner.

**[COMMENT: Section 41.08 clarifies current standards and procedures for rescinding a landmark designation. It expands the reasons for which a rescission may be granted (sub. (5)(b) is new); and it requires a two-thirds Council vote for rescission if the Commission recommends against rescission. It requires the Commission to make a recommendation within 90 days after receiving a complete rescission request. Unlike the current ordinance, it does not list the specific kinds of evidence required; however, it does authorize the Commission to publish evidentiary guidelines to assist landmark owners and ensure adequate documentation for Commission findings.]**

**41.09 MAINTAINING LANDMARKS.** Persons who own or control a landmark shall do all of the following:

**(1)** Protect the landmark against exterior decay, deterioration and reasonably foreseeable damage.

**(2)** Keep the landmark free of structural defects.

**(3)** 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.

**(4)** 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. Waivers or variances granted under ch. 18, 17, 29, 30 or 31 do not affect the requirements under subs. (1) to (3).

**[COMMENT: This ordinance separates landmark standards from historic district standards, for ease of reference. Section 41.09 clarifies, but does not significantly alter, current maintenance standards for landmarks.]**

#### **41.10 ALTERING LANDMARKS.**

**(1) Certificate of appropriateness required.** 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.

**(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 for which a certificate of appropriateness is required under sub. (1) unless the Commission has issued a certificate of appropriateness for that action within 2 years prior to the permit date.

**(4) Restoration 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.

**[COMMENT: This ordinance separates landmark standards from historic district standards, for ease of reference. Section 41.10 clarifies, but does not significantly alter, current requirements for landmarks.]**

#### **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. 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. An alteration made pursuant to a certificate of appropriateness under subch. V does not constitute a demolition.

**(2) Notice to Commission.** The City Building Inspection Division shall promptly notify the Commission whenever it finds conditions that may constitute, or may imminently result in, the demolition of a landmark by neglect.

**(3) No demolition permit may be issued.** No City agency may issue a demolition permit for a landmark structure while that structure's landmark designation remains in effect.

**(4) Restoration 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.

#### **[COMMENTS:**

**Section 41.11 prohibits the intentional demolition of a designated landmark, by action or neglect, while the landmark designation remains in effect. A landmark owner may apply to have a landmark designation rescinded under s. 41.08.**

**Section 41.11 clarifies what is meant by demolition "by neglect," and requires the City Building Inspection Division to notify the Commission whenever it finds conditions that may constitute, or imminently result in, demolition by neglect. It does not require the Commission to hold a hearing, because such a hearing may serve no purpose. However, the Commission may hold a hearing, if it wishes to do so (see s. 41.06).**

*Section 41.11 does not allow the demolition of a designated landmark pursuant to a "certificate of appropriateness," because that would pose an inherent contradiction (destroying a designated landmark to preserve its historic character). An owner who wishes to demolish a designated landmark must instead seek rescission of the landmark designation. Lesser alterations, if authorized by a "certificate of appropriateness," do not constitute a "demolition" even if they entail the removal of some building components.]*

## **Subchapter IV Historic Districts; General**

### **41.12 DESIGNATING AND AMENDING HISTORIC DISTRICTS.**

#### **(1) Common Council and Commission roles.**

(a) *Common Council.* The Common Council, after considering the recommendations of the Landmarks Commission and the City Plan Commission under this section, may by ordinance do any of the following according to this section:

1. Designate a clearly defined geographic area as a historic district.
2. Amend the designation of an existing historic district. An amendment may include a boundary amendment or an amendment of standards specific to that historic district, provided that the amendment complies with this section.

(b) *Landmarks Commission.* The Landmarks Commission shall review each request for the designation or amendment of a historic district, and shall submit its recommendation to the Common Council according to this section. Before the Landmarks Commission refers its final recommendation to the Common Council, it shall submit a draft recommendation for review by the City Plan Commission.

(c) *City Plan Commission.* The City Plan Commission shall review the Landmarks Commission's draft recommendation for the designation or amendment of a historic district, and shall submit to the Landmarks Commission its recommendation for or against the designation or amendment. The Landmarks Commission shall refer the Plan Commission's recommendation, together with the Landmarks Commission's response and final recommendation, to the Common Council according to this section.

*[COMMENT: This ordinance clarifies, but does not significantly alter, the roles of the Common Council, the Landmarks Commission and the City Plan Commission in the designation of historic districts.]*

*This ordinance specifically allows for the amendment of a historic district. Amendments may include, among other things, boundary amendments or amendments to district-specific development standards. Amendments must be adopted by ordinance, subject to the same standards and procedures that apply to the initial designation of a historic district.]*

**(2) Historic significance and boundaries.** An ordinance designating or amending a historic district shall recite the basis and rationale for that designation or amendment. The recitation shall briefly explain how the historic district as designated or amended meets the following standards:

(a) A historic district shall be an area of particular historic, architectural, or cultural significance to the City of Madison, and shall meet at least one of the following criteria:

1. It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.

2. It is associated with important events or the lives of important persons in national, state or local history.

3. It is an area of particular archaeological or anthropological significance.

4. It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.

5. It is representative of the work of a master builder, designer or architect.

(b) The boundaries of a historic district shall be clearly defined, and shall be reasonable in relation to the area of historic significance under par. (a).

**[COMMENT: This ordinance clarifies, but does not significantly alter, current standards for the designation of historic districts. Paragraph (b) is new.]**

### **(3) Constructing and altering structures in historic districts; standards.**

(a) *General.* The ordinance designating a historic district shall include standards to ensure that new structures and alterations to existing structures within the district are compatible with the purpose of the district; that they are compatible with nearby structures other than non-contributing structures; that they are compatible with the overall historic character of the district; and that they do not diminish the historic character of the district. Standards may be expressed in text or graphic form. The ordinance may identify non-contributing structures within the district that may not be used for comparison purposes when applying compatibility standards adopted under this paragraph.

(b) *Developing the standards.* The Commission shall develop district-specific standards under par. (a), for inclusion in its proposed ordinance designating a historic district. The Commission shall develop the draft standards in consultation with an *ad hoc* advisory committee appointed by the Commission. The advisory committee shall consist of interested and knowledgeable persons, a majority of whom shall be residents of the historic district.

(c) *Contents.* Standards under par. (a) may include standards related to any of the following:

1. Architectural features.
2. Height, scale and gross volume.
3. Width and height proportions of publicly visible facades.
4. Proportions and relationships between doors and windows in publicly visible facades.
5. The rhythm of solids to voids, created by openings within and between publicly visible facades.
6. Textures and materials used on publicly visible facades.
7. Roof configurations.
8. Landscape treatments.
9. The amounts, shapes, and patterns of open spaces and setbacks.
10. The directional expression of publicly visible facades.
11. The demolition, movement or removal of structures.

12. Other matters that the Commission and Common Council deem appropriate to protect the character and assets of the historic district, consistent with this section.

**[COMMENT:** *This ordinance avoids prescribing specific standards applicable to all historic districts, because every district is somewhat different. This ordinance spells out the kinds of standards that may be considered, but actual standards are to be spelled out in the ordinances that create specific districts.*

*This ordinance eliminates current references to Commission "guidelines" for historic districts (although the Commission may still consider guidelines established by the U.S. Department of Interior, and may still publish suggested "best practices" for owners of historic properties). An ordinance should normally deal in legal standards, not "guidelines" that can result in vagueness, inconsistency, weak compliance and potential abuse of administrative authority.]*

**(4) Requesting a historic district designation or amendment.** (a) Any person may request the designation or amendment of a historic district. The person shall submit the request to the City Planning Division, to the attention of the Preservation Planner, on a form approved by the Commission. The request shall clearly describe the proposed historic district or amendment, and shall clearly explain and document why the proposed historic district designation or amendment qualifies and should be approved under this section.

(b) The Preservation Planner shall promptly notify the Commission of each request under par. (a), and shall review the request for completeness. The Preservation Planner may ask the requester to submit additional information and documentation as needed. When the Preservation planner finds that the request is reasonably complete, the Preservation Planner shall refer the request to the Landmarks Commission.

**(5) Landmarks Commission review and public hearing.** The Commission shall review and hold a public hearing on each request referred to it under sub. (4)(b). The hearing shall be preceded by public notice as provided in s. 41.06. The Commission may gather other information, in addition to hearing testimony and evidence, which may be relevant to its evaluation of the request.

**(6) Recommendations and referrals.**

(a) *Landmarks Commission; draft recommendation.* After the Commission completes its review and holds a public hearing under sub. (5), it shall issue a draft recommendation for or against the requested designation or amendment of a historic district. The Commission may recommend a designation or amendment in the form proposed by the requesters, or in a modified form. The Commission shall include all of the following in its draft recommendation:

1. A report explaining and documenting its recommendation.
2. A draft ordinance implementing its recommendation, if the Commission recommends the designation or amendment of a historic district.

(b) *Plan Commission review.* The Landmarks Commission shall refer a copy of its draft recommendation under par. (a) to the City Plan Commission. Within 90 days after the City Plan Commission receives the Landmarks Commission's draft recommendation, the City Plan Commission shall make a recommendation that does one of the following:

1. Concurs with the Landmarks Commission recommendation.
2. Concurs with the Landmarks Commission recommendation, contingent on specified changes.
3. Opposes the Landmarks Commission recommendation.



(c) *Landmarks Commission; final recommendation and referral.* After reviewing the City Plan Commission's recommendation under par. (b), the Landmarks Commission shall refer a final draft recommendation to the Common Council. The final draft recommendation shall include all of the following:

1. The materials required under par. (a).
2. The City Plan Commission's recommendation under par. (b).
3. The Landmarks Commission's response to the City Plan Commission's recommendation, including an identification of any changes made in response to the City Plan Commission's recommendation.

(d) *Notice of final draft referral.* The Landmarks Commission, upon referring its final draft recommendation to the Common Council under par. (c), shall do all of the following:

1. Mail notice of the referral to each person who requested the historic district designation or amendment under sub. (4). The Commission shall mail the notice within 10 days after the referral, and at least 30 days before the Common Council takes any action on the Commission's recommendation.
2. Give public notice of the referral, in the same manner that it gave notice of the public hearing under sub. (5), at least 30 days before the Common Council takes action on the recommendation.

**(7) Common Council action.** The Common Council, after receiving the Landmarks Commission referral under sub. (6)(c), shall hold a public hearing on the Commission's recommendation. The hearing shall be preceded by notice consistent with s. 41.06. Following public hearing, the Common Council shall do one of the following:

(a) Adopt the ordinance recommended by the Commission, subject to any modifications that the Common Council deems appropriate consistent with this chapter.

(b) Decline to adopt an ordinance.

**[COMMENT: Subsections (4) to (7) clarify, but do not significantly alter, the current procedure for designating historic districts. Under this ordinance, the same procedure must be used to amend historic districts.]**

**41.13 MAINTAINING STRUCTURES IN HISTORIC DISTRICTS.** Persons who own or control a structure in a historic district shall do all of the following:

**(1)** Protect the structure against exterior decay, deterioration and reasonably foreseeable damage.

**(2)** Keep the structure free of structural defects.

**(3)** 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.

**(4)** 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. Waivers or variances granted under any of these chapters do not affect the requirements under subs. (1) to (3).

**[COMMENT: This ordinance separates landmark standards from historic district standards, for ease of reference. Section 41.13 spells out maintenance requirements for structures in historic districts. It clarifies, but does not substantially alter, existing requirements.]**

#### **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.

**(4) Restoration order.** If a person takes any action 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.

*[COMMENT: This ordinance separates landmark standards from historic district standards, for ease of reference. Section 41.14 clarifies, but does not substantially alter, current ordinance requirements for historic districts.]*

### **Subchapter V Certificates of Appropriateness**

#### **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 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 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).

(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 sub. (7).

**(7) Appeal to Common Council.**

(a) *Who may appeal.* Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify a Commission decision under sub. (6):

1. The person who applied for the certificate.
2. The Alder for the district in which the subject property is located.
3. The owner of a tax parcel located within 200 feet of a tax parcel on which all or part of the subject property is located.

(b) *Filing an appeal.* A person may initiate an appeal under par. (a) by filing a petition with the City Clerk within 10 days after the date on which the Commission issued the decision that the person is appealing. The petition shall clearly specify petitioner's identity and address, the petitioner's qualification under par. (a) to appeal the Commission's decision, the grounds for the appeal, and the relief requested from the Common Council consistent with par. (d). The City Clerk shall file the appeal petition with the Common Council.

(c) *Public hearing.* The Common Council shall hold a public hearing on each appeal filed under par. (b). The hearing shall be preceded by a class 1 public notice.

(d) *Common Council decision.* The Common Council may, by favorable vote of two-thirds of all members, reverse or modify the decision of the Commission if it finds that the Commission's decision is inconsistent with applicable standards under s. 41.16, 41.17 or 41.18, or represents an inappropriate exercise of discretion by the Commission.

**[COMMENT:** Section 41.15 reorganizes and clarifies, but does not significantly alter, current procedures. It does spell out deadlines by which the Preservation Planner and the Commission must act on applications for Certificates of Appropriateness.

Subsection (7)(d) spells out the standard for Common Council review of Commission decisions related to “certificates of appropriateness.” Unlike the June 24 draft ordinance, which would give the Council almost unlimited discretion to reverse a Commission decision if it finds the reversal to be in the “public interest,” this ordinance requires the Council to apply the same ordinance standards that apply to the Commission. But, because the application of ordinance standards and the granting or denial of variances may involve some interpretation or exercise of discretion by the Commission, this draft allows the Council to substitute its interpretation for that of the Commission, or to find that the Commission improperly exercised its discretion.

#### **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 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.

**[COMMENT:** *This ordinance separates standards for landmarks and historic districts, for ease of reference. Section 41.16 spells out standards for issuing “certificates of appropriateness” related to landmarks.*

*Section 41.16 clarifies current ordinance standards. Section 41.16(1) states that the Commission “shall” issue a certificate that meets all applicable standards, and “shall” deny a certificate that fails to meet any applicable standard unless the Commission grants a variance from that standard under s. 41.18. This formulation provides somewhat greater certainty, and gives somewhat less scope for unfettered discretion. It also clarifies the purpose and scope of variances under s. 41.18 (they are variances from the standards under ss. 41.16 and 41.17, and NOT from other ordinance standards).*

#### **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.

**[COMMENT:** *This ordinance separates standards for landmarks and historic districts, for ease of reference. Section 41.17 spells out standards for issuing “certificates of appropriateness” related to historic districts. Note that these standards are district-specific, and may be somewhat different for each district. This draft eliminates confusing general standards that do not tie back to applicable district-specific standards, because each district is different. Certificates of appropriateness for landmarks in historic districts must comply with s. 41.16 as well as s. 41.17.*

*Section 41.17 states that the Commission “shall” issue a certificate that meets all applicable standards, and “shall” deny a certificate that fails to meet any applicable standard unless the Commission grants a variance from that standard under s. 41.18. This formulation provides somewhat greater certainty, and gives somewhat less scope for unfettered discretion. It also defines the purpose and scope of variances under s. 41.18 (they are variances from the standards under ss. 41.16 and 41.17, and NOT from other ordinance standards).*

#### **41.18 VARIANCES.**

**(1) When allowed.** The Commission may, at the request of a property owner and for the purpose of issuing a certificate of appropriateness under s. 41.15(1), grant a variance from one or more certificate standards under s. 41.16 or 41.17 if all of the following variance standards are met:

(a) The proposed variance applies to a specifically identified landmark or landmark site, or a specifically identified property in a historic district.

(b) The owner of the property under par. (a) files a variance request under sub. (5) for the purpose of obtaining a certificate of appropriateness under s. 41.15(1) related to that property.

(c) The Commission holds a public hearing on the variance request. The hearing may be held as part of a hearing on the proposed certificate of appropriateness, provided that the proposed variance is separately identified as a hearing topic. The hearing shall be preceded by notice as provided in s. 41.06.

(d) The variance provides relief from a standard under s. 41.16 or 41.17 that, if strictly applied to the subject property, would unreasonably and unnecessarily do any of the following:

1. Prevent the use of the property for an otherwise permitted purpose.
2. Deny the property owner a reasonable return on the owner's reasonable investment in the property. A standard under s. 41.16 or 41.17 does not deny a property owner a reasonable return on investment merely because it prevents the owner from achieving a higher return.

3. Preclude a superior design or method.

(e) The conditions justifying the variance are all of the following:

1. Unique to the property for which the variance is granted, and not typical of other landmarks or other properties in a historic district.
2. Outside the control of the property owner.
3. Documented by clear, credible and persuasive evidence.

(f) The variance is consistent with the general purpose and intent of the standard under s. 41.16 or 41.17 to which it pertains.

(g) The variance preserves or enhances the historic character and ambience of the landmark or historic district.

(h) The variance will not have a significant adverse effect on any property located on a tax parcel that is within 200 feet of any tax parcel on which the subject property is located.

(i) The variance is no broader than reasonably necessary, based on the conditions that justify the variance.

**(2) Evidence.** The Commission may publish evidentiary guidelines to assist applicants and ensure adequate documentation for Commission findings under sub. (1). The guidelines may suggest specific kinds of information that may constitute clear, credible and persuasive evidence under sub. (1)(e)3.

**(3) Variance shall be in writing.** A variance under sub. (1) shall be granted in writing. The variance shall clearly identify the subject property and certificate of appropriateness to which it pertains, the specific standards under s. 41.16 or 41.17 from which the variance is granted, and any variance terms and conditions under sub. (4).

**(4) Variance terms and conditions.** The Commission may grant a variance under sub. (1) subject to reasonable terms and conditions specified by the Commission. The Commission may require the requesters to meet with the Commission, the Preservation Planner, or other expert or affected persons, to discuss possible variance terms, conditions and alternatives.

**(5) Request for variance.** (a) A property owner shall submit a variance request under sub. (1) to the City Planning Department, to the attention of the Preservation Planner, on a form approved by the Commission. The request shall include all of the following:

1. The name and address of the property owner.
2. The location of the property to which the request pertains.
3. The specific standard or standards under s. 41.16 or 41.17 from which the property owner seeks a variance.
4. The conditions and supporting evidence that justify the variance.

(b) As soon as reasonably possible, but no later than 30 days after the Preservation Planner receives a request under par. (a), the Preservation Planner shall either refer the request to the Commission or deny the request for lack of completeness. The Preservation Planner shall not evaluate the strength of the requester's supporting evidence under par. (a)4. when determining completeness, but shall leave that evaluation to the Commission.

**(6) Commission decision.** The Commission shall grant or deny a variance request within 60 days after it receives the request under sub. (5)(b), except that the Commission may extend that deadline with the written agreement of the requester. If the Commission denies a variance request, its decision shall include the reasons for denial and a notice of appeal rights under sub. (7).

**(7) Appeal to Common Council.** (a) *Who may appeal.* Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify a Commission decision under sub. (6):

1. The property owner who requested the variance.
2. The Alder for the district in which the subject property is located.
3. The owner of a tax parcel located within 200 feet of a tax parcel on which all or part of the subject property is located.

(b) *Appeal standards and procedures.* An appeal under par. (a) is governed by the same standards and procedures that apply under s. 41.15(7) to an appeal of a Commission decision under s. 41.15(6), and may be included as part of such an appeal.

**[COMMENT: Section 41.18 provides a clearly defined "variance" procedure, rather than a vague and open-ended "waiver" procedure that could systematically undermine ordinance standards. It uses the term "variance" rather than "waiver," because "variance" connotes a limited action based on conditions unique to the subject property, rather than a sweeping generic "waiver" of ordinance standards enacted by the Common Council. An open-ended "waiver" procedure invites abuse, and could lead to a flood of contentious appeals.]**

## **Subchapter V Enforcement and Penalties**

### **41.19 ENFORCEMENT AND PENALTIES.**

**(1) General.** The Commission shall administer and enforce this chapter, except that the City Building Inspection Division shall also enforce the maintenance requirements under ss. 41.09 and 41.13. In the exercise of their enforcement responsibilities under this chapter, authorized agents of the Commission and the City Building Inspection Division may inspect properties, issue warning notices and compliance orders, and refer cases to the City Attorney for court enforcement.

**(2) Restoration orders.** The Commission may issue restoration orders as provided under s. 41.10(4), 41.11(4) and 41.14(4).

**(3) Court injunctions.** 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 an order legally 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.



**(4) Penalties.** A person who violates this ordinance 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.

**[COMMENT: The sections cited in sub. (2) clarify and expand the Commission's current authority to issue restoration orders, as appropriate. Subsection (3) is new. Subsection (4) clarifies, but does not significantly alter, current penalties.]**

## **Subchapter VI Planning, Coordinating and Promoting Historic Preservation**

### **41.20 PLANNING, COORDINATING AND PROMOTING HISTORIC PRESERVATION.**

**(1) Landmarks commission.** The Commission shall do all of the following:

(a) Promote and facilitate historic preservation in the City of Madison, consistent with this chapter. The Commission may accept gifts and grants for the purpose of historic preservation, consistent with this chapter, and shall deposit those gifts and grants to a City fund specifically designated for that purpose.

(b) Promote public information, education and tourism related to the historic heritage of the City of Madison, including landmarks and historic districts designated under this chapter.

(c) Prepare, implement and periodically update historic preservation plans, surveys and inventories.

(d) Compile, organize and maintain records of historic resources within the City, regardless of whether those resources are designated landmarks or located in designated historic districts.

(e) Work with other City agencies to install signs identifying designated historic districts.

(f) Work with appropriate Wisconsin officials representing the National Register of Historic Places of the United States National Park Service to promote historic preservation and to facilitate the designation, as National Register landmarks, of landmarks that are designated under this chapter.

(g) Provide information and assistance related to the preservation of historic properties throughout the City. This may include suggestions related to voluntary preservation practices, and available sources of funding and technical assistance.

**(2) Inter-agency coordination.** The Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments shall coordinate their activities in order to do all of the following:

(a) Ensure effective administration and enforcement of this chapter.

(b) Ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.

(c) Identify and preserve important historic resources.

(d) Call public attention to designated landmarks and historic districts.

(e) Preserve and where possible enhance the historic character and ambience of designated landmarks and historic districts.

*[COMMENT: Section 41.20 consolidates and expands current provisions related to planning, coordinating and promoting historic preservation. This section eliminates current language that authorizes the Commission to engage in active lobbying and solicitation of funds.]*

**Subchapter VII  
Designated Historic Districts; District-Specific Standards**

**41.21 MANSION HILL HISTORIC DISTRICT**

[Same as current ordinance]

**41.22 THIRD LAKE RIDGE HISTORIC DISTRICT**

[Same as current ordinance]

**41.23 UNIVERSITY HEIGHTS HISTORIC DISTRICT**

[Same as current ordinance]

**41.24 MARQUETTE BUNGALOWS HISTORIC DISTRICT**

[Same as current ordinance]

**41.25 FIRST SETTLEMENT HISTORIC DISTRICT**

[Same as current ordinance]