

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: June 23, 2010

**MEMORANDUM**

TO: Landmarks Commission, Plan Commission

FROM: Katherine C. Noonan, Asst. City Attorney

RE: The Landmarks Ordinance as a Zoning Ordinance

The existing Landmarks Ordinance, Sec. 33.19, MGO, was not adopted as part of the City's Zoning Code (Chapter 28, MGO). Because it was not adopted under the zoning power of Wis.Stat. §62.23(7), it is not subject to any of the requirements of this statutory provision. The existing relationship of the Landmarks Ordinance and the Zoning Code is found in Sec. 28.106, titled, Historic District Suffixes. The purpose of this zoning ordinance is to identify those zoning lots that are in historic districts or where landmarks are located and to require such lots to comply with the applicable provisions of Sec. 33.19.

Sec. 28.106 is as follows:

**28.106 HISTORIC DISTRICT SUFFIXES.**

- (1) Statement of Purpose and Applicability. Historic District suffixes are created to provide an effective means of identifying zoning lots which are either located within a designated Historic District or upon which is located a designated landmark, pursuant to the provisions of Section 33.19, Madison General Ordinances. The appropriate suffix for a designated landmark or respective Historic District as created hereunder shall be appended to the current and any future zoning district classification of each zoning lot so affected and the suffix shall also be appended to zoning district classifications on Zoning District Maps maintained by the Zoning Administrator. The suffix designation has no effect upon the principal zoning district classification of said zoning lots. However, the applicable regulations of Chapter 33.19 which are referenced by the respective suffix shall apply to each said zoning lot in addition to the applicable requirements of the Zoning Code.
- (2) HIST-L Designated Landmark. The HIST-L suffix applies to all zoning lots on which a designated landmark is located pursuant to Section 33.19(4) and (6), Madison General Ordinances, and the owner of each such zoning lot is notified that the landmark located thereon and the landmark site shall be maintained in a condition consistent with the provisions of Section 33.19, in addition to the applicable requirements of the Zoning Code.
- (3) HIST-MH Mansion Hill Historic District. The HIST-MH suffix applies to all zoning lots located within the Mansion Hill Historic District and the owners of such zoning

- lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Section 33.19 and the specific provisions of Section 33.19(10), in addition to the applicable requirements of the Zoning Code.
- (4) HIST-TL Third Lake Ridge Historic District. The HIST-TL suffix applies to all zoning lots located within the Third Lake Ridge Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Section 33.19 and the specific provisions of Section 33.19(11), in addition to the applicable requirements of the Zoning Code.
- (5) HIST-UH University Heights Historic District. The HIST-UH suffix applies to all zoning lots located within the University Heights Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Section 33.19 and the specific provisions of Section 33.19(12), in addition to the applicable requirements of the Zoning Code.
- (Cr. by Ord. 8974, 9-25-86)
- (6) HIST-MB Marquette Bungalows Historic District. The HIST-MB suffix applies to all zoning lots located within the Marquette Bungalows Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Section 33.19 and the specific provisions of Section 33.19(13), in addition to the applicable requirements of the Zoning Code. (Cr. by Ord. 10,871, Adopted 3-15-94)
- (7) HIST-FS First Settlement Historic District. The HIST-FS Suffix applies to all zoning lots located within the First Settlement Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered, and demolished or reconstructed in accordance with the applicable general provisions of Section 33.19 and the specific provisions of Section 33.19(14), in addition to the applicable requirements of the Zoning Code. (Cr. by Ord. 13,048, 5-7-02)

The above zoning ordinance requires compliance with the Landmarks Ordinance. Pursuant to Wis. Stat. §13.48(13), the State, as well as its agencies, boards, etc., is subject to local zoning ordinances, including Sec. 28.106.

The new Zoning Code, introduced by the Common Council in September, 2009, creates the Landmarks Ordinance as zoning overlay districts. As a zoning ordinance, the Landmarks Ordinance would be subject to the provisions of Wis. Stat. §62.23(7). There are provisions in the existing Landmarks Ordinance that could not be maintained were it to become a zoning ordinance because they conflict with Wis. Stat. §62.23(7).

For example, only the Zoning Board of Appeals can grant variances to zoning ordinances, therefore the Landmarks Commission would no longer have jurisdiction over variances. Furthermore, all provisions of the Landmarks Ordinance would be

subject to a variance request by a property owner, unlike the existing Landmarks Ordinance that allows variances only in specified circumstances. In addition, as a zoning ordinance, any challenged interpretation of the Landmarks Ordinance would be heard by the Zoning Board of Appeals. Further review of the Landmarks Ordinance may identify additional conflicts or required changes that will necessitate amendments to the Landmarks Ordinance if it becomes a zoning ordinance.