

DATE: October 19, 2014

TO: Madison City Council, Ad Hoc Committee on Landmarks Ordinance Revision  
Amy Scanlon, Preservation Planner  
John Strange, Assistant City Attorney

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

SUBJECT: **Comments on Draft Landmarks Ordinance**

Please accept the following comments on sections (7) to (9) of the draft Landmarks Ordinance, which the Ad Hoc Committee will consider on October 22, 2014. These are essentially the same comments that I submitted for the October 9 meeting, with a few refinements. These comments reflect the general sense of our committee, although we are still discussing a few minor points that we may bring to you at a later date.

### **General Comments**

We would like to commend the Ad Hoc Committee for its tentative decision, on October 9, to reorganize the draft landmarks ordinance. You will not regret this decision. We think most people can agree on the need for a state-of-the-art ordinance that provides greater clarity, transparency and certainty for all persons affected. The proposed new chapter on Historic Preservation will make it easier to achieve these goals.

Regardless of the ultimate content of the new ordinance, we pledge to help create a clear, well-organized final product that Madison can be proud of. In addition to submitting substantive comments, we will continue to offer specific draft language for your consideration. We understand that you face some hard policy decisions, and that you may not adopt all of our suggested language as proposed; but we hope that it will be helpful.

Attached *Appendix A* incorporates our latest thinking on how the current ordinance might be organized into a new chapter 41 (Historic Preservation). *Appendix B* shows how subsections (7) to (9) of the current draft could be redrafted in the new ch. 41 format. Before your next meeting on November 6, we hope to provide you with draft language showing how sections (10) to (15) could also be redrafted in this new format. We believe that these organizational and drafting changes will provide a clearer, more readable ordinance.

### **Comments on Subsections (7) to (9)**

Under a new ch. 41 format (see *Appendix A*), current subsections (7) to (9) would be numbered as sections 41.07, 41.08 and 41.12, respectively. *Appendix B* shows how these sections could be redrafted. Yellow highlights indicate refinements since the last Ad Hoc committee meeting (some based on Ad Hoc Committee comments). We have included a few explanatory comments (also in yellow highlight) with the draft text.

### **Subsection 7 (proposed section 41.07, “Designating Landmarks”)**

The attached redraft clarifies current standards and procedures, and makes the following substantive changes:

1. It clarifies that a site may be designated as a landmark if it has important archaeological or anthropological significance, or likely significance (based, for example, on preliminary archaeological studies).
2. It allows the Common Council, upon recommendation of the Landmarks Commission, to supplement the original landmark designation in order to enhance landmark protection (the procedure would be the same as for original designation). This is a slightly more flexible version of current subsection (7)(f), which is seldom if ever used.

### **Subsection 8 (proposed section 41.08, “Rescinding a Landmark Designation”)**

The attached redraft clarifies current standards and procedures, and makes the following substantive changes:

1. It provides that the Common Council may not rescind a landmark designation over the objection of the Commission, except by a two-thirds vote (a majority vote is sufficient if the Landmarks Commission recommends the rescission).
2. It clarifies who may request rescission (the landmark owners, all of whom must join in the request).
3. It clarifies and expands the current rescission options:
  - a. It leaves the current “unable to find buyer” rescission option intact, but makes it more concise.
  - b. It expands the “changed appearance” rescission option to some degree, by allowing the Commission to consider a substantial change in the appearance or condition of the landmark, or in the circumstances that prompted the original landmark designation, such that the landmark no longer reasonably qualifies for landmark designation. Neither this draft nor the current ordinance allow rescission based on a change caused by owner action or neglect.

### **Subsection 9 (proposed section 41.12, “Designating and Amending Historic Districts”)**

The attached redraft does all of the following:

1. It clarifies, but does not substantially alter, the current process by which the Common Council establishes historic districts by ordinance after considering the recommendations of the Landmarks Commission and the City Plan Commission (the Landmarks Commission prepares a recommended draft ordinance for Common Council consideration). Our redraft adds that district boundaries must be reasonably drawn in relation to the area of historic significance, and it clarifies the procedure by which the Landmarks Commission and City Plan Commission coordinate their recommendations to the Common Council.

2. It allows for the amendment of a historic district designation. Amendments may include 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.
3. It eliminates current references to “guidelines” (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 deal in legal standards, not “guidelines” that can result in vagueness, inconsistency, weak compliance and potential abuse of administrative authority.
4. It avoids creating “one-size-fits-all” prescriptive standards for development in historic districts, since every district is somewhat different. Under our redraft, the ordinance designating a historic district must include district-specific standards to ensure that new structures (and alterations to existing structures) are compatible with the purpose of the district; that they are compatible with nearby 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. The Commission must develop the draft standards in consultation with a committee of affected citizens nominated by the neighborhood association and Alder. Our redraft identifies various *kinds* of development standards that may be considered for each district. But it stops short of specifying prescriptive standards that apply to all districts.
5. It clarifies that an area may qualify for historic district designation if it has important archaeological or anthropological significance, or likely significance (for example, based on a preliminary archaeological investigation).
6. It requires the Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments to coordinate their activities in order to call public attention to designated historic districts, and to preserve and where possible enhance the historic character and ambience of the districts. It also requires the Landmarks Commission to work with other City commissions and departments to ensure that historic preservation is an integral consideration in city planning, zoning and operating practice. This expands upon the current ordinance, which merely requires the Landmarks Commission to assist other City planning efforts to visually define and highlight historic districts.

Please see APPENDICES attached:

*Appendix A: Proposed Outline of New Ordinance Chapter 41*

*Appendix B: Proposed Redraft of Ordinance Subections (7) to (9),  
shown in new Chapter 41 format*

# ***Appendix A***

## **Chapter 41 – Historic Preservation**

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

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

### **Subchapter II – Landmarks Commission**

- 41.04 Authority and duties
- 41.05 Preservation planner
- 41.06 Hearings and public notices

### **Subchapter III – Historic Landmarks**

- 41.07 Designating landmarks (*see draft attached*)
- 41.08 Rescinding a landmark designation (*see draft attached*)
- 41.09 Maintaining landmarks
- 41.10 Altering landmarks
- 41.11 Demolishing landmarks

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

- 41.12 Designating and amending historic districts (*see draft attached*)
- 41.13 Maintaining structures in historic districts
- 41.14 Constructing and altering structures in historic districts
- 41.15 Demolishing structures in historic districts

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

- 41.15 Certificates of appropriateness; general
- 41.16 Landmarks; standards for certificates of appropriateness
- 41.17 Historic districts; standards for certificates of appropriateness
- 41.18 Variances

### **Subchapter V – Penalties and Enforcement**

### **Subchapter VI – Coordination and Outreach**

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

- 41.\_\_\_ Mansion Hill historic district
- 41.\_\_\_ Third Lake Ridge historic district
- 41.\_\_\_ University Heights historic district
- 41.\_\_\_ Marquette Bungalows historic district
- 41.\_\_\_ First Settlement historic district

## Appendix B

### 41.07 DESIGNATING LANDMARKS.

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

*[COMMENT: Re-define "Landmark" to mean "a site, improvement, or site with improvements that is designated as a landmark under s. 41.07" (remove current substantive material, which largely duplicates designation standards under sub. (2)). Define "Landmarks Commission," or "Commission," to mean the commission created under s. 33.19.]*

**(2) Designation standards.** A site, improvement, or site with improvements may be designated as a landmark if any of the following apply:

(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, or likely significance.

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

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

*[COMMENT: Par. (c) clarifies that a site may be designated as a landmark if it has important archaeological or anthropological significance, or likely significance (based, for example, on preliminary archaeological information).]*

**(3) Requesting designation.** Any person may request that a site, improvement, or site with improvements located in this City be designated as a landmark. The person shall submit the request to the Landmarks Commission on a landmark nomination form provided by the Commission. The request shall clearly identify and delineate the proposed landmark, and shall clearly explain and document why it qualifies under sub. (2) for designation as a landmark. The Commission may ask the requesters to submit additional relevant information and documentation as needed.

*[COMMENT: The highlighted language in sub. (3) reflects Ad Hoc Committee preferences expressed at the Oct. 9 meeting]*

**(4) Commission review and public hearing.** When the Commission determines that a request under sub. (3) is complete, it shall review and hold a public hearing on the request. 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. The Commission may subpoena relevant witnesses and evidence if necessary.

**(5) Commission action.**

(a) After the Commission completes its review and holds a public hearing under sub. (4), it shall make and submit to the Common Council a recommendation supporting or opposing the requested landmark designation. The Commission may support the requested designation in a modified form recommended by the Commission, subject to recommended terms and conditions that are consistent with this chapter. The Commission shall provide the Common Council with a written report that explains 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.**

(a) The Common Council, after considering the Landmarks Commission report and recommendation under sub. (5) shall do one of the following:

1. Designate the landmark according to the Commission's recommendations, subject to any modifications that the Common Council may deem appropriate consistent with this chapter.
2. Decline to designate the landmark as recommended by the Commission.

(b) The City Clerk shall promptly notify the City Building Inspection Division and the City Assessor of any landmark designation under par. (a), and shall record the landmark designation at City expense with the Dane County Register of Deeds.

**(7) Supplementary terms and conditions.** At the request of **any person**, and upon recommendation of the Commission, the Common Council may at any time supplement the terms of a landmark designation to enhance the preservation and protection of the landmark. The procedure for supplementing the landmark designation shall be the same as for designating a landmark under this section.

**[COMMENT: Sub. (7) allows the Common Council, upon recommendation of the Landmarks Commission, to supplement the original Landmarks designation in order to enhance landmark protection (the procedure would be the same as for original designation). This provision would substitute for current sub. (7)(f), which is seldom if ever used. Highlighted language reflects Ad Hoc Committee preference expressed at the Oct. 9 meeting.]**

**(8) Landmark plaque.**

(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 shall be easily visible to passing pedestrians. The plaque 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) The plaque under par. (a) is, and remains, City property. No person may remove a plaque placed on a landmark under par. (a) without the approval of the Preservation Planner.

#### **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 according to this section. The Common Council may not rescind a landmark designation contrary to the recommendation of the Commission, except by a favorable two-thirds vote of all members.

*[Comment: Sub. (1) requires a 2/3 vote if Common Council rescinds a landmark designation contrary to Commission recommendation (a majority vote suffices if the Commission recommends rescission).]*

**(2) Requesting rescission.** The owners of a landmark may, at any time, request the rescission of a landmark designation. The owners shall submit the request to the Commission, on a form provided by the Commission. The request shall be signed by all of the owners of record of every tax parcel on which the landmark is wholly or partly located. The request shall explain the reasons for the proposed rescission, and shall include clear documentation showing that the proposed rescission qualifies under sub. (5).

**(3) Commission review and public hearing.** If the Commission determines that a request under sub. (2) is complete, it shall review and hold a public hearing on the request. 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. The Commission may subpoena relevant witnesses and evidence if necessary.

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

(a) After the Commission completes its review and holds a public hearing under sub. (3), the Commission shall make and submit to the Common Council a recommendation supporting or opposing rescission of the landmark designation. The Commission shall provide the Common Council with a written report that explains 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. (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 not be rescinded unless one of the following applies:

(a) *Owners unable to find buyer.* The landmark owners demonstrate by clear and persuasive evidence that they are unable, despite good faith efforts, to find a buyer who is willing to preserve the landmark. Evidence may include the current real estate listing and disclosure statements for the landmark; comparable real estate listings showing current market values; evidence showing the original real estate listing date for the landmark, and the dates of real estate showings; evidence showing the original listing amount and any subsequent changes; evidence showing the current assessed value of the landmark, the value of improvements made by the owners, and the routine costs of maintenance; and evidence showing all purchase offers and their amounts.

*[Comment: Par. (a) retains current provision, but makes it more concise.]*

(b) *Changed condition.* The landmark owners demonstrate all of the following by clear and persuasive evidence:

1. That there has been a substantial change in the physical appearance or condition of the landmark, or in the circumstances that prompted the original landmark designation, such that the landmark would no longer reasonably qualify for landmark designation under s. 41.07.

2. That the change under subd. 1. was not the result of any owner action or neglect, such as a failure to maintain the landmark.

*[Comment: Par. (b) expands current provision to give slightly more flexibility to rescind landmark designation (current provision allows rescission only for changed appearance). Neither this draft nor the current ordinance allow rescission based on a change caused by owner action or neglect.]*

**(6) Notice of rescission.** If the Common Council rescinds a landmark designation according to this section, 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.

**(7) Re-designation.** A landmark designation, once rescinded under this subchapter, may not be reinstated for at least 5 years following the effective date of the rescission.

*[COMMENT: Sub. (7) is consistent with the current ordinance. It was erroneously omitted from our previous draft proposal.]*

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#### **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.

##### **[COMMENTS:**

*This draft allows for the amendment of a historic district designation. Amendments may include 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.*

*Definitions: Re-define "historic district" to mean "an area designated as a historic district under subch. IV or subch. VI" (remove, from the current definition, substantive material that largely duplicates the standards under sub. (3) of this section). Under our proposed reorganization, subch. IV relates to the designation or amendment of historic districts, and sub. VI codifies existing historic districts.]*

(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 its 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 section clarifies, but does not change, the current roles of the Common Council, Landmarks Commission and Plan Commission.]**

**(2) Historic significance and boundaries.** An ordinance designating a historic district shall recite the basis for that designation. The recitation shall briefly explain how the historic district 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 associated within an area of particular archaeological or anthropological significance, or likely significance.

4. It embodies the distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, or method of construction, or 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: Par. (a)3. clarifies that a site may be designated as a landmark if it has important archaeological or anthropological significance, or likely significance (based, for example, on preliminary archaeological information). Paragraph (b) is new.]**

**(3) Construction and alteration of 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 invasive 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.

**[COMMENT: Define "invasive structure" to mean "a structure, identified in an ordinance creating or amending a historic district and constructed within 50 years prior to the date of that ordinance or ordinance amendment, which is within the historic district but not compatible with the historic character of the district.]**

(b) *Developing the standards.* The Commission shall develop draft standards under par. (a), for inclusion in its proposed ordinance designating the historic district, in consultation with an ad hoc committee of district residents nominated by the neighborhood association and Alders that represent the historic district.

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

1. Architectural elements.
2. Height, scale and gross volume.
3. Street façade width and height proportions.
4. Proportions and relationships between doors and windows in street facades.
5. The rhythm of solids to voids, created by openings between street facades.
6. Textures and materials used on street facades.
7. Roof configurations.
8. Landscape treatments.
9. The amount, shape, and pattern of open spaces and setbacks.
10. The directional expression of street 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.

**[COMMENTS:**

*This draft avoids prescribing specific standards applicable to all historic districts, because every district is somewhat different. The general ordinance spells out the kinds of standards that should be considered, but actual standards would be spelled out in the ordinances that create specific districts. The highlighted text incorporates some changes from our previous draft.*

*This draft eliminates current references to “guidelines” (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 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.** Any person may request the designation or amendment of a historic district. The person shall submit the request to the Landmarks Commission on a form provided 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. The Commission may ask the person to submit additional information and documentation as needed.

**(5) Landmarks Commission review and public hearing.** If the Commission determines that a request under sub. (4) is complete, it shall review and hold a public hearing on the request. 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. The Commission may subpoena relevant witnesses and evidence if necessary.

**(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 adoption or amendment of a historic district designation. The Commission may recommend adoption or amendment in the form proposed by the requesters, or in a modified form recommended by the Commission. 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 a new or amended historic district designation.

(b) *Referral to Plan Commission.* The Landmarks Commission shall refer a copy of its draft recommendation under par. (a) to the Plan Commission, for review under par. (c).

(c) *Plan Commission recommendation.* Within 60 days after the Plan Commission receives a copy of the Landmarks Commission's draft recommendation under par. (a), the 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, subject to specified changes.
3. Opposes the Landmarks Commission recommendation.

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

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

(e) *Notice of final draft referral.* The Landmarks Commission, upon referring its final draft recommendation to the Common Council under par. (d), 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)(d), 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 may deem appropriate consistent with this chapter.

(b) Decline to adopt an ordinance.

*[COMMENT: Subsection (7) clarifies the procedure by which the Landmarks Commission and City Plan Commission coordinate their referrals to the Common Council, but does not change the current authority of either Commission.]*

**(8) Coordination related to historic districts and historic preservation.** The Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments shall coordinate their activities in order to call public attention to designated historic districts, and to preserve and where possible enhance the historic character and ambience of the districts. The Landmarks Commission shall also work with other City commissions and departments to ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.

*[COMMENT: Subsection (8) is an expansion of the current ordinance, which merely requires the Landmarks Commission to assist other City planning efforts to visually define and highlight historic districts. Subsection (8) could be moved to a separate subchapter VI related to "Coordination and Outreach" (see chapter outline).]*