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RE: proposed amendments to Chapter 41 of Madison Code of Ordinances

In response to your request for review of amendments proposed by Smart Growth Greater Madison to Chapter 41 of Madison's Code of Ordinances, the State Historic Preservation Office (SHPO) submits the following comments to the Madison Landmarks Commission.

Prior to any amendments proposed during this round of LORC revisions, Chapter 41 meets the standards in state law relative to the designation of individual landmarks and historic properties and districts. Chapter 41 and the Landmarks Commission's processes also meet federal and state standards for participation in the federal Certified Local Government partnership program.

Regarding proposed revisions to Chapter 41 that would define the applicability of the 200-foot rule, including 41.03(5), 41.18(2)(h), 41.26(2)(a), 41.27(1)(a), 41.27(3)(a), 41.27(4)(a-b), and 41.27(5)(a):

The visual relationship of buildings in a historic district (existing or new construction) to other properties in the same historic district is typically used as a measure of compatibility with the historic character of the district. Visual characteristics of buildings in a historic district like height, massing, roof shape, setback, materials, fenestration, and rhythm of solids and voids all contribute to an overall sense of the historic environment. Buildings outside of a historic district are intentionally excluded from the boundaries of the district because they are fundamentally different from those included in the district and do not contribute to the character of the district. State statute [62.23\(7\)\(em\)2m](#) requires that repair of designated historic buildings, including those in historic districts, owners "*use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.*" Using properties intentionally excluded from the historic district to measure compatibility within the district defies best practices for conservation of historic character.

Regarding proposed revisions to 41.07(3):

If it is the opinion of the city attorney's office that the provision for protest petitions in Chapter 28 of Madison's Code of Ordinances is applicable to the Landmarks Commission's consideration of a nomination for historic designation, then the SHPO would interpret this as a provision to opt out of historic designation. This type of provision violates the requirements of the Certified Local Government partnership program in Wisconsin, which provides grant funding to participating communities for historic preservation planning projects. Adding such a provision to Chapter 41 would jeopardize Madison's CLG status.

Regarding proposed revisions to 41.08(2):

If the rescission process for historic designation may be initiated by "any person," the process for approving a rescission should be equivalent to the process for designation in terms of notification and public hearings. Historic designation provides tangible and intangible benefits to the property owner. Allowing any person to request rescission of the designation would undercut the owner's access to those benefits and could negatively impact the owner's due process. Therefore, the process for approving a rescission should afford the owner sufficient opportunity to influence the process.

Rescission of Landmark designation should be based on clear evidence that a designated Landmark no longer serves the purpose of designation stated in section 41.01 - to "*represent the City's unique heritage, contribute to the health, prosperity, safety, and welfare of the City's residents.*" Landmark designation is a formal recognition by the Landmarks Commission, affirmed by the Common Council, that a place meets the criteria of significance articulated in 41.07(2). By designating a Landmark, the Commission and the Common Council recognize that a place has cultural value to the whole community.

Our office is available for advice on subsequent drafts of this ordinance if it would be helpful.



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