

**From:** [Jeffrey Vercauteren](#)  
**To:** [Schmidt, Chris](#); [Clear, Mark](#); [Rummel, Marsha](#); [Bidar-Sielaff, Shiva](#); [King, Steve](#)  
**Cc:** [Scanlon, Amy](#); [Strange, John](#)  
**Subject:** Materials for Next LORC Meeting  
**Date:** Sunday, July 20, 2014 4:49:24 PM  
**Attachments:** [Vercauteren Landmarks Ordinance Comparison.pdf](#)  
[Vercauteren Landmarks Purpose and Intent Revisions.pdf](#)

---

Hello all,

Please find attached two documents I plan to present at the next Landmarks Ordinance Review Committee meeting. The first document is an overview of certain provisions from landmarks ordinances in other municipalities. The second document contains recommended revisions to the Purpose and Intent section of the ordinance. I look forward to discussing these on Wednesday.

Thanks,

Jeff Vercauteren  
Associate Attorney  
**CULLEN WESTON PINES & BACH LLP**  
122 West Washington Avenue, Suite 900  
Madison, Wisconsin 53703  
608.310.3322 (Office) | 608.445.9384 (Mobile)  
[vercauteren@cwpb.com](mailto:vercauteren@cwpb.com) | [www.cwpb.com](http://www.cwpb.com)

"This is a transmission from the law firm of Cullen Weston Pines & Bach LLP and may contain information which is proprietary, privileged, confidential, and protected by the attorney-client or attorney work product privileges. If (a) you are not the addressee or (b) you are not the intended recipient, that is, your e-mail address was used in error by the sender, you should know that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this transmission in error, please delete and/or destroy it and, if we have not already realized our error and contacted you, notify us immediately at our telephone number (608) 251-0101."

## OVERVIEW OF LANDMARKS ORDINANCES

This document provides an overview of certain provisions in landmarks and historic preservation ordinances from a representative class of municipalities of varying population sizes and geographic locations to serve as background information for consideration by the Ad Hoc Landmarks Ordinance Review Committee. These provisions are for information only and should not be considered policy recommendations for the committee at this time.

The document is organized by the following sections frequently found in landmarks and historic preservation ordinances:

1. Purpose and Intent
2. Definitions
3. Approval Standard
4. Standard of Review
5. Landmark and Historic District Designation
6. Commission Membership

---

### 1. Purpose and Intent

Many ordinances include statements of purpose and intent similar to the language of the current ordinance; the following are examples of provisions not included in the current ordinance:

- Purpose includes “encouraging new development to sensitively incorporate historic structures and artifacts.” *Portland Ord. 33.846.030(A)*.
- Purpose includes “to enhance property values and to increase economic and financial benefits to the city and its inhabitants.” *Riverside Ord. 20.05.010*.
- Purpose includes to stabilize and improve property values, strengthen the economy of the city, and combat urban blight and decay. *Wichita Ord. 2.12.1017*.

### 2. Definitions

The current ordinance lacks definitions for several key terms that are found in other municipal ordinances, such as “contributing feature,” “compatibility,” and “demolition by neglect.” Additional definitions could be considered, including the following:

- “Compatibility” means a positive relationship to existing buildings and their environs based on the individual visual character of the area. Compatibility considers the relationship between buildings and structures within view of the property, placing greater weight on adjacent historic structures. *Savannah Ord. 8-3030*.

- “Contributing Feature” means “a significant building, site, structure, or object which adds to the architectural qualities, character-defining features, historic association, or archeological values” of a landmark or historic district because it was present during the historic period or reflects significant historic character. *Wichita Ord. 2.12.1016.*
- “Demolition by neglect” means lack of maintenance that results in deterioration and threatens the preservation of the structure. *Austin Ord. 25-11-211(6).*
- “Non-Contributing Feature” means “a building, site, structure, or object that does not add to the architectural qualities, character-defining features, historic association, or archeological values” of a landmark or historic district because it was not present during the historic period or no longer reflects significant historic character. *Wichita Ord. 2.12.1016.*
- “Unnecessary hardship” exists where (1) the existing property cannot yield a reasonable return, (2) the plight is due to unique circumstances, and (3) hardship is not the result of any act or omission of the applicant. *Des Moines Ord. 58-63.*

### **3. Approval Standard**

The current ordinance contains certain standards the Commission can consider in approving or denying a certificate of appropriateness. The following are examples of approval standards used in other municipalities:

- Factors the commission shall consider include whether (1) architecture is “sensitive to the mass and proportions of existing structures on the site or within the district,” (2) architecture is “clearly differentiated from nearby historic structures, while taking cues from them,” and (3) structure is “not structurally or economically feasible to preserve” (excluding demolition by neglect). *Milwaukee Ord. 320-21-11-g-h.*
- The commission shall issue a certificate if it finds the interest of historic preservation (1) will not be adversely affected by demolition or (2) will be best served by relocation of the structure, considering factors such as the state of repair of the building, the reasonableness of the cost of restoration, existing or potential usefulness, and the character of the neighborhood. *Austin Ord. 25-11-244(C).*
- The commission shall approve a certificate where (1) the historic integrity of the building has been irretrievably lost, (2) the structure lacks historic or architectural significance, (3) preservation of the landmark is not technically or economically feasible, and (4) there is no feasible alternative to demolition. *Akron Ord. 31.395.*

#### **4. Standard of Review**

- Standard of review is abuse of discretion or procedural error. *Savannah Ord. 8-3030(o)*.
- City council shall consider whether commission acted according to law and whether the commission's action was "patently arbitrary or capricious." *Des Moines Ord. 58-31(f)*.
- Decision is reviewed *de novo* after a hearing within 90 days. *Lexington Ord. 13-8*.

#### **5. Landmark and Historic District Designation**

- Property owner must consent to landmark designation and all owners of property within proposed historic district must consent to creation of district. *Portland Ord. 33.846.030(C)(3)*.
- Proposed landmark must "be of special significance in terms of its historical, prehistorical, architectural, archaeological, and/or cultural importance, and possess integrity of design, setting, workmanship, materials, feeling and/or association." *Raleigh Ord. 10-1053(a)*.

#### **6. Commission Membership**

- Nine members, including one real estate professional, one construction professional, one architect, one historian, and one archaeologist. *Stockton Ord. 16.220.040*.

## PROPOSED REVISIONS TO PURPOSE AND INTENT SECTION OF LANDMARKS ORDINANCE

This document provides proposed revisions to the Purpose and Intent section of the Landmarks Ordinance included in the draft referred to the Ad Hoc Landmarks Ordinance Review Committee on July 1, 2014 as Legistar 34577. These revisions are based on the following ordinance provisions found in other municipalities:

- Purpose includes “encouraging new development to sensitively incorporate historic structures and artifacts.” *Portland Ord. 33.846.030(A)*.
- Purpose includes “to enhance property values and to increase economic and financial benefits to the city and its inhabitants.” *Riverside Ord. 20.05.010*.
- Purpose includes to stabilize and improve property values, strengthen the economy of the city, and combat urban blight and decay. *Wichita Ord. 2.12.1017*.
- Purpose includes to “ensure complementary, orderly, and efficient growth and development.” *Lexington Ord. 13-1(a)*. One goal is that new structures shall be compatible with the visual and aesthetic character to be preserved so as to stabilize and improve property values. *Lexington Ord. 13-1(c)(6)*.
- Purpose includes “to insure the harmonious, orderly and efficient growth and development of the municipality.” *Charleston Ord. 54-230*.

---

(1) Purpose and Intent. It is hereby declared a matter of public policy that the preservation, protection, enhancement, perpetuation and use of improvements of architectural, archaeological, and anthropological significance; historical interest; special character; and cultural value is a public necessity to foster the health, prosperity, safety and welfare of the people. The purpose of this section is to:

(a) Effect and accomplish the protection, enhancement, perpetuation and use of such improvements and of districts which represent or reflect elements of the City’s cultural, social, economic, political, archaeological, anthropological, and architectural history.

(b) Understand and Ssafeguard the City’s historic and cultural, archaeological and anthropological heritage and cultural landscape, as embodied and reflected in such landmarks and historic districts.

(c) Encourage new development that sensitively incorporates the character of landmarks and historic districts.

(de) Stabilize and improve property values, and increase economic and financial benefits to the City and its residents.

(e) Ensure complementary, orderly, and efficient growth and development compatible with the character of landmarks and historic districts.

(fe) Foster civic pride in the beauty and noble accomplishments of the past.

(ge) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry, thereby strengthening the economy of the City.

(hf) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City, and encourage continued investment and vibrancy in landmarks and historic districts.

(i) Provide clarity in the standards for approval and the review process for proposals affecting landmarks or historic districts.