

Legistar File No. 86649 Body - Version 2

DRAFTER’S ANALYSIS: This proposed ordinance changes how demolition applications are reviewed by city staff and the Plan Commission. Under the current MGO 28.185, all applications for demolition are approved by the Plan Commission. This change proposes that only demolitions of buildings determined by the Landmarks Commission to have historic value by the Landmarks Commission will require Plan Commission approval. All demolitions of non-historic buildings can be processed administratively after Landmarks Commission reviews for historic value.

Currently, all principal buildings proposed for demolition are first reviewed by the Landmarks Commission for historic value. This proposed change would maintain that review for all applicants. The Landmarks Commission would review the proposed demolition for historic value and assign a Category (either A, B, or C) to the application. The descriptions of Categories A, B, and C are codified in the new subsection MGO 41.28. Category C demolitions, or those with no known historic value, will then be processed administratively. Category A and B applications, or those with historic value, move to the Plan Commission for review and approval. The Landmarks Commission already assigns a designation to all applications using similar methodology.

The Plan Commission will then evaluate the proposed demolition under the new standards in MGO 28.185(6)(c). Staff believes the new standards will help Commissioners better determine if a historic building should be demolished.

The substitute responds to questions and feedback staff and policymakers have received in relation to the proposed ordinance. The purpose of these changes is to:

- Update the purpose statement to include a statement about the value of historic preservation and ensure that this does not unintentionally suggest a priority for growth concerns over preservation concerns.
- Provide several clarifications, including:
 - That Building Inspection’s authority to approve demolitions without Landmarks review is for buildings that are an imminent danger to the public (in 28.185 (5) (a))
 - That Plan Commission will not only receive but also consider Landmarks Recommendations on value (in 28.185 (6) (b))
 - Provide clarity to distinguish between the two proposed standards for Plan Commission approval and the potential factors they may consider in finding the second standard met (in 28.185 (6) (c))
 - Introduce subchapter 41H in the Landmarks Ordinance to make it clearer that the Landmarks Commission value review is for all proposed demolitions, not just those in historic districts (to proceed the text of 41.28)
 - More explicitly state how certain types of historic findings would apply within the proposed Historic Value Categories (i.e. individual buildings that are in the National Register of Historic places and sites with archaeology)

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 28.185 entitled “Approval of Demolition (Razing, Wrecking) and Removal” of the Madison General Ordinances is repealed and recreated as follows:

“28.185 APPROVAL OF DEMOLITION OF PRINCIPAL BUILDINGS.

(1) Statement of Purpose. It is hereby declared as a matter of public policy that the careful consideration of requests to demolish principal buildings with historic value is a public necessity and required in the interest of the health, prosperity, safety, and welfare of the people. The City recognizes that historic resources are cultural and economic assets that can attract residents and visitors, create jobs, stabilize and improve property values.

and stimulate business and industry. It is further a matter of public policy that the City balances its general interest in preserving buildings with historic interest with its ~~need~~ general interest to accommodate the growth of its population and built environment.

- (2) General. Demolitions of principal buildings are subject to the requirements of this section. No principal buildings shall be demolished without either administrative or Plan Commission approval.
- (3) Application. Any Eligible Applicant under MGO Sec. 28.181(2) may submit an application for a demolition approval for a principal building, as defined by MGO Sec. 28.211, to the Director of the Building Inspection Division. Thirty (30) days prior to the filing of an application for demolition, the applicant or their agent is required to notify a list of interested persons registered with the City. Application completeness is subject to MGO Sec. 28.181(4), and applications shall contain the following information:
 - (a) A clear, detailed and completed statement and description of the building proposed for demolition and the reason for requesting the demolition.
 - (b) If known to the applicant, the date the building proposed for demolition was constructed.
 - (c) A description of the proposed method and timeline of the demolition.
 - (d) A statement regarding whether the applicant is also seeking a Zoning Map amendment pursuant to MGO Sec. 28.182(10) or conditional use pursuant to MGO Sec. 28.183 in conjunction with the requested demolition.
 - (e) If likely to be deemed to have historic interest, the proposed plan(s) to mitigate the adverse effects to Madison's cultural landscape. If applicable, a description of the efforts that the applicant has taken or will take to relocate the building to another site rather than demolish it.
 - (f) If proposed for relocation, information regarding the applicant's preliminary assessment that relocation is likely to be structurally and legally feasible.
 - (g) Photos of the interior and exterior of each principal building to be demolished sufficient to indicate its character and condition.
- (4) Review for Historic Value. Applications for demolition of a principal building shall be reviewed by the Landmarks Commission, unless exempted under subsection 5(a) or (b) below. The Landmarks Commission shall provide input to the Building Inspection Division and Plan Commission regarding the historic value of the property with the building proposed for demolition, and assign a Category (A, B or C) to each application pursuant to MGO Sec. 41.28.
 - (a) If the Landmarks Commission determines that the proposed demolition is a Category C demolition, the demolition may be approved administratively under sub. (5)(c) below.
 - (b) If the Landmarks Commission determines that the proposed demolition is a Category A or B, then the Plan Commission shall consider the demolition under sub. (6).
 - (c) Nothing in this subsection eliminates the requirement in MGO Secs. 41.09(1)(c) and 41.12(3) that the demolition of landmark structures or structures in historic districts must also be approved by the Landmarks Commission through the issuance of a Certificate of Appropriateness.
- (5) Administrative Approval. Applications for the demolition of a principal building may be administratively approved by the Director of Building Inspection in any of the following circumstances:

- (a) The Director of the Building Inspection Division finds that the building proposed to be demolished is structurally unsound and an imminent danger to the public, subject to an appeal as provided in MGO Sec. 29.21. The applicant may support the request with the report of a licensed architect or engineer certifying and providing reasons that the building is structurally unsound.
 - (b) The building proposed for demolition is identified for demolition in a Campus Institutional Master Plan that has been approved by the Common Council pursuant to MGO Sec. 28.097(6).
 - (c) The Landmarks Commission has reviewed any other proposed demolition under MGO Sec. 41.28 and found that the demolition is a “Category C” Demolition.
- (6) Plan Commission Approval. The Plan Commission shall hold a public hearing on any demolition application that is not approved administratively under sec. (5) above.
- (a) Public Hearing Required. If the applicant for a demolition approval requests an amendment to the Zoning Map pursuant to MGO Sec. 28.182(10) or a conditional use approval pursuant to Sec. MGO 28.183, the demolition application may be considered at the same time the Plan Commission considers the amendment to the zoning map or conditional use. The public hearing for a demolition application shall meet the requirements of MGO Sec. 28.183(5)(a)1., except that a demolition application considered with a zoning map amendment shall also meet the public hearing requirements in MGO Sec. 28.182(4).
 - (b) Submitted Materials. The Plan Commission shall receive and consider the complete application, the report from the City’s Preservation Planner, and any report that may be submitted by the Landmarks Commission in connection with the Review for Historic Value as well as any materials submitted to the Landmarks Commission for their review under MGO Sec. 41.28.
 - (c) Standards of Approval. The Plan Commission shall not approve an application for demolition unless it finds that ~~each of the following standards~~ both subs. (1) and (2) below are met:
 - 1. Demolition of the existing building(s) is consistent with or will aid in the implementation of adopted plans or with the purpose statement of this section.
 - 2. There are factors that are found to outweigh the public interest in preserving historic resources. Such a finding may include, but is not limited to:
 - i. The building is found to be in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it.
 - ii. If the building has historic value, the building has been so altered that it cannot convey its historical association or architectural significance.
 - iii. There is ~~evidence of a potential~~ structural or fire hazard, unlawful use of the property, public nuisance, or other public health and safety concern that supports demolition as provided in reports from the Madison Fire Department, Police Department, and/or Building Inspection Division.
 - iv. The applicant will implement a plan to mitigate the loss of the building with historic value, to include but not limited to relocation, salvage of historic materials, adaptive reuse of portions of the existing structure, interpretive installations at the site, or other creative mitigation measures.

- (d) Conditions. Before granting a demolition approval, the Plan Commission may stipulate conditions and restrictions on the proposed demolition as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified above.
 - (e) Decision. At the conclusion of the public hearing, the Plan Commission shall approve, approve with conditions, or deny a demolition.
- (7) Appeal of Plan Commission Decision.
- (a) The Plan Commission's decision to approve or deny a demolition may be appealed to the Common Council by:
 - 1. The applicant, or
 - 2. The Alderperson of the district in which the building proposed for demolition is located.
 - (b) The appeal shall specify the grounds, with specific reference to the findings of the Plan Commission.
 - (c) The appeal shall be filed with the Zoning Administrator within ten (10) days of the final action of the Plan Commission.
 - (d) The Zoning Administrator shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
 - (e) After receiving the appeal from the City Clerk, the Common Council shall introduce the appeal at one Common Council meeting and set the appeal for a public hearing at the next Common Council meeting. In addition to setting the appeal for a public hearing, the City shall also provide email notice to anyone whose name appears on the list of persons wishing to receive information about demolitions. The Common Council shall decide on the appeal within a reasonable period of time.
 - (f) The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds ($\frac{2}{3}$) of the members of the Common Council.
 - (g) If the applicant for a demolition has also filed a timely appeal of a conditional use permit pursuant to MGO Sec. 28.183, the two appeals shall be considered at the same Common Council meeting unless the applicant and the Office of the City Attorney agree to an alternate schedule.
- (8) Scope of Approval.
- (a) A demolition approved under sub. (5) or (6) is valid for two (2) years from the date of approval.
 - (b) Where the plans have not been altered since approval of the demolition and the approval has expired, the Director of Planning and Community and Economic Development may, after consultation with the Alderperson of the District, approve an extension for up to one (1) year from the expiration date.
- (9) Subsequent Applications. Effective April 1, 2025, no application for a demolition approval that is denied wholly or in part by the Plan Commission (or, on appeal, by the Common Council) shall be resubmitted for a period of one (1) year from the date of the final decision, unless the decision expressly states that it is placed on file without prejudice.
- (10) Demolition by Fire. Demolition by fire is prohibited unless the burn is conducted by the Madison Fire Department (MFD) in conjunction with an MFD training event and limited to no more than three (3) demolitions by fire events per year. For any approval for demolition by fire, the applicant shall provide written notice of the date of the proposed

demolition to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within one thousand (1,000) feet of the boundaries of the property on which the demolition will occur. Such notice shall be provided at least five (5) days prior to the date of the proposed demolition.

- (11) Penalty. Any person who fails to obtain a demolition approval prior to demolition of a principal building shall, upon conviction thereof, be subject to a forfeiture of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000). Each day or portion thereof such violation continues shall be considered a separate offense.”

2. Section 41.28 entitled “Historic Value Advisory Recommendation” of Subchapter 41H entitled “Historic Value Advisory Recommendation” of the Madison General Ordinances is created as follows:

“SUBCHAPTER 41H: HISTORIC VALUE ADVISORY RECOMMENDATION

41.28 HISTORIC VALUE ADVISORY RECOMMENDATION

“(1) Review for Historic Value. Following a review of MGO Sec. 28.185 applications for demolition by the Landmarks Commission and based upon application materials, ~~and~~ a report by the City’s Preservation Planner, and any public testimony, the Commission shall ~~review MGO Sec. 28.185 applications for demolition and~~ assign one of the following Categories to each principal building proposed for demolition:

- (a) Category A Demolitions: denotes that the Landmarks Commission finds that the building has historic value based on architectural significance, cultural significance, historic significance, as the work/product of an architect of note, its status as a contributing structure in a National Register Historic District, listed in the National Register of Historic Places, and/or as an intact or rare example of a certain architectural style or method of construction.
 - (b) Category B Demolitions: denotes that the Landmarks Commission finds that the building has historic value related to the vernacular context of Madison’s built environment, cultural practices, or as the work/product of an architect of note, but the building itself is not historically, architecturally or culturally significant.
 - (c) Category C Demolitions: denotes that the Landmarks Commission finds that the building has no known historic value. ~~This category may also denote sites or properties that have historic value, and the significance will not be negatively impacted by the removal of the building itself. This category may also include sites or properties that have archaeological or other site findings of significance, but where removal of the building itself will have no impact.~~
- (2) Presence of Archaeology. When applicable, each finding shall also note the presence of an archaeological or burial site on the site of the building proposed for demolition.”

EDITOR’S NOTE:

Section 28.185 entitled “Approval of Demolition (Razing, Wrecking) and Removal” of the Madison General Ordinances currently reads as follows:

“28.185 APPROVAL OF DEMOLITION (RAZING, WRECKING) AND REMOVAL.

- (1) Statement of Purpose. It is hereby declared as a matter of public policy that the careful consideration of requests to demolish or remove existing principal buildings is a public necessity and required in the interest of the health, prosperity, safety, and welfare of the people. The purpose of this section is therefore to ensure the preservation of historic buildings, encourage applicants to strongly consider relocating rather than demolishing existing buildings, aid in the implementation of adopted City plans, maximize the reuse or recycling of materials resulting from a demolition, protect the public from potentially unsafe structures and public nuisances, and require the use of safe and orderly demolition or removal methods.
- (2) Definitions.
 - Demolition. An act or process that removes, pulls down, tears down, razes, deconstructs, or destroys an existing building wall facing a public street or, during any ten (10) year period, removes, pulls down, tears down, razes, deconstructs or destroys fifty percent (50%) or more of the area of the exterior walls of a building. This definition does not include the repair or replacement of windows, doors, or siding.
- (3) Requirement. No building, as defined in MGO Sec. 29.04, shall be demolished or removed without a permit from the Building Inspection Division of the Department of Planning and Community and Economic Development.
- (4) Application. Any Eligible Applicant (See MGO Sec. 28.181(2)) may submit an application for a demolition or removal permit for a principal building to the Director of the Building Inspection Division. Every application for demolition or removal of a principal building shall contain the following:
 - (a) A clear, detailed and completed statement and description of the principal building or structure proposed for demolition or removal and the reason for requesting the demolition or removal.
 - (b) If known to the applicant, the date the building or structure proposed for demolition or removal was constructed.
 - (c) A description of the proposed method and timeline of the demolition or removal.
 - (d) A statement whether the applicant is also seeking a zoning map amendment pursuant to MGO Sec. 28.182(10), or conditional use pursuant to MGO Sec. 28.183, in conjunction with the requested demolition.
 - (e) If applicable, a description of the efforts that the applicant has taken or will take to relocate the building to another site rather than demolish it.
 - (f) Photos of the interior and exterior of each principal building to be demolished or removed sufficient to indicate its character and condition.
- (5) Completeness Review. See MGO Sec. 28.181(4).
- (6) Notice. A demolition request, except for applications approved administratively under sub. (8) below, requires notice as provided in MGO Sec. 28.181(5):
 - (a) Preapplication. Failure to provide notice does not invalidate any action taken on the application by the Plan Commission or Common Council. The notice requirement may be waived, if approved by the Alderperson and Director of Planning and Community and Economic Development.
 - (b) Mail. Notice of the required public hearing shall be sent at least ten (10) days before the public hearing.
 - (c) Publication.
 1. A demolition or removal permit application considered with a zoning map amendment shall meet the public hearing requirements for zoning map amendments (See MGO Sec. 28.181(5)).

2. A demolition or removal permit considered with a conditional use permit shall meet the public hearing requirements for conditional uses (See MGO Sec. 28.181(5)).

(7) Review for Historic Value. Every application for demolition or removal of a principal structure shall be reviewed by the Landmarks Commission, which shall provide input to the Building Inspection Division regarding the historic value of the property with the building or structure proposed for demolition or removal.

- (a) If the Landmarks Commission determines that the property with the proposed demolition or the structure proposed for removal has no known historic value, the demolition or removal may be approved administratively under sub. (8)(b) below, provided that at least one of the standards for administrative approval have been met.
- (b) If the Landmarks Commission determines that the property with the proposed demolition or the structure proposed for removal has historic value, then the Plan Commission shall consider the demolition or removal under sub. (9) below, after reviewing input from the Landmarks Commission.
- (c) Nothing in this subsection eliminates the requirement in MGO Secs. 41.09(1)(c) and 41.12(3) that the demolition of landmark structures or structures in historic districts must also be approved by the Landmarks Commission through the issuance of a Certificate of Appropriateness.

(8) Administrative Approval.

- (a) Accessory Buildings: If the Director of Building Inspection determines the building proposed to be demolished or removed is an accessory building, as defined in MGO Sec. 28.211, then the approval shall be administratively reviewed.
- (b) Demolition or removal permits may be issued administratively by the Director of the Building Inspection Division whenever the Landmarks Commission has determined that the property with the proposed demolition or the structure proposed for removal has no known historic value and at least one of the following conditions is present:
 1. The Director of the Building Inspection Division finds that the building proposed to be demolished or removed is structurally unsound, subject to an appeal as provided in MGO Sec. 29.18. The applicant may support the request with the report of a licensed architect or engineer certifying and providing reasons that the building is structurally unsound.
 2. The building or buildings proposed for demolition are being demolished due to damage by fire or other natural disaster.
 3. The building or buildings proposed for demolition are identified for demolition in a Campus Institutional Master Plan approved by the Common Council pursuant to MGO Sec. 28.097(6).
 4. The building or buildings proposed for demolition are proposed to be replaced with residential or mixed-use buildings containing affordable (income-restricted) housing units subsidized by the City of Madison.

(9) Plan Commission Approval.

- (a) Public Hearing Required. The Plan Commission shall hold a public hearing on any demolition or removal application that is not approved administratively under sec. (8) above. If the applicant for a demolition or removal permit requests an amendment to the Zoning Map pursuant to MGO Sec. 28.182(10) or a conditional use approval pursuant to Sec. MGO 28.183, the demolition or removal permit application may be considered at the same time the Plan

Commission considers the amendment to the zoning map or conditional use. The public hearing for a demolition or removal application shall meet the requirements of MGO Sec. 28.183(5)(a)1., except that a demolition or removal application considered with a zoning map amendment shall also meet the public hearing requirements in MGO Sec. 28.182(4).

- (b) Reuse and Recycling Plan. Every applicant for demolition or removal approval that requires approval by the Plan Commission is required to get an approved Reuse and Recycling Plan approved by the City Recycling Coordinator prior to receiving a raze permit.
- (c) Standards of Approval. The Plan Commission shall not approve an application for demolition or removal unless it finds that each of the following standards are met:
 - 1. The applicant has included information related to any efforts to relocate the building, including but not limited to assessing the costs of relocation, the impact of relocation on city terrace trees, and the structural soundness of the building.
 - 2. The applicant has received a Certificate of Appropriateness from the Landmarks Commission under MGO Secs. 41.09(1)(c) and 41.12(3), if applicable.
 - 3. The applicant has received an approved reuse and recycling plan from the City Recycling Coordinator.
 - 4. The Plan Commission has received and considered the report of the City's historic preservation planner regarding the historic value of the property as well as any report that may be submitted by the Landmarks Commission.
 - a. For properties determined by the Landmarks Commission to have any historic value or significance, the Plan Commission may consider how demolition and redevelopment of the property relates to the implementation of the City's adopted plans.
 - 5. The Plan Commission has received and considered the report of the City Forester regarding the impact a proposed building relocation could have on City terrace trees, if applicable.
 - 6. The Plan Commission shall consider the condition of the building or buildings proposed for demolition or removal. In order to find this standard met, the Plan Commission may consider a report of the Madison Fire Department, Police Department, and/or Building Inspection Division regarding the proposed demolition, including whether any evidence of a potential fire hazard, unlawful use of the property, public nuisance, or other public health and safety concern supports demolition or removal.
 - 7. The Plan Commission shall consider the factors and information specified in items 1—6 and find that the proposed demolition or removal is consistent with the statement of purpose of this section and with the health, prosperity, safety, and welfare of the City of Madison.
- (d) Conditions. Before granting a demolition or removal permit, the Plan Commission may stipulate conditions and restrictions on the proposed demolition as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified above.

- (e) Decision. At the conclusion of the public hearing, the Plan Commission shall approve, approve with conditions, or deny a demolition or removal permit.

(10) Appeal of Plan Commission Decision.

- (a) The Plan Commission's decision to grant or deny a demolition or removal permit may be appealed to the Common Council by:
 - 1. The applicant, or
 - 2. The Alderperson of the district in which the building proposed for demolition or removal is located.
- (b) The appeal shall specify the grounds, with specific reference to the findings of the Plan Commission.
- (c) The appeal shall be filed with the Zoning Administrator within ten (10) days of the final action of the Plan Commission.
- (d) The Zoning Administrator shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
- (e) After receiving the appeal from the City Clerk, the Common Council shall introduce the appeal at one Common Council meeting and set the appeal for a public hearing at the next Common Council meeting. In addition to setting the appeal for a public hearing, the City shall also provide email notice to anyone whose name appears on the list of persons wishing to receive information about demolitions. The Common Council shall make a decision on the appeal within a reasonable period of time.
- (f) The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds ($\frac{2}{3}$) of the members of the Common Council.
- (g) If the applicant for a demolition or removal permit also has requested a zoning map amendment pursuant to MGO Sec. 28.182 or a conditional use permit pursuant to MGO Sec. 28.183, the determination shall be appealed with the appeal of the conditional use or map amendment.

(11) Scope of Approval.

- (a) A demolition or removal permit approved under sub. (8) or (9) is valid for two (2) years from the date of approval.
- (b) Where the plans have not been altered since issuance of the demolition or removal permit and the permit has expired, the Director of Planning and Community and Economic Development may, after consultation with the Alderperson of the District, approve an extension for up to one (1) year from the expiration date.

- (12) Demolition by Fire. Demolition by Fire is prohibited unless the burn is conducted by the Madison Fire Department (MFD) in conjunction with an MFD training event and limited to no more than three (3) demolitions by fire events per year. For any permit approved for demolition by fire, the applicant shall provide written notice of the date of the proposed demolition to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within one thousand (1,000) feet of the boundaries of the property on which the demolition will occur. Such notice shall be provided at least five (5) days prior to the date of the proposed demolition.

(13) Penalty.

- (a) Any person who fails to submit documentation of compliance with an approved reuse and recycling plan shall, upon conviction thereof, be subject to a forfeiture of not less than five hundred dollars (\$500) and not more than one thousand

dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense.

- (b) Any person who fails to obtain a demolition or removal permit prior to the demolition or removal shall, upon conviction thereof, be subject to a forfeiture of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000). Each day or portion thereof such violation continues shall be considered a separate offense.”