

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

Date: June 23, 2015

**MEMORANDUM**

TO: Landmarks Ordinance Review Committee  
Stuart Levitan, Chairman of the Landmarks Commission  
Amy Scanlon, Preservation Planner

FROM: John W. Strange, Assistant City Attorney

RE: Draft Analysis for Chapter 41, Historic Preservation (Legistar 34577)

This memorandum broadly summarizes changes recommended by the Landmarks Ordinance Review Committee (LORC) to date. This memorandum will also serve as a draft of my final drafter's analysis.

**I. Large Scale Organization**

The Landmarks Ordinance Review Committee (LORC) recommended moving the former Landmarks Ordinance into its own new Chapter, entitled Historic Preservation. Accordingly, this ordinance creates Chapter 41, Historic Preservation, and amends Section 33.19 to include only the creation of the Landmarks Commission. Going forward, Section 33.19 will create and empower the Landmarks Commission. Chapter 41 will include the substance of the former Landmarks Ordinance.

**II. Small Scale Organization**

The new Chapter 41 is broken up into subchapters and will be accompanied by a Table of Contents so that users can quickly search for topics that are pertinent to a project they may want to do on a landmark or in a historic district.

**III. Specific Provisions**

**a. General Provisions**

*i. Policy and Purpose*

Both the Landmarks Commission and the LORC spent considerable time working on the Policy and Purpose section of the ordinance. Generally, revisions and edits focused on two themes: declaring the importance of historic preservation to the City of Madison and recognizing that new construction, when it happens, should complement the city's historic

resources.

*ii. Definitions*

Sec. 33.19 Landmarks Ordinance currently contains twelve (12) definitions. The proposed Chapter 41 contains forty (40) definitions. New definitions were added to define words or phrases that are used repeatedly throughout the ordinance or were often confused in previous usage. Additionally, where new concepts have been introduced, new words and phrases have been defined. In addition to adding definitions, this ordinance also tries to link definitions that work together. For example, the definitions of improvement, structure, building, object, site, landscape feature, and historic resources should all work together and be internally consistent. Where definitions are linked, cues following each definitions tip the reader to also consider additional definitions.

*iii. General Administrative Provisions*

Chapter 41 also groups important administrative provisions in the same section. Included in this section is a description of how to measure between two properties when called for by the ordinance. This addition, and inclusion of this concept throughout the ordinance, replaces the previously confusing Visually Related Area concept and definition.

*iv. Landmarks Commission*

Subchapter B provides information regarding the Landmarks Commission, Preservation Planner, and how the Landmarks Commission is to conduct hearings in matters that come before it.

*v. Landmarks*

Subchapter C is dedicated to Landmarks and outlines the process of designation and rescinding Landmarks. Furthermore, this Subchapter reminds Landmark owners when certificates of appropriateness are required to alter or demolish a landmark.

*vi. Historic Districts*

Subchapter D is dedicated to Historic Districts and outlines the process of designating or amending a historic district. Subchapter D also details how to create a historic district ordinance and, as with Landmarks, reminds owners of structures in historic districts when a certificate of appropriateness is required for new construction, alteration, or demolition in a historic district.

*vii. Obligation to Maintain Landmarks and Structures in Historic Districts*

One of the significant additions to the Historic Preservation ordinance is the introduction of the concept of demolition by neglect. Couple with an affirmative obligation to maintain landmarks and structures in historic districts, the Landmarks Commission and LORC have clearly stated that owners are required to preserve and maintain their historic resources. Failing to do so can result in increased financial penalties, a finding of demolition by neglect, and the likelihood of being denied future demolition permits. This Subchapter also provides additional avenues for the City to ensure that repairs are completed and explore condemning historic properties.

*viii. Certificate of Appropriateness*

Chapter 41 also provides a separate subchapter for Certificates of Appropriateness. This subchapter describes when COAs are required and outlines the process and standards for addressing them.

Significantly, the Landmarks Commission and the LORC added a variance section to this subchapter, which allows owners to seek relief from the standards contained in the ordinance under certain circumstances, including economic hardship, alternative design, and for projects that are necessary in the public interest. Of these, variances based on economic hardship and projects that are necessary in the public interest are new to the Landmarks Commission and Common Council.

Economic hardship variances are provided for in sec. 41.19(1)(a) and (4)(a). This type of variance allows for a variance from the standards if the strict application of the ordinance would result in an economic hardship on the owner, provided that the hardship was not caused by the owner's failure to maintain their property. The ordinance outlines what the owner must show in order to establish economic hardship.

Variances based on a project that is necessary for the public interest is provided for in sec. 41.19(1)(d) and (4)(d). This variance allows the LC and the Common Council to take into consideration whether a particular project is of such special merit that variance from the ordinance is necessary. The discussion regarding adding this type of variance was extensive, and is summarized in a separate memorandum by the drafter. That memorandum is part of the legislative file (34577).

*ix. Appeal*

Some have suggested that the current appeal language in Sec. 33.19 is confusing. Chapter 41 greatly simplifies the appeal language.

*x. Designated Historic Districts*

Subchapter G addresses each specific Historic District Ordinance. This ordinance does not substantively change the historic district standards. It does, however, add sections to each Historic District identifying historic resources and incorporates the 200 foot visually related area concept into the text of the standards.