



## PLANNING DIVISION STAFF REPORT

December 21, 2021

PREPARED FOR THE LANDMARKS ORDINANCE REVIEW COMMITTEE

Legistar File ID # [56918](#), Draft Historic Preservation Ordinance

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### **Introduction**

At its meeting of November 30, 2021, the Landmarks Ordinance Review Committee (LORC) reviewed three documents presented by committee members Marsha Rummel and Patrick Heck with questions and suggestions for altering the proposed ordinance standards and the design guidelines. Staff and the committee discussed a portion of the documents and the committee asked staff to prepare a response memo to the documents for the committee's review. Original inquiry is in bold and italicized, and staff response follows each.

### **LORC Items for Discussion (7-page document)**

#### ***Policy 1. Definition of Developed public right of way?***

Assistant City Attorney Kate Smith is drafting a definition of "developed public right-of-way."

#### ***Policy 2. Protection of historic resources not visible from the developed public right-of way?***

While there are some portions of the ordinance where areas of a property or structure that are visible from the developed public right-of-way are held to a higher standard, there is no exemption for areas that are not visible. The standards as proposed deal with all areas of a property in a historic district. There is generally more latitude for alterations in areas that are not visible from the public right-of-way or are on the back of a property or structure.

- Please see the February 7, 2020, staff memo for more discussion: [Staff memo on Period of Significance, Visible from the Street, Spectrum of Standards for Review](#)
- Please see [minutes from March 10, 2020](#), for decision to shift from "visible from the street" to "visible from the developed public right-of-way."

#### ***Policy 3. Should non-contributing buildings be held to the same standards for repairs, maintenance, and alterations?***

Just as new construction must meet standards to make sure that it is appropriate infill/redevelopment to a historic district, structures constructed outside of the period of significance in a historic district require review to ensure that they do not become more out of character with the historic resources within the district.

- Please see the January 8, 2020, staff memo for more discussion: [Staff memo on Code Required Work & Period of Significance](#)
- And the February 7, 2020, staff memo for more discussion: [Staff memo on Period of Significance, Visible from the Street, Spectrum of Standards for Review](#)
- And committee discussion in the [January 23, 2020, minutes](#) and the [February 12, 2020, minutes](#) where the committee recommended that a building should refer to itself, having all existing structures use the same standards.

#### ***Policy 4. ADD Preservation of Historic Features to Standards for Maintenance***

All structures and site features are currently addressed in the draft ordinance, typically under the general standards or the building site standards. While there was discussion of carriage stepping stones, most of those are located in the public right-of-way, which does not have historic designation and is outside of the purview of the Historic Preservation Ordinance.

#### ***Policy 5. ADD back the deleted language for measuring 200 feet to 41.03, highlighted below.***

Staff agrees with this edit.

***Policy 6. Should the process be simplified if approved for tax credits?***

Preservation tax credits are an incentive that does not require compliance. The penalty for not complying with state and federal standards is that property owners don't receive their tax credit. Properties with local historic designation require compliance with the city's preservation ordinance. As there is no guarantee that properties will complete the preservation tax credit process, they should still be required to comply with the Madison Historic Preservation Ordinance. We will clarify this as an administratively reviewed approval process in the Landmarks Commission Policy Manual.

- Please see the March 3, 2020, staff memo for more discussion: [Staff memo on Expedited Tax Credit Review Process](#)
- And the [November 5, 2020, minutes](#) where the committee recommended that staff's compromise of projects that don't require a public hearing could be reviewed administratively by staff.

***Policy 7. Underrepresented Communities Intensive Survey***

The demolition reporting process by the Preservation Planner and the Landmarks Commission is governed by standards in the Zoning Ordinance at [MGO 28.185\(7\)\(a\)\(4\)](#):

"The Plan Commission shall consider the report of the City's historic preservation planner regarding the historic value of the property as well as any report submitted by the Landmarks Commission."

Including basic historic property research is standard practice for qualified preservation planners, but we could propose an edit to the Landmarks Commission's Policy Manual, which details the demolition reporting process to specify that previous architectural and historic property surveys, including the Underrepresented Communities Historic Resources Survey Report, should be referenced in that reporting to the Landmarks Commission

***Policy 8. Extend the Third Lake Ridge period of significance to 1944***

Staff is supportive of this idea as the period of significance in the Jenifer-Spaight National Register (NR) nomination ends in 1944. However, the Third Lake Ridge local historic district covers a significantly larger area than just that NR district. If the committee recommends expanding the period of significance, there should be focused public engagement regarding that change, which could be done as part of the upcoming public meetings on the draft ordinance.

- Please see the January 8, 2020, staff memo for more discussion: [Staff memo on Code Required Work & Period of Significance](#)
- And committee discussion in the [January 23, 2020, minutes](#), which had the same recommended approach of additional public engagement to ascertain if a wider period of significance was warranted.

***Policy 9. Define a percentage of a building that needs to be commercial in order for a building to be called a commercial building.***

The Historic Preservation Ordinance only deals with physical changes to the exterior of a property and do not vary in relation to the proposed land use. The Landmarks Commission does not get involved in land use decisions as that is governed by the Zoning Ordinance. For example, there are many former residential buildings on Williamson St that are now in commercial use, and it would not be appropriate to create or use different commercial standards for these residential form structures based upon changes in use. The Historic Preservation Ordinance deals with building form, not use.

**Clarification 1. Proposed 41.11: “Strike current 41.11 (1)(d) and all of 41.11(2), make 41.07(2) and 41.07(3) a requirement for historic district designations.” (a) DELETE: “make 41.07(2) and 41.07(3) a requirement for historic district designations.” This is already addressed by existing 41.10(2) and (3)(a). (b) Strike current 41.11 (1)(d) and all of 41.11(2), but add that the ordinance should be changed to account for any exception to the standards (e.g., in the existing draft: “Additions to structures in Marquette Bungalows Historic District shall be no taller than the existing historic resource.”).**

Staff agrees with this recommended edit.

**Clarification 2. Proposed Guidelines for Maintenance > Exterior Walls > Masonry (5). Remove from the guidelines and add to the ordinance so that a property owner can request an exception, otherwise appears to be in conflict with building code?**

This should not be a standard because it largely condones neglect of a building where the paint continues to flake off and the hydrostatic pressure created by the remaining paint leads to spalling of the masonry. The provision in the guidelines was to explain the possibility of an exceptional circumstance. Staff would recommend that this be removed from the guidelines so that it is not in conflict with other standards, including the maintenance requirements in both the preservation and zoning ordinances.

**Clarification 3. CLARIFY Changes to 9/1/21 draft (meeting minutes do not capture rationale for removal)**

The prohibition of specific materials in the standards were removed because the city ordinance would not be in compliance with Wisc SS 62.23(7)(em)2m:

“In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.”

There are regular advancements in materials and while most vinyl products do not adequately replicate historic materials at present, when or if they do, then the Landmarks Commission must approve those replacement materials. The Historic Preservation Ordinance can govern aesthetics and ensure that preservation is a priority and that any required replacement materials or materials on an addition replicate the appearance of historic materials. It cannot specify what that material is made of. The Landmarks Commission periodically reviews alternative materials to determine if they adequately replicate the appearance of historic materials.

**Clarification 4. Do repairs require LC/PP approval?**

Repairs do require a Certificate of Appropriateness, whereas Maintenance does not, per the Spectrum of Review. The definition of what is Maintenance or Repair is found in the referenced sections. Examples of scale of projects that might fall into a given category should either go in the Landmarks Commission Policy Manual or the Design Guidelines, not the ordinance.

**Clarification 5. POLICY What triggers LC review for Repair and Alterations?**

See answer above.

**Clarification 6. 41.xx Standards for Additions**

This language is specifically related to the character of a principal structure and would not just be for historic resources in the district. There is more latitude for alterations to accessory structures, so an addition on the front is a possibility. This would prohibit construction of a front porch on a structure that never had a porch. Evidence of there being a porch could include historic photographs, building permits, or Sanborn Maps.

**Clarification 7. 41.xx Standards for Additions**

Roofing materials on sloped roofs must replicate the appearance of historic roofing materials, regardless of if they are visible from the public right-of-way. Flat or slightly sloped roofs can have any material because there is not the reasonable possibility for pedestrian line of sight. That is a provision in some of our existing ordinances and provides flexibility for property owners in a way that does not diminish the historic resource.

**Clarification 8. 41.xx Standards for Additions (5) Windows and Doors (c) 3. And Standards for Alterations (5) (g) 3.**

The language suggested in the submitted memo specifies material type, which would be contrary to the requirements of State statute previously discussed. The goal is for the storm door not to obscure the historic entry door. If there is evidence of a specific design of a storm door, then that is approvable.

**Clarification 9. 41.xx Standards for Additions (7) Building Systems (d) and Standards for New Structures (4) Roofs (e):**

This was the language recommended by the committee in its discussion of rooftop decks, terraces, green roofs, or other rooftop amenities, so this is how staff drafted the ordinance standard. There was concern about the addition of these rooftop features to flat-roofed structures, so the committee added the constraint of also being minimally visible from the site and not just visible from the street. If the committee would like to proceed in a different direction for this type of rooftop addition to a structure, it is an option for discussion.

**Clarification 10. Clarify meanings and usage of visible.**

These are not definitions, but descriptive of a process of review. The clarification is in the use of language in the standards and based upon the context of the design proposed. The membership of the Landmarks Commission is capable of determining if the design meets the language of these standards and the different uses of the word “visible” in these sentences. It is incumbent upon the applicant to show how their proposal meets the standards of the ordinance. Staff and the Landmarks Commission is able to provide their interpretation about what is visible based upon submittal materials, just as they have done for the existing ordinances with this requirement (University Heights, Marquette Bungalows, and First Settlement).

**Clarification 11. 41.xx Standards for Additions (6) Entrances, Porches, Balconies and Decks (b) 3. and Standards for New Structures (6) Entrances, Porches, Balconies and Decks (b) 1.**

Staff would recommend using the language in the New Structures standard for the Additions standard.

**Guidelines 1. Modify the guidelines so that it is a document that can be used to help interpret the standards.**

Staff is creating an introductory paragraph that describes the permitting and review process for proposed projects, per the guidance from LORC. For the guidelines themselves, the “how to items” are exceptionally important to the educational nature of the design guidelines. They provide guidance for how to meet the standards and how to implement the preservation practice required in the standards. That should stay and is a foundational part of why we have created these design guidelines.

One of the main outcomes of the 2020 Madison Preservation Plan (adopted by Common Council on 5/27/21) and the Underrepresented Communities Historic Resources Survey Report (accepted by Common Council on 5/27/20) was a commitment by the City to ensure that its preservation program proceeded with an equity lens to how we engaged in our processes and practice. The expanded history and architectural sections proposed in the submitted memo have largely reincorporated the histories that were previously created for each historic district. While those were acceptable when the districts were originally created, now those histories are viewed as problematic, do not follow the standards of professional historians, and have noted equity issues. It is possible to talk about the complete history of our historic districts without engaging in excessive praise of wealth, or in the erasure of the diversity of residents in these districts or the Madison area (such as the original Native American inhabitants). Historic Preservation should not be used as a tool to perpetuate exclusionary

zoning, claiming of heritage by a white elite, and excluding new types of residents from feeling like they have a place in these neighborhoods. These districts do have diverse histories (as uncovered by the Underrepresented Communities Historic Resources Survey Report), and it is important to tell the full story of Madison and of these neighborhoods. Staff would appreciate and welcome feedback on what relevant information is missing from the histories proposed in the staff draft.

***Guidelines 2. Modify the definition of Guidelines in the ordinance.***

The Design Guidelines will be a document approved by the Landmarks Commission just as its Policy Manual is (or the policy manuals and guidelines for any number of other city boards, committees, and commissions). The current language relates to when the guidelines were going to be included in the ordinance. Staff would recommend removing this language from the current ordinance draft. When the Landmarks Commission approves the Design Guidelines, they can propose a text amendment to the ordinance that references the Design Guidelines for use in interpreting the standards in the ordinance.

***Guidelines 3. Expand the section on New Structures to provide more guidance***

The proposed New Construction standards are longer and more detailed than any of the new construction standards in the existing historic district ordinances. They provide detail on the factors that the Landmarks Commission will need to take into consideration. By taking projects through a review process using existing and proposed new ordinance, staff found that the amount of detail required in the new ordinance would result in the need for more information than is currently required, and would shape how projects are submitted and reviewed. This section is already greatly expanded from the existing requirements for any district. However, the goal is for appropriate infill. These standards have been reviewed both by LORC and by the Landmarks Commission for their functionality.

- Please see the discussion from the [March 14, 2019, meeting](#) where these standards were crafted.

***Guidelines 4. Add a section to the draft ordinance***

These details are already addressed in the proposed standards. The Landmarks Commission offered their input that they are capable of adequately and fairly interpreting these proposed standards for new construction in order to achieve appropriate infill/redevelopment development.

- Please see Landmarks Commission Chair, Dr. Anna Andrzejewski's comments in the [January 12, 2021, meeting](#).

**Draft historic District Design Guidelines (16-page memo)**

***Proposed new history sections***

Please see discussion in Guidelines 1 above.

***Reversible window treatments***

These could be safety film (which replicates safety glass, but allows the retention of the historic window), energy efficient film added to the interior of a window, interior security railings, etc.

***A wrought iron railing is acceptable if it was historically used on the building style (e.g., Victorian homes).***

While wrought iron was common for decorative elements such as cresting on a Victorian roof or decorative fencing, it was not common as railings on a structure in Madison. If researchers peruse historic photos of structures in Madison, they will find that railings were wood or masonry. If there is an example of a historic wrought iron railing, then that would be approvable. Most such railings are faux-wrought iron in the form of aluminum railings introduced in the 1950s and 1960s. As this would be a highly unusual style of railing on a Victorian house, staff would not recommend this proposed change.

***Air conditioning compressors may be placed in front of the building wall if necessary, but must be screened.***

While there are variance options, staff would not recommend air compressors on the front of a building, even with screening. These should be on the sides or the rear.

***Additions should not be constructed on street facades, except that historically representative architectural features, such as a porch, may be added or restored.***

Since new additions to the front of a structure are prohibited per the general standard without evidence of there previously being a porch on the front of a structure, staff would not recommend adding the word “added” to this guideline as that would create contradictions in the ordinance.

***Illustrations***

Staff will arrange the creation of illustrations for guidelines when the language of the Design Guidelines is finalized. Otherwise the new language in this section does not follow the format of the standards or the rest of the guidelines. A goal for the design guidelines is to make them user friendly and a consistent format is part of that endeavor.

***What of metal panels that have been used?***

The general standard exterior walls and the general guideline for exterior walls addresses this.

***More contemporary styles of doors may be considered if they are simple in style and design.***

Staff would not recommend limiting this to doors as this is recommending. Contemporary door or windows could be approvable.

***Grilles...or on a side elevation facing a developed public right-of-way.***

While this would not be the most ideal location for a new grille, if it is a secondary elevation and the grille is screened, it is possibly approvable.