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Madison, WI 53703

April 15, 2022

Re: Requested Revisions to Proposed Landmarks Ordinance from LORC

Economic Development Committee:

Smart Growth Greater Madison has submitted to you requested revisions to the new Landmarks Ordinance from the Landmarks Ordinance Review Committee (LORC). In that document, the LORC changes are highlighted in green text and changes requested by Smart Growth are shown in blue text (for added text) and red text (for deleted text). This letter provides an explanation of the requested revisions.

But before discussing our requested revisions, Smart Growth wants you to know that we support the approach LORC took in drafting the new Landmarks Ordinance. Having consistent definitions, standards and processes, to the greatest extent possible, which apply to all of the local historic districts is a laudable achievement.

Some of Smart Growth's requested revisions could be considered technical, rather than policy, in nature:

- Smart Growth requests revising the language in the ordinance about the Landmarks Commission's using its own initiative to gather information to clarify the Commission's authority to do so.
- Smart Growth requests a revision to the recission of a landmark designation so that it can apply to the same things to which a landmark designation can apply: a site, improvement, or site with improvements.
- In the proposed Landmarks Ordinance, anyone can propose that something be designated a landmark (this not a change from the current Landmarks Ordinances). Smart Growth requests a revision that would allow anyone to request recission of a landmark.
- Smart Growth requests a revision to codify current practice that if the Preservation Planner declines to issue a certificate of appropriateness, the applicant may submit a formal application for a certificate of appropriateness, which shall be considered by the Landmarks Commission.

Changes which would be characterized as policy that Smart Growth is requesting include the following:

- Recognizing that there are important city public policy goals and values with which historic preservation sometimes conflicts, such as creating more affordable housing and promoting inclusivity throughout the city, Smart Growth requests a revision indicating that the Landmarks Commission should consider those other city public policy priorities when applying the Landmarks Ordinance.
- Smart Growth requests that the standards for recission of a landmark designation include that the designated site, improvement, or sites with improvements no longer qualifies for

designation as a landmark for a reason other than its physical appearance. For example, a building might be designated as a landmark to honor an important person who once lived in building, but we might subsequently learn that the person was a virulent racist and no longer want to honor them.

The Common Council has recently enacted more than one ordinance to encourage the construction of more housing units in general and more affordable housing units throughout the city. Toward that end, Smart Growth is requesting a number of modest revisions which would make it somewhat easier to construct additional housing units on parcels in local historic districts that are NOT occupied by historic resources:

- In several places in the Landmarks Ordinance, a proposed demolition, new building or addition to an existing building must obtain a certificate of appropriateness based on examining only historic resources within 200 feet of the proposed development, and if the proposed development is located at the edge of a local historic district, historic resources within 200 feet but outside of the historic district are ignored. Smart Growth requests revisions to make the determination of a certificate of appropriateness based on all of the historic resources in the local historic district AND the historic resources within 200 feet, including historic resources within 200 feet but outside of the historic district.
- It used to be the practice of the Landmarks Commission to find that the standards for a certificate of appropriateness for combining parcels were met if the combination of parcels was needed for a proposed new building or addition and the new building or addition met the standards for a certificate of appropriateness. However, a recent opinion letter from the City Attorney's Office halted this practice. Smart Growth requests a revision that would exempt a combination of parcels needed for a proposed new building or addition from the separate requirement for certificate of appropriateness if the new building or addition meets the standards for a certificate of appropriateness.
- Smart Growth requests a revision that would allow considering the street setbacks of all existing buildings on the block face where a new building is being proposed, not just existing buildings on the block face which are within 200 feet.

Finally, when someone buys a property that has not been designated as a landmark and is not in a local historic district, they do so based on the existing regulations that apply to the property at the time of the purchase. They usually do not anticipate that their property might later be made subject to restrictions in the Landmarks Ordinance, which increase the cost of ownership and limit what they are able to do with their property. Consequently, Smart Growth is requesting a number of revisions to provide greater procedural due process protections for a property owner whose property is subject to an attempt to designate it as a landmark or to include it in a new local historic district or enlargement of an existing historic district, as well as minor adjustments to some of the standards:

- If someone other than the owner of record of a applies for a property to be designated as a landmark, city staff must send a notice by certified mail to the property owner within 3 days of receiving the application to designate the property as a landmark.
- Notices must be mailed at least 60 days before a hearing instead of 10 days before a hearing.
- The public hearing regarding a proposed creation of a new local historic district or change in the boundaries of an existing historic district must be at least 30 days after the Plan Commission makes its recommendation.

- An owner of record may file a protest petition against an application to designate their property as a landmark, in which case a supermajority vote of the Common Council is required to designate the property as a landmark (mimicking the protest petition process where an application has been filed to re-zone a property over the objection of the property owner).
- An owner of record may file a protest petition against an application to include their property in a new local historic district or in an existing historic district through a change in boundaries, in which case a supermajority vote of the Common Council is required to include the property in the historic (mimicking the protest petition process where an application has been filed to re-zone a property over the objection of the property owner).
- In the standards for designating a landmark, the word “significant” is added before "cultural, political, economic or social history of the nation, state or community." This parallels the use of the inclusion of the words "important" and "master" in other standards in the list.

Thank you for considering these requests.

Sincerely,

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