

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

Date: April 3, 2014

MEMORANDUM

TO: Mayor Paul Soglin
All Alders

FROM: Michael P. May, City Attorney
John W. Strange, Assistant City Attorney

RE: Appeal of Landmarks Commission Certificates of Appropriateness:
121, 123, and 127 West Gilman Street, Legistar 33474, 33275

These matters are on the agenda for the April 8, 2014 meeting. Mayor Soglin requested a written opinion regarding the relative applicability of the maximum height provisions of the Zoning Ordinance, Chapter 28, MGO, and the gross volume and visual compatibility provision of the Landmarks Ordinance, Chapter 33, MGO.

Madison has many layers of land use regulation, starting with the base zoning district. In some areas there are additional regulations created by historic districts, urban design districts, wellhead protection districts, wetland overlay districts, and floodplain overlay districts, among others. Under the zoning code, all of these regulations apply in any given district.

The West Gilman Street properties are an example of this layered regulation; the official zoning for these properties is Downtown Residential 1 (DR1), Mansion Hill Historic District (HIST-MH). This Memorandum will lay out the relevant layers of land use regulation for this project, and then provide legal analysis regarding applicability to this project.

The Layers of Zoning Regulations Applicable to the Gilman Street Project.

The base layer of zoning for this project is DR1. The zoning requirements for DR1 are found in the general provisions for Downtown and Urban Districts, and in the specific provisions for DR1 found in Secs 28.071, 28.077, and 28.078, MGO (see attached). Relevant to this memorandum, these ordinances reference the downtown height map in setting the maximum allowable building height of five (5) stories (by way of reference, this is the same maximum building height allowed for these properties under the old zoning code).

In addition to the base zoning requirements for DR1, the properties on Gilman Street are also subject to additional zoning requirements because they are in the Mansion Hill Historic District. Sec. 28.146, MGO (see attached). Sec. 28.146(3) states:

The HIST-MH suffix applies to all zoning lots located within the Mansion Hill Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, *shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(10), in addition to the applicable requirements of the Zoning Code. (Emphasis added).*

These provisions make clear that the provisions of both the base zoning code and the Landmarks Ordinance apply to building projects in the Mansion Hill Historic District (this section says that the Landmarks Ordinance applies “in addition” to the zoning code). Relevant to this memorandum, Sec. 33.19, MGO (see attached) sets out the criteria for new development in the Mansion Hill District, including that the “gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.” Sec. 33.19(10)(e)1.

Legal Analysis Regarding the Relevant Applicability of the Zoning Code’s DR1 maximum height provision and the Landmarks Ordinance’s Gross Volume Provision.

The project at Gilman Street is proposed to be five (5) stories. Even though buildings in DR1 are allowed to be built up to five (5) stories, the Landmarks Commission denied the Certificate of Appropriateness for Construction because it found that the gross volume of the proposed building was not visually compatible with the buildings and environment with which it would be visually related. Thus, the legal issue is: because the zoning code clearly states that both provisions apply, which one prevails if one operates to limit the other?

At the outset, it is worth noting that these two provisions will not necessarily always interact in this way. For example, it is certainly possible that the Landmarks Commission could approve a project in the Mansion Hill District that is five stories tall, but of lesser gross volume and greater visual compatibility. In this instance, however, the gross volume provision in the Landmarks Ordinance is being applied in a more stringent manner than the zoning code, that is, it is being applied to limit the maximum allowable height provision in the zoning code. Fortunately, the zoning code addresses what to do when something like this happens.

Sec. 28.004(1), MGO states that “the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare.” Sec. 28.004(2), MGO goes on to say that where the conditions imposed by the zoning ordinance (“this ordinance”) are either more or less restrictive than regulations in “other” ordinances or laws, “*the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.*” (emphasis added). Thus, unless an exception is specifically noted, the more restrictive ordinance (or provisions thereof)

applies.

There is nothing inherent in the gross volume/visual compatibility standard of sec. 33.19(1)(e)1, MGO, that means it will in all cases be more restrictive than the zoning code's height limit. As noted above, perhaps a five story building of a different nature would be found by the Landmarks Commission to be compatible. Perhaps a six story building in some other part of the Mansion Hill District would be found to be compatible with the surrounding buildings. In the latter case, if the zoning code prescribed a five story limit, then it would be the zoning code, not the Landmarks Ordinance which was more restrictive and would apply to the development.

The point is that the zoning code's height limit and the Landmarks ordinance's gross volume/visual compatibility standard are two *different* standards or tests. The City's ordinances make it clear that both apply to this development, and whichever one is more restrictive is the one which limits the development.

In this instance, the gross volume and visual compatibility provision of the Landmarks Ordinance was applied by the Landmarks Commission to be more restrictive than the maximum building height allowed by the base zoning code. Nothing in the zoning code excepts the Landmarks Ordinance from the general rule stated in MGO 28.004(2) that the more restrictive provision applies. Thus, I conclude that, in this instance, it was legally proper for the Landmarks Commission to apply the Landmarks Ordinance in a way that denied approval of a building that fell within the height limit of the zoning code. Whether that application will be upheld is now before the Council on appeal.

The legal requirement that both standards and the most restrictive of them apply to the development does not mean that a party could not make a somewhat different policy argument: that the Landmarks Commission ought to inform its application of the gross volume/visual compatibility standard by what the zoning code says. That is a policy question for the Commission and ultimately this Council. Legally, the city's ordinances are clear that both standards apply and that which is more restrictive is what limits the development.

Some have suggested that because the Zoning Code was enacted after the Landmarks Ordinance, the Zoning Code repealed the Landmarks ordinance. I disagree. As illustrated above, the zoning code went to considerable length to specifically incorporate the Landmarks Ordinance into the land use regulation for properties in the Mansion Hill Historic District. If the Council had intended for the zoning code to repeal the Landmarks Ordinance, it would have said so.

CC: Steve Cover
Katherine Cornwell
Amy Scanlon
Richard Yde
William White

ZONING CODE

28.004 INTERPRETATION.

This ordinance applies to all land and land development within the jurisdictional limits of the City of Madison, Wisconsin.

- (1) In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare.
- (2) Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.
- (3) This ordinance is not intended to abrogate any easement, covenant or other private agreement. However, this ordinance applies if it is more restrictive or imposes higher standards or requirements than an easement, covenant or other private agreement.
- (4) Any use, building, structure, or lot that is lawfully existing at the time of the adoption of this ordinance, or any subsequent amendment(s), may be continued, subject to the provisions in Subchapter 28N, Nonconformities.
- (5) A building, structure or use that was unlawful when this Chapter was adopted does not become lawful solely by reason of the adoption of this Chapter. To the extent that the unlawful building, structure or use conflicts with this Chapter, the building, structure or use remains unlawful under this Chapter.
- (6) In their interpretation and application, the provisions of this ordinance shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Wis. Admin. Code ch. NR 116 or NR 117, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 116 or NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

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maximum of five (5) stories, plus an additional story if stepped back on all sides if approved under the requirements of Section 28.098 Planned Development District.

28.077 DOWNTOWN RESIDENTIAL DISTRICTS.

(1) Statement of Purpose.

These districts are intended to recognize historic Downtown neighborhoods comprised of predominantly residential uses with some non-residential uses. The districts are also intended to:

- (a) Facilitate the preservation, development or redevelopment goals of the comprehensive plan and of adopted neighborhood, corridor or special area plans.
- (b) Promote the preservation and conservation of historic buildings and districts while allowing selective infill and redevelopment based on the recommendations of adopted City plans.
- (c) Ensure that new buildings and additions to existing buildings are designed with sensitivity to their context in terms of scale and rhythm, building placement, facade width, height and proportions, garage and driveway placement, landscaping and similar design features.

28.078 DOWNTOWN RESIDENTIAL 1 DISTRICT.

(1) Permitted and Conditional Uses.

See Table 28E-2 for a complete list of allowed uses within the downtown and urban districts.

(2) Dimensional Standards.

Standards represent minimums unless otherwise noted. Dimensions are in feet unless otherwise noted.

Downtown Residential 1 District	
Lot area (sq. ft.)	3,000
Lot width	1, 2, and 3-unit dwellings: 30 >3-unit dwellings, and non-residential and mixed-use buildings: 40
Front yard setback	15 See (a) below
Side yard setback	5 Lot width <40: 10% lot width
Rear yard setback	20% of lot depth, but at least 30 See (b) below
Maximum lot coverage	75%
Maximum height	See Downtown Height Map
Stepback	See Downtown Stepback Map
Usable open space	40 sq. ft. per bedroom See (c) below

- (a) Front yard setbacks may be designated on the zoning map as a specific location (build to line), a minimum, or a range.
- (b) Underground parking may extend into the rear yard setback if located completely below grade.
- (c) Usable open space may take the form of at-grade open space, porches, balconies, roof decks, green roofs or other above-ground amenities.

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(3) Residential Point System.

To ensure a variety of housing types in the downtown area, the following point values are established:

Type of Dwelling Unit	Point Value
Studio/efficiency unit	0.75
One-bedroom unit	1
Two-bedroom unit	2
Three or more bedroom unit	3

In any development site except for the Residential - Group Living category (see Table 28E-2) the average point value for all dwelling units must be at least 1.25.

(4) Building Standards.

The following standards are applicable to new buildings and additions, within any ten- (10) year period, exceeding fifty percent (50%) of existing building's floor area.

- (a) Maximum Building Width. The maximum width of any building fronting the primary abutting street shall not exceed sixty (60) feet.
- (b) Through-lot Development. Development of through lots shall be designed with buildings oriented to each street and with a minimum distance of sixty (60) feet between rear facades of above-ground building elements. Underground parking may extend into this shared rear yard area if located completely below grade.

28.146 HISTORIC DISTRICT SUFFIXES.

- (1) Statement of Purpose and Applicability. Historic District suffixes are created to provide an effective means of identifying zoning lots which are either located within a designated Historic District or upon which is located a designated landmark, pursuant to the provisions of Sec. 33.19, MGO. The appropriate suffix for a designated landmark or respective Historic District as created hereunder shall be appended to the current and any future zoning district classification of each zoning lot so affected and the suffix shall also be appended to zoning district classifications on Zoning District Maps maintained by the Zoning Administrator. The suffix designation has no effect upon the principal zoning district classification of said zoning lots. However, the applicable regulations of Chapter 33.19 which are referenced by the respective suffix shall apply to each said zoning lot in addition to the applicable requirements of the Zoning Code.
- (2) HIST-L Designated Landmark. The HIST-L suffix applies to all zoning lots on which a designated landmark is located pursuant to Sec. 33.19(4) and (6), MGO, and the owner of each such zoning lot is notified that the landmark located thereon and the landmark site shall be maintained in a condition consistent with the provisions of Sec. 33.19, in addition to the applicable requirements of the Zoning Code.
- (3) HIST-MH Mansion Hill Historic District. The HIST-MH suffix applies to all zoning lots located within the Mansion Hill Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(10), in addition to the applicable requirements of the Zoning Code.
- (4) HIST-TL Third Lake Ridge Historic District. The HIST-TL suffix applies to all zoning lots located within the Third Lake Ridge Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(11), in addition to the applicable requirements of the Zoning Code.

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- (5) HIST-UH University Heights Historic District. The HIST-UH suffix applies to all zoning lots located within the University Heights Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(12), in addition to the applicable requirements of the Zoning Code.
- (6) HIST-MB Marquette Bungalows Historic District. The HIST-MB suffix applies to all zoning lots located within the Marquette Bungalows Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(13), in addition to the applicable requirements of the Zoning Code.
- (7) HIST-FS First Settlement Historic District. The HIST-FS Suffix applies to all zoning lots located within the First Settlement Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, shall be constructed, maintained, altered, and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(14), in addition to the applicable requirements of the Zoning Code.

33.19 LANDMARKS COMMISSION.

- (1) Purpose and Intent. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. The purpose of this section is to:
 - (a) Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political and architectural history.
 - (b) Safeguard the City's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.
 - (c) Stabilize and improve property values.
 - (d) Foster civic pride in the beauty and noble accomplishments of the past.
 - (e) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.
 - (f) Strengthen the economy of the City.
 - (g) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City.

- (2) Definitions. In this section, unless the context clearly requires otherwise:

Commission means the landmarks preservation commission created under this section.

Historic district is an area designated by the commission with the consent of the Common Council which contains one or more landmarks or landmark sites, as well as those abutting improvement parcels which the commission determines should fall under the provisions of this section to assure that their appearance and development is harmonious with such landmarks or landmark sites.

Improvement means any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Improvement parcel is the unit of property which includes a physical betterment constituting an improvement and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes. Provided, however that the term "improvement parcel" shall also include any unimproved area of land which is treated as a single entity for such tax purposes.

Landmark means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the City, state or nation and which has been designated as a landmark pursuant to the provisions of this chapter.

Landmark site means any parcel of land of historic significance due to a substantial value in tracing the history of aboriginal man, or upon which an historic event has occurred, and which has been designated as a landmark site under this section, or an improvement parcel, or part thereof, on which is situated a landmark and any abutting improvement parcel, or part thereof, used as and constituting part of the premises on which the landmark is situated.

Person means any individual, association, corporation or business entity. For purposes of repeated violations of the provisions of this chapter, any association, corporation or business entity is considered the same as another association, corporation or business entity if they share at least one (1) officer.

Visually related area for a corner parcel shall be defined as the area described by a circle drawn on a two hundred (200) foot radius, the center being the center of the

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corner parcel, i.e. the intersection of diagonals from the principal corners of that parcel. (Am. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)

Visually related area for a parcel within a block (not a corner parcel) shall be defined as the area described by a two hundred (200) foot circle drawn from the centerpoint of the streetside (front) lot line. (Am. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)

Zoned for Commercial Use shall be defined as the application of zoning categories NMX, UMX, TSS, CCT, LMX to an improvement parcel regardless of current use.

Zoned for Employment Use shall be defined as the application of zoning categories IL, IG and TE to an improvement parcel regardless of current use.

Zoned for Residential Use shall be defined as the application of zoning categories TR-V1, TR-V2, TR-U1, TR-C1, TR-C2, TR-C3, TR-C4 to an improvement parcel regardless of current use.

(Sec. 33.01(2) Am. by Ord. 6470, 1-9-79; ORD-13-00087, 5-29-13)

- (3) Landmarks Commission Composition and Terms. A Landmarks Commission is hereby created, consisting of seven (7) members. Of the membership, one shall be a registered architect; one shall be an historian qualified in the field of historic preservation; one shall be a licensed real estate broker; one shall be an alderperson; and three shall be citizen members. Each member shall have, to the highest extent practicable, a known interest in landmarks preservation. The Mayor shall appoint the commissioners subject to confirmation by the Common Council. Of the initial members so appointed, two shall serve a term of one year, two shall serve a term of two years, and three shall serve a term of three years. Thereafter the term for each member shall be three years. (Am. by ORD-09-00147, 11-6-09)
- (4) Landmarks and Landmark Sites Designation Criteria.
- (a) For purposes of this ordinance, a landmark or landmark site designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural or cultural significance to the City of Madison, such as historic structures or sites which:
1. Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or
 2. Are identified with historic personages or with important events in national, state or local history; or
 3. Embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship or
 4. Are representative of the notable work of a master builder, designer or architect whose individual genius influences his age.
- (b) The commission may adopt specific operating guidelines for landmark and landmark site designation providing such are in conformance with the provisions of this paragraph.
- (5) Powers and Duties.
- (a) Designation. The commission shall have the power subject to subsection (6) hereunder, to recommend to the Common Council the designation of landmarks, landmark sites and historic districts within the City limits of Madison. Such designations shall be made by the Common Council based upon subsection (4) hereof. Once designated by the Common Council such landmarks, landmark sites and historic districts shall be subject to all the provisions of this ordinance. (Am. by Ord. 11,983, 12-12-97)

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(b) Regulation of Construction, Reconstruction and Exterior Alteration.

1. Any application for a permit from the Director of the Building Inspection Division involving the exterior of a designated landmark, landmark site or structure within an Historic District shall be filed with the Landmarks Commission. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
2. No owner or person in charge of a landmark, landmark site or structure within an Historic District shall reconstruct or alter all or any part of the exterior of such property or construct any improvement upon such designated property or properties within an Historic District or cause or permit any such work to be performed upon such property unless a Certificate of Appropriateness has been granted by the Landmarks Commission or its designee(s) as hereinafter provided.
The Landmarks Commission may appoint a designee or designees to approve certain projects that will have little effect on the appearance of the exterior of such properties, provided that the Landmarks Commission shall first adopt a written policy on the types of projects which can be approved by its designee(s). Unless such certificate has been granted by the commission or its designee(s), the Director of the Building Inspection Division shall not issue a permit for any such work. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
3. Whenever, under Paragraph 2. above, the Landmarks Commission receives an application for a project in the University Heights Historic District which proposes to erect a new primary building, an accessory building over 100 square feet in size or an addition over 100 square feet in size to the footprint of an existing building, not including decks and open porches, the Landmarks Commission shall hold a public hearing. The Commission may establish rules and procedures for the conduct of such hearings and shall see to it that a record of the proceedings is made and preserved.
Notice of the time, place and purpose of such hearing shall be given by publication as a Class 2 Notice under the Wisconsin Statutes in the official City paper. Notice of the time, place and purpose of such public hearing shall also be sent by the City Clerk to the applicant, the Director of the Planning Division, the alderperson of the district in which the property affected is located, and the owners of record, as listed in the office of the City Assessor, of property in whole or in part situated within two hundred (200) feet of the boundaries of the properties affected, said notice to be sent at least ten (10) days prior to the date of such public hearing. The applicant shall immediately post a copy of such notice in a conspicuous manner in a common or central location of each rental building where all residents/occupants are likely to see the notice or mail a copy of the notice to each rental unit within the area entitled to notice. The applicant has the option of making the required mailing and may use labels purchased from the City or the applicant may pay the City to do the mailing. Failure to post the notice at least forty-eight (48) hours before the scheduled hearing or to mail a copy of the notice to each rental unit at least five (5) days before the scheduled hearing shall subject the applicant to a forfeiture of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100). Failure to post or mail such notices shall not affect the validity of the action taken on the application. (Cr. by Ord. 11,070, 12-6-94)

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4. Upon filing of any application with the Landmarks Commission, the Landmarks Commission shall determine:
 - a. Whether, in the case of a designated landmark or landmark site, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done; and
 - b. Whether, in the case of the construction of a new improvement upon a landmark site, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site; and
 - c. Whether, in the case of any property located in an Historic District designated pursuant to the terms of Subsection (6)(d) hereunder, the proposed construction, reconstruction or exterior alteration does not conform to the objectives and design criteria of the historic preservation plan for said district as duly adopted by the Common Council.
(Sec. 33.01(4)(b)3. Renumbered to 4. by Ord. 11,070, 12-6-94)
 5. If the commission determines Subparagraphs a., b. and c. of Paragraph 4. above in the negative, it shall issue the Certificate of Appropriateness. Upon the issuance of such certificate, the building permit shall then be issued by the Director of the Building Inspection Division. The commission shall make this decision within sixty (60) days of the filing of the application. Should the commission fail to issue a Certificate of Appropriateness due to the failure of the proposal to conform to the above guidelines, the applicant may appeal such decision to the Common Council. In addition, if the commission fails to issue a Certificate of Appropriateness, the commission shall, at the request of the applicant, cooperate and work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this ordinance. (Am. by Ord. 11,648, 8-20 & 8-26-96; ORD-08-00109, 10-7-08)
 6. In addition to any other penalty provided in this section, should an owner or person in charge of a landmark, landmark site or structure within an Historic District reconstruct or alter all or any part of the exterior of such property or construct any improvement upon such designated property or properties within an Historic District or cause or permit any such work to be performed upon such property without first obtaining a Certificate of Appropriateness from the Landmarks Commission or its designee or should such reconstruction, alteration or other work be performed in violation of the conditions of a lawfully granted Certificate of Appropriateness, the Landmarks Commission, after reviewing such reconstruction, alteration or other work, may order it removed if it does not comply with the requirements of Section 33.19(5)(b)4. above or may order such renovation as is necessary to make it comply with Section 33.19(5)(b)4. (Am. by Ord. 11,648, 8-20 & 8-26-96)
- (c) Regulation of Demolition. No permit to demolish all or part of a landmark, or improvement in an Historic District, shall be granted by the Director of the Building Inspection Division except as follows: (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
1. Scope.
Any application for a permit to demolish or remove all or part of a landmark or improvement in an Historic District shall be filed with the Landmarks Commission. Such application shall be made in all cases, both when demolition or removal is planned as an isolated event and when said demolition or removal

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is considered in conjunction with a special development plan, a rezoning plan or a conditional use plan. No owner or operator of a landmark, or improvement in an Historic district, shall be granted a permit to demolish or remove such property unless a Certificate of Appropriateness therefor has been granted by the Landmarks Commission. (Am. by Ord. 8117, 10-3-83)

2. Procedure.

The Landmarks Commission shall hold a public hearing on each application for a wrecking or removal permit and shall follow the procedures required for other hearings by Madison General Ordinance Section 28.183. Thereafter, the Landmarks Commission may decide to grant a Certificate of Appropriateness, refuse to grant such Certificate or suspend action on same for a period not to exceed one (1) year from the date of application for said permit. Failure to issue a Certificate of Appropriateness or to issue a written determination to suspend action on the application within thirty (30) days of the application date shall be deemed a refusal to grant a Certificate of Appropriateness for the demolition or removal, provided that the determination period may be extended an additional thirty (30) days by written stipulation of the applicant and the Landmarks Commission. If the Landmarks Commission determines to suspend action on the application, the Commission and the applicant shall undertake serious and continuing discussions for the purpose of finding a mutually agreeable method of saving the subject property. Furthermore, during this time the owner shall take whatever steps are necessary to prevent further deterioration of the building. At the end of the one-year period the Landmarks Commission shall act on the suspended application by either granting or refusing to grant a Certificate of Appropriateness for the proposed demolition or removal. (Am. by Ord. 9085, 1-29-87; ORD-12-00134, 1-2-13)

3. Standards.

In determining whether to issue a Certificate of Appropriateness for any demolition, the Landmarks Commission shall consider and may give decisive weight to any or all of the following:

- a. Whether the building or structure is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;
- b. Whether the building or structure, although not itself a landmark building, contributes to the distinctive architectural or historic character of the District as a whole and therefore should be preserved for the benefit of the people of the City and the State;
- c. Whether demolition of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and to the objectives of the historic preservation plan for the applicable district as duly adopted by the Common Council;
- d. Whether the building or structure is of such old and unusual or uncommon design, texture and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense;
- e. Whether retention of the building or structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;

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- f. Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it, provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness;
 - g. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the buildings and environment of the district in which the subject property is located.
 4. (R. by Ord. 11,070, 12-6-94)
(Sec. 33.01(5)(c) Am. by Ord. 7027, 6-27-80)
- (d) Regulation of Painting Signs on Brick Buildings. No permit to paint a sign on a brick building shall be granted by the Director of the Building Inspection Division except as follows: (Am. by ORD-08-00109, 10-7-08)
 1. A Certificate of Appropriateness must be issued by Landmarks Commission. To qualify For a Certificate of Appropriateness:
 - a. the building must be designated a landmark or be in a locally-designated historic district.
 - b. the brick surface must have been painted previously.
 - c. the building must have been built in whole or in part for commercial or industrial use.
 - d. the sign must be an identification sign for a tenant of the building.
 - e. the sign shall not be illuminated.
 - f. the proposed sign must be of a size, style, and location that blends with the historic character of the building and/or historic district.
 2. The permittee must comply with the provisions of Chapter 31, Madison General Ordinances.
(Cr. by Ord. 12,313, 2-1-99)
- (e) Restoration of Painted Signs on Brick Buildings. No permit to restore a painted sign of a brick building shall be granted by the Director of the Building Inspection Division except as follows: (Am. by ORD-08-00109, 10-7-08)
 1. A Certificate of Appropriateness must be issued by the Landmarks Commission. To qualify for a Certificate of Appropriateness:
 - a. the building must be a landmark or be in a locally-designated historic district.
 - b. the building must have been built in whole or in part for commercial or industrial use.
 - c. the owner must be able to document the existence and appearance of the sign to be restored.
 - d. the original sign must predate 1950.
 - e. the restored sign must be the same size and in the same location as the original sign.
 - f. the restored sign must be in the same colors, if known, as the original sign.
 - g. the restored sign shall not be illuminated.
 - h. the lettering style of the restored sign shall match as closely as possible the original lettering style of the original sign, however, new words may be used.
 2. The permittee must comply with the provisions of Chapter 31, Madison General Ordinances.

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(Cr. by Ord. 12,364, 3-30-99)

- (f) Appeal. An appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness under Subsection (5)(b) and (c) may be taken to the Common Council by the applicant for the permit. In addition, an appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness for any building or demolition project requiring a public hearing, whether this determination is made upon receipt of the application for a demolition permit or at the end of the one-year period in a case where action on the application has been suspended, or to suspend action on a demolition application, may also be taken to the Common Council by the Alderperson of the district in which the subject property is located, or by 20% of the property owners within 200 feet of the subject property.

Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. After a public hearing, the Council may, by favorable vote of two-thirds (2/3) of its members, based on the standards contained in this ordinance, reverse or modify the decision of the Landmarks Commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission's decision.

(Am. by Ord. 11,983, 12-12-97)

- (g) Recognition Of Landmarks And Landmark Sites. At such time as a landmark or landmark site has been properly designated in accordance with subsections (4) and (6) hereof, the commission shall cause to be prepared and erected on such property at City expense, a suitable plaque declaring that such property is a landmark or landmark site. Such plaque shall be so placed as to be easily visible to passing pedestrians. In the case of a landmark, the plaque shall state the accepted name of the landmark, the date of its construction, and other information deemed proper by the commission. In the case of a landmark site which is not the site of a landmark building, such plaque shall state the common name of the site, and such other information deemed appropriate by the commission. (Renumbered by Ord. 11,070, 12-6-94)

- (h) Sale Of Landmarks And Landmark Sites. Any party who is listed as the owner of record of a landmark site at the time of its designation, who can demonstrate to the Common Council that by virtue of such designation he is unable to find a buyer willing to preserve such landmark or landmark site, even though he has made reasonable attempts in good faith to find and attract such a buyer, may petition the commission for a rescission of its designation. Following the filing of such petition with the secretary of the commission:
1. The owner and the commission shall work together in good faith to locate a buyer for the subject property who is willing to abide by its designation.
 2. If, at the end of a period not exceeding six (6) months from the date of such petition, no such buyer can be found, and if the owner still desires to obtain such rescission, the Common Council shall rescind its designation of the subject property.
 3. In the event of such rescission, the City Clerk shall notify the Director of the Building Inspection Division and the City Assessor of same, and shall cause the same to be recorded in the office of the Dane County Register of Deeds. (Am. by ORD-08-00109, 10-7-08)

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4. Following any such rescission, the Common Council may not redesignate the subject property a landmark or landmark site for a period of not less than five (5) years following the date of rescission.

(Am. by Ord. 11,983, 12-12-97)

- (i) Other Duties. In addition to those duties already specified in this section, the commission shall:

1. Review proposed land divisions and subdivision plats of landmark sites and properties in Historic Districts to determine whether the proposed lot sizes negatively impact the historic character or significance of a landmark or landmark site and whether the proposed lot sizes are compatible with adjacent lot sizes and maintain the general lot size pattern of the Historic District. The Landmarks Commission review shall be advisory to the Plan Commission.

(Cr. by ORD-11-00123, 9-12-11)

2. Actively work for the passage of enabling legislation which would permit the granting of full or partial tax exemptions to properties it has designated under the provisions of this section in order to encourage landmark owners to assist in carrying out the intent of this ordinance.
3. Work closely with the State of Wisconsin liaison officer and the Governor's liaison committee for the National Register of Historic Places of the United States National Park Service in attempting to include such properties hereunder designated as landmarks or landmark sites on the Federal Register.
4. Work for the continuing education of the citizens of Madison about the historic heritage of this City and the landmarks and landmark sites designated under the provisions of this section.
5. As it deems advisable, receive and solicit funds for the purpose of landmarks preservation in the City of Madison. Such funds shall be placed in a special City account for such purpose.

(Renumbered by Ord. 11,070, 12-6-94; ORD-11-00123, 9-12-11)

- (6) Procedures.

- (a) Designation Of Landmarks and Landmark Sites. The Landmarks Commission and the Common Council may consider nominations for landmark status. An individual or group may nominate a property for consideration. If a complete, accurate application is submitted and the Commission decides to consider the nomination, a public hearing shall be scheduled. At least ten (10) days prior to such hearing, the commission shall notify the owners of record, as listed in the office of the City Assessor, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property affected. Notice of such hearing shall also be published as a Class 1 Notice, under the Wisconsin Statutes. The commission shall also notify the following: Department of Public Works, Parks Division, Fire and Police Departments, Health Division, Department of Planning and Community and Economic Development and Plan Commission. Each such department shall respond to the commission within thirty (30) days of notification with its comments on the proposed designation or rescission. The commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses, and shall have the power to subpoena such witnesses and records as it deems necessary. The commission may conduct an independent investigation into the proposed designation or rescission. Within ten (10) days after the close of the public hearing, and after application of the criteria in Subsection (4), above, the commission may recommend the designation of the property as either a landmark or a landmark site or recommend the rescission of such designation. After such recommendation has been made, notification shall be sent to the property owner or

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owners. The commission shall report its recommendation, along with the reasons for it, to the Common Council. After considering the commission's report, and considering the standards contained in this ordinance, the Common Council may designate the property as either a landmark or a landmark site or rescind such designation. The City Clerk shall notify the Director of the Building Inspection Division and the City Assessor. The City

Clerk shall cause such designation or rescission to be recorded, at City expense, in the Dane County Register of Deeds office.

If the Commission decides not to consider a nomination, the property owner or alderperson may request that the Common Council consider the nomination. The Common Council shall then refer the nomination to the Landmarks Commission for a recommendation.

(Am. by Ord. 11,983, 12-12-97; Ord. 12,302, 1-15-99; ORD-08-00109, 10-7-08)

- (b) For those properties listed on pages 50 and 51 of the Downtown Historic Preservation Plan, the procedure to designate a property as a landmark cannot be initiated once a completed application for a conditional use, demolition permit or zoning map amendment has been submitted. (Cr. by Ord. 12,302, 1-15-99)
- (c) Voluntary Restrictive Covenants. The owner of any landmark or landmark site may, at any time following such designation of his property, enter into a restrictive covenant on the subject property after negotiation with the commission. The commission may assist the owner in preparing such covenant in the interest of preserving the landmark or landmark site and the owner shall record such covenant in the Dane County Register of Deeds office, and shall notify the City Assessor of such covenant and the conditions thereof. (Subdiv. (b) R. and (c) Renumbered to (b) by Ord. 11,070, 12-6-94)
- (d) Creation of Historic Districts.
 - 1. For preservation purposes, the Landmarks Commission shall select geographically defined areas within the City of Madison to be designated as Historic Districts and shall, with the assistance of the City Department of Planning and Community and Economic Development, prepare an historic preservation plan in ordinance form for each area. An Historic District may be designated for any geographic area of particular historic, architectural, or cultural significance to the City of Madison which:
 - a. Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state or community; or
 - b. Is identified with historic personages or with important events in national, state or local history; or
 - c. Embodies the distinguishing characteristics of architectural type specimens inherently valuable for the study of a period or periods, styles, methods or construction, indigenous materials or craftsmanship; or
 - d. Is representative of the notable works of master builders, designers, or architects who influenced their age.Each historic preservation plan prepared for or by the Landmarks Commission shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development and a statement of preservation objectives.
 - 2. Guideline criteria to be considered in the development of Historic District plans are as follows:
 - a. All new structures shall be constructed to a height visually compatible with the buildings and environment with which they are visually related.
 - b. The gross volume of any new structure shall be visually compatible with

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official City paper. Notice of the time, place and purpose of such public hearing shall also be sent by the City Clerk to the Alder of the Aldermanic District or Districts in which the Historic District is located, and the owners of record, as listed in the office of the City Assessor, who are owners of property situated in whole or in part within the Historic District, or situated in whole or in part within two hundred (200) feet of the boundaries of the Historic District. Said notice is to be sent at least ten (10) days prior to the date of such public hearing. Following the public hearing, the Landmarks Commission shall vote to recommend, reject or withhold action on the plan. This recommendation shall be forwarded to the City Plan Commission and the Common Council. (Am. by ORD-09-00147, 11-6-09)

- b. The City Plan Commission. The Plan Commission shall review the Historic District plan and make a recommendation to the Common Council. The Plan Commission shall make its recommendation on the Historic District plan within thirty (30) days.
- c. The Common Council. The Common Council, upon receipt of the recommendations from the Landmarks Commission and Plan Commission, shall hold a public hearing, notice to be given as noted in Subparagraph a. above, and shall following said public hearing either designate or reject the Historic District. Designation of the Historic District shall constitute adoption of the plan in ordinance form prepared for that district and direct the implementation of said plan.

(33.01(6)(d) Renumbered to (c) by Ord. 11,070, 12-6-94)

- (7) Conformance With Regulations. Every person in charge of any landmark, landmark site or improvement in an Historic District shall maintain same or cause or permit it to be maintained in a condition consistent with the provisions of this section.
- (8) Maintenance of Landmarks, Landmark Sites and Historic Districts.
 - (a) Every person in charge of an improvement on a landmark site or in an Historic District shall keep in good repair all of the exterior portions of such improvement and all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to fall into a state of disrepair. This provision shall be in addition to all other provisions of law requiring such improvement to be kept in good repair.
 - (b) Insofar as they are applicable to a landmark, landmark site or improvement in an Historic District, designated under this section, any provision of Chapters 18 (Plumbing Code), 27 (Minimum Housing and Property Maintenance Code), 29 (Building Code), 30 (Heating, Ventilating and Air Conditioning Code) and 31 (Outdoor Signs and Outdoor Advertising Structures) of the Madison General Ordinances may be varied or waived, on application, by the appropriate board having such jurisdiction over such chapter or, in the absence of such board, by the Director of the Building Inspection Division, provided such variance or waiver does not endanger public health or safety. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
 - (c) Notwithstanding subdivision (a) above, sandblasting of any exterior surface of an improvement on a landmark site or in an historic district is prohibited. Other types of abrasive exterior cleaning, including but not limited to waterblasting with a sand additive, or corrosive cleaning, including but not limited to muriatic acid wash, are also prohibited unless specifically approved prior to work by the Landmarks Commission. The Landmarks Commission shall approve exterior surface cleaning projects using abrasive or corrosive cleaning methods only if the project will not adversely affect the exterior fabric

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- of the building. (Cr. by Ord. 7923, 1-27-83)
- (9) Conditions Dangerous to Life, Health or Property. Nothing contained in this section shall prohibit the making of necessary construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an Historic District pursuant to order of any governmental agency or pursuant to any court judgment, for the purpose of remedying emergency conditions determined to be dangerous to life, health or property. In such case, no approval from the commission shall be required
- (10) Mansion Hill Historic District.
- (a) Purpose and Intent.
It is hereby declared a matter of public policy that a specific area of the City be identified, designated, and protected because of its special character and historical interest. This area, to be called the Mansion Hill Historic District, shall be described in general by the map and specifically by the legal description on file in the City Clerk's office. The purpose and intent of this ordinance shall be to designate this area according to the creation and review and adoption procedures in Sections 33.19(6)(d)1. through 4., Landmarks Commission, of the Madison General Ordinances. (Am. by Ord. 8690, 10-10-85 & 11-14-85)
- (b) (R. by Ord. 6470, 1-9-79)
- (c) Criteria for Creation of Mansion Hill Historic District. In that the Mansion Hill Historic District reflects a pattern in the broad social history of Madison and in the State and the Nation, and in that elements within the District meet the other three designation criteria, namely that many of the buildings in the District:
1. Are identified with historic personages or with important events in national, state or local history;
 2. Embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship;
 3. Are representative of the notable work of a master builder, designer or architect whose individual genius influences his age;
- The area described by the map and legal description shall be designated an historic district.
- (d) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition.
The Commission shall act in these matters specifically as they regard the Mansion Hill Historic District in the manner specified by Madison General Ordinance, Sections 33.19(5)(b) and (c).
- (e) Guideline Criteria for new Development in the Mansion Hill Historic District.
1. The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
 2. In the street elevation(s) of a new building, the proportion between the width and the height in the facade(s) shall be visually compatible with the buildings and the environment with which it is visually related (visually related area).
 3. The proportions and relationships between width and height of the doors and windows in new street facade(s) shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
 4. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with the buildings and environment with which it is visually related (visually related area).
 5. All new street facades should blend with other buildings via directional expression. When adjacent buildings have a dominant vertical or horizontal expression, this expression should be carried over and reflected.

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- (f) Conformance With Regulations; Maintenance of the District; Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability.

The Mansion Hill Historic District shall be subject to the public policy guidelines established in Sections 33.19(7) through (9), and (15) and (16) of the Madison General Ordinances in all of these matters. (Am. by Ord. 10,871, Adopted 3-15-94)

- (g) Reference to Plan.

The public policy guidelines in this section derive from a plan entitled “The Mansion Hill Historic Preservation Plan and Development Handbook”, City Planning Department, 1975.

(Sec. 33.01(10) Cr. by Ord. 5527, 8-4-76)

- (11) Third Lake Ridge Historic District.

- (a) It is hereby declared a matter of public policy that a specific area of the City be identified, designated, and protected because of its special character and historical interest and significance. This area, to be called the Third Lake Ridge Historic District, shall be described in general by the map and specifically by the legal description on file in the City Clerk’s Office. The purpose and intent of this ordinance shall be to designate this area according to the creation and review and adoption procedures in Sec. 33.19(6)(d) 1. through 4., Landmarks Commission, of the Madison General Ordinances. (Am. by Ord. 8690, 10-10-85 & 11-14-85)

- (b) Criteria for the Creation of the Third Lake Ridge Historic District.

In that the Third Lake Ridge Historic District area reflects a broad pattern of social history of Madison and the State and the Upper Midwest, and in that elements within the District meet other designation criteria in Subsections (4) and (6), namely that many of the buildings and sites in the District:

1. Are identified with historic personages or with important events in state or local history; and
2. Embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship;

The area described by the map and legal description shall be designated an historic district.

- (c) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition.

The Commission shall act in these matters as they regard the Third Lake Ridge Historic District in the manner specified by Sec. 33.19(5)(b) and (c), Madison General Ordinances.

- (d) Guideline Criteria for New Development in the Third Lake Ridge Historic District - Parcels Zoned for Employment Use. (Am. by ORD-12-00134, 1-2-13)

1. The gross volume of any new structure shall be visually compatible with the buildings and environment within its visually related area.
2. The height of any new structure shall be visually compatible with the buildings and environment within its visually related area.

- (e) Guideline Criteria for Exterior Alteration in the Third Lake Ridge Historic District - Parcels Zoned for Employment Use. (Am. by ORD-12-00134, 1-2-13)

Alterations of the height of any existing structure shall be visually compatible with the buildings and environment within its visually related area.

- (f) Guideline Criteria for New Development in the Third Lake Ridge Historic District - Parcels Zoned for Commercial Use.

1. Any new structures shall be evaluated according to both of the criteria listed in Sec. 33.19(11)(d); that is, compatibility of gross volume and height.
2. The rhythm of solids and voids in the street facade(s) of any new structure shall

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3. be compatible with the buildings within its visually related area.
 3. The materials used in the street facade(s) of any new structure shall be compatible with those used in the buildings and environment within its visually related area.
 4. The design of the roof of any new structure shall be compatible with those of the buildings and environment within its visually related area.
 5. The rhythm of building masses and spaces created by the construction of a new structure shall be compatible with the existing rhythm of masses and spaces for those sites within its visually related area.
- (g) Guideline Criteria for Exterior Alteration in the Third Lake Ridge Historic District - Parcels Zoned for Commercial Use.
1. Alterations of the height of any existing structure shall be visually compatible with the buildings and environment within its visually related area.
 2. Alterations of the street facade(s) of any existing structure shall retain the original or existing historical rhythm of solids and voids.
 3. Alterations of the street facade(s) of any existing structure shall retain the original or existing historical materials.
 4. Alterations of the roof of any existing structure shall retain its existing historical appearance.
- (h) Guideline Criteria for New Development in the Third Lake Ridge Historic District - Parcels Zoned for Residential Use.
1. Any new structure shall be evaluated according to all criteria listed in Sec. 33.19(11)(f).
 2. The directional expression of any new structure shall be compatible with those of the buildings and environment within its visually related area.
 3. The materials, patterns and textures of any new structure shall be compatible with those of the buildings and environment within its visually related area.
 4. The landscape plan of any new structure shall be compatible with that of the buildings and environment within its visually related area.
- (i) Guideline Criteria for Exterior Alteration in the Third Lake Ridge Historic District - Parcels Zoned for Residential Use.
1. Alteration of any existing structure shall be evaluated according to all criteria listed in Sec. 33.19(11)(g).
 2. Alteration of the surface material, pattern and texture in the facade(s) of any existing structures shall be compatible with the original or existing historical finishes.
 3. Alteration of any existing structure shall retain or be compatible with the original or existing historical rhythm of masses and spaces.
 4. Alteration of any existing structure shall retain the existing historical landscape plan or shall develop a new plan which is compatible with the plans of the buildings and environment within its visually related area.
 5. Alteration of the street facade(s) of any existing structure shall retain the original or existing historical proportional relationships of door sizes to window sizes.
- (j) Conformance With Regulations; Maintenance of the District; Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability.
The Third Lake Ridge Historic District shall be subject to the public policy guidelines established in Sec. 33.19(7) through (9) and (15) and (16) of the Madison General Ordinances, in all of these matters. (Am. by Ord. 10,871, Adopted 3-15-94)
- (k) Reference to Plan.
The public policy guidelines in this subsection derive from a plan entitled "Third Lake

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Ridge Historic District”, City Planning Department, January, 1978.

(Sec. 33.01(11) Cr. by Ord. 6470, 1-9-79)

(12) University Heights Historic District.

- (a) Purpose and Intent. It is hereby declared a matter of public policy that a specific area of the City be identified, designated and protected because of its special character of historic interest and significance. This area, to be called University Heights Historic District, shall be described generally by the map and specifically by the legal description on file in the City Clerk’s Office. The purpose and intent of this ordinance shall be to designate this area in accordance with Section 33.19(6)(d) entitled “Creation of Historic Districts” of the Madison General Ordinances.
- (b) Criteria for the Creation of the University Heights Historic District. In that the University Heights Historic District reflects a pattern in the broad social history of Madison and in the state and the nation and in that elements within the district meet the other three designation criteria in Sections 33.19(4) and (6) of the Madison General Ordinances, namely that many of the buildings in the district:
 1. are identified with historic personages or with important events in national, state, or local history;
 2. embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; and,
 3. are representative of the notable work of a master builder, designer, or architect whose individual genius influenced her/his age, the area described by the map and legal description shall be designated an historic district.
- (c) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition. The Commission shall act in these matters specifically as they regard the University Heights Historic District in the manner specified by the Madison General Ordinances, Sections 33.19(5)(b) and (c).
- (d) Criteria for the Review of Additions, Exterior Alterations and Repairs in TRC2, TR-C3 and TR-C4 Zoning Districts. (Am. by ORD-12-00134, 1-2-13)
 1. Height. All additions shall be no higher than the existing building; however, if the existing building is already a nonconforming one, no addition shall be made thereto except in accordance with Section 28.192 of the Madison General Ordinances. Roof additions resulting in an increased building volume are prohibited unless they meet the standards in Section 33.19(12)(d)6. and are permitted under Chapter 28 of the Madison General Ordinances, or approved as a variance pursuant to Sections 28.184. (Am. by ORD-12-00134, 1-2-13)
 2. Second Exit Platforms and Fire Escapes. Second exit platforms and fire escapes shall be invisible from the street, wherever possible, and shall be of a plain and unobtrusive design in all cases. In instances where an automatic combustion products detection and alarm system is permitted as an alternative to second exits, use of such a system shall be mandatory. (Am. by ORD-12-00134, 1-2-13)
 3. Repairs. Materials used in exterior repairs shall duplicate the original building materials in texture and appearance, unless the Landmarks Commission approves duplication of the existing building materials where the existing building materials differ from the original. Repairs using materials that exactly duplicate the original in composition are encouraged. (Renum. by ORD-08-00122, 11-22-08)
 4. Restoration. Projects that will restore the appearance of a building or structure to its original appearance are encouraged and will be approved by the Landmarks Commission if such projects are documented by photographs, architectural or

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- archeological research or other suitable evidence. (Renum. by ORD-08-00122, 11-22-08)
5. Re-Siding. Re-siding with aluminum or vinyl that replaces or covers clapboards or nonoriginal siding on buildings originally sided with clapboards will be approved by the Landmarks Commission provided that the new siding imitates the width of the original clapboard siding to within one (1) inch and provided further that all architectural details including, but not limited to, window trim, wood cornices and ornament either remain uncovered or are duplicated exactly in appearance. Where more than one layer of siding exists on the building, all layers except the first must be removed before new siding is applied. If insulation is applied under the new siding, all trim must be built up so that it projects from the new siding to the same extent it did with the original siding. (Renum. by ORD-08-00122, 11-22-08)
 6. Additions Visible from the Street and Alterations to Street Facades. Additions visible from the street, including additions to the top of buildings or structures, and alterations to street facades shall be compatible with the existing building in architectural design, scale, color, texture, proportion of solids to voids and proportion of widths to heights of doors and windows. Materials used in such alterations and additions shall duplicate in texture and appearance, and architectural details used therein shall duplicate in design, the materials and details used in the original construction of the existing building or of other buildings in University Heights of similar materials, age and architectural style, unless the Landmarks Commission approves duplication of the texture and appearance of materials and the design of architectural details used in the existing building where the existing building materials and architectural details differ from the original. Additions and exterior alterations that exactly duplicate the original materials in composition are encouraged. Additions or exterior alterations that destroy significant architectural features are prohibited. Side additions shall not detract from the design composition of the original facade. (Renum. by ORD-08-00122, 11-22-08)
 7. Additions and Exterior Alterations Not Visible from the Street. Additions and exterior alterations that are not visible from any streets contiguous to the lot lines upon which the building or structure is located will be approved by the Landmarks Commission if their design is compatible with the scale of the existing building and, further, if the materials used are compatible with the existing materials in texture, color and architectural details. Additions and alterations shall harmonize with the architectural design of the building rather than contrast with it. (Renum. by ORD-08-00122, 11-22-08)
 8. Roof Shape. The roof shape of the front of a building or structure shall not be altered except to restore it to the original documentable appearance or to add a dormer or dormers in a location and shape compatible with the architectural design of the building and similar in location and shape to original dormers on buildings of the same vintage and style within the district. Alterations of the roof shape of the sides or back of a building or structure shall be visually compatible with the architectural design of the existing building. (Renum. by ORD-08-00122, 11-22-08)

9. Roof Material.
 - a. If the existing roof of a building or structure is tile, slate or other material that is original to the building or structure and/or contributes to its historic character all repairs thereto shall be made using the same materials. In addition, in all cases any such roof must be repaired rather than replaced, unless the documented cost of repair exceeds the documented cost of re-roofing with a substitute material that approximates the appearance of the original roofing material as closely as possible, in which case re-roofing with a material that approximates the appearance of the original roofing material as closely as possible will be approved by the Landmarks Commission.
 - b. If the existing roofing material is asphalt shingles, sawn wood shingles or a nonhistoric material such as fiberglass, all repairs shall match in appearance the existing roof material; however, if any such roof is covered or replaced, re-roofing must be done using rectangular sawn wood shingles or rectangular shingles that are similar in width, thickness and apparent length to sawn wood shingles, for example, 3-in-1 tab asphalt shingles. Modern style shingles, such as thick wood shakes, dutch lap, french method and interlock shingles, that are incompatible with the historic character of the district are prohibited.
 - c. Rolled roofing, tar and gravel and other similar roofing materials are prohibited except that such materials may be used on flat or slightly sloped roofs which are not visible from the ground.
(Renum. by ORD-08-00122, 11-22-08)
10. Parking Lots. No new parking lots will be approved unless they are accessory to and on the same zoning lot as a commercial building or multiple family dwelling.
(Renum. by ORD-08-00122, 11-22-08)
- (e) Criteria for the Review of Additions, Exterior Alterations and Repairs in the TR-C2, TR-C3, TR-C4, TR-V1, TR-V2, TR-U1, TR-U2, NMX, TSS, and LMX Zoning Districts.
(Title Am. by ORD-13-00087, 5-29-13)
 1. Height. All additions shall be no higher than the existing building; however, if the existing building is already a nonconforming one no addition shall be made thereto except in accordance with Section 28.192 of the Madison General Ordinances. In addition, all additions, including additions to the top of a building or structure, shall conform to the height restrictions for the zoning district in which the building or structure is located. (Am. by ORD-12-00134, 1-2-13)
 2. Additions and Alterations. Alterations and additions shall be compatible in scale, materials and texture with the existing building or structure.
 3. Repairs. Materials used in repairs shall harmonize with the existing materials in texture, color and architectural detail.
 4. Re-Siding. The criteria for the review of re-siding are the same as the criteria for review of re-siding in the TR-V1, TR-V2, TR-C2, TR-C3 and TR-C4 zoning districts set forth in Section 33.19(12)(d)5. of the Madison General Ordinances. (Am. by ORD-13-00087, 5-29-13)
 5. Roof Shape. Roof alterations to provide additional windows, headroom or area are prohibited unless permitted under Chapter 28 of the Madison General Ordinances or otherwise approved pursuant thereto as a variance or as part of a conditional use. In addition, all roof alterations shall be visually compatible with the architectural design of the building or structure.

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6. Roof Materials. All repairs shall match in appearance the existing roofing materials; however, when a roof is covered or replaced, roofing materials shall duplicate as closely as practicable the appearance of the original materials. Thick wood shakes, french method, interlock and dutch lap shingles are prohibited. Rolled roofing, tar and gravel and other similar roof materials are also prohibited except on flat or slightly sloped roofs which are not visible from the street.
 7. Parking Lots. No new parking lots will be approved unless they are accessory to and on the same zoning lot as a commercial building or multiple family dwelling.
- (f) Criteria for the Review of New Construction in the TR-V1, TR-V2, TR-U1, TR-U2, TR-C2, TR-C3, TR-C4, MNX, TSS, and LMX Zoning Districts. (Title Am. by ORD-13-00087, 5-29-13)
1. Principal Buildings.
 - a. Height. The maximum height for new buildings and structures in the TR-C2, TR-C3, TR-C4, TR-V1, and TR-V2 Zoning Districts shall be thirty-five (35) feet and shall not exceed two and a half (2-1/2) stories except as provided in the height regulations for the district.

The maximum height for new buildings and structures in the TR-U1, NMX, TSS, and LMX Zoning Districts shall be forty (40) feet.

The maximum height in the TR-U2 Zoning District for new buildings and structures shall be fifty (50) feet. All new buildings and structures in all zoning districts within University Heights shall be no less than fifteen (15) feet high.

(Am. by ORD-12-00134, 1-2-13; ORD-13-00087, 5-29-13)
 - b. Materials. Materials for the exterior walls of new buildings and structures shall be the same as or similar to materials prevalent in the University Heights Historic District. Permitted materials include brick, narrow gauge horizontal clapboards four or less inches in exposed width, stone, stucco, smooth shingles or combinations of the above provided the combinations occur in a manner and location similar to the materials on existing buildings in University Heights (e.g., brick on first floor with clapboard on second floor). Other materials, such as aluminum or vinyl must be visually compatible with buildings in the visually related area. The following materials are prohibited: concrete block, asbestos, wide clapboards over four inches in exposed width, diagonal boards, vertical boards, rough sawn wood, rough split shingles, shakes.
 - c. Visual Size. The gross area of the front facade, i.e., all walls facing the street, of a single-family, two-unit or commercial building shall be no greater than 125% of the average gross area of the front facades of buildings in the visually related area. The gross area of the front facade of a multiple family dwelling shall be no more than 125% of the average gross area of the front facades of all buildings within the visually related area or variations in the setback shall be designed in the front facade of the building to repeat the rhythm and proportions of buildings to space between them within the visually related area.

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- d. Roof Shape. The shapes and pitches of roofs on new buildings and structures shall be similar to the roof shapes and pitches on existing buildings within the visually related area.
 - e. Roof Materials. Roofing materials on new buildings or structures shall be similar in appearance to roofing materials used on buildings within the visually related area. Modern-style shingles, such as thick wood shakes, dutch lap, french method and interlock shingles, that are incompatible with the historic character of the district are prohibited. Rolled roofing, tar and gravel and other similar roofing materials are prohibited except that such materials may be used on flat or slightly sloped roofs which are not visible from the ground.
 - f. Parking Lots. No new parking lots will be approved unless they are accessory to and on the same zoning lot as a commercial building or multiple family dwelling. (Renum. by ORD-08-00122, 11-22-08)
2. Accessory Buildings. Accessory buildings, as defined in Section 28.211 of the Madison General Ordinances, shall be compatible with the design of the existing buildings on the zoning lot, shall not exceed fifteen (15) feet in height and shall be as unobtrusive as possible. No accessory building shall be erected in any yard except a rear yard. Exterior wall materials shall be the same as those for construction of new principal buildings as set forth in Section 33.19(12)(f)1.c. (Am. by ORD-12-00134, 1-2-13)
- (g) Conformance with Regulations, Maintenance of the District, Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability. The University Heights Historic District shall be subject to the public policy guidelines established in Section 33.19(7) through (9) and (15) and (16) Madison General Ordinances, in all of these matters. (Am. by Ord. 10,871, Adopted 3-15-94)
(Sec. 33.01(12) Cr. by Ord. 8690, 10-10-85 & 11-14-85)
- (13) Marquette Bungalows Historic District.
- (a) Purpose and Intent. It is hereby declared a matter of public policy that a specific area of the city be identified, designated and protected because of its special character of historic interest and significance. This area, to be called the Marquette Bungalows Historic District, shall be described generally by the map and specifically by the legal description on file in the City Clerk's office. The purpose and intent of this ordinance shall be to designate this area in accordance with Section 33.19(6)(d) entitled "Creation of Historic Districts" of the Madison General Ordinances.
 - (b) Criteria for the Creation of the Marquette Bungalows Historic District. In that the Marquette Bungalows Historic District reflects a pattern in the broad social history of Madison and in the state and the nation and in that elements within the district meet designation criteria in Section 33.01(6)(a)1. of these ordinances, specifically that many of the buildings in the district embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship, the area described by the map and legal description shall be designated an historic district.
 - (c) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition. The Commission shall act in these matters specifically as they regard the Marquette Bungalows Historic District in the manner specified by the Madison General Ordinances, Section 33.19(5)(b) and (c).

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- (d) Criteria for the Review of Additions, Exterior Alterations and Repairs. All additions, exterior alterations and repairs must be compatible with the historic character of the house and the Marquette Bungalows Historic District.
1. Re-Siding. Re-siding with aluminum or vinyl that replaces or covers clapboards or non-original siding on buildings originally sided with clapboards will be approved by the Landmarks Commission provided that the new siding imitates the width of the original clapboard siding to within one inch and provided further that all architectural details including, but not limited to, window trim, wood cornices and other ornament either remain uncovered or are duplicated exactly in appearance. All trim must continue to project out beyond the plane of the siding. Brick, stucco, and half-timber detailing shall match the original in appearance. Original wood shingle siding should be repaired or replaced to match the original in appearance, whenever possible; however, covering wood shingles with double-four vinyl or aluminum may be approved.
 2. Roof Materials. Reroofing shall be done with asphalt shingles, fiberglass shingles or other rectangular composition shingle similar in appearance to 3-in-1 tab asphalt shingles. Sawn wood shingles may also be approved. Modern style shingles, such as thick wood shakes, dutch lap, french method and interlock shingles are incompatible with the historic character of the district and are prohibited. Vents shall be located as inconspicuously as possible and shall be similar in color to the color of the roof. Rolled roofing, tar and gravel and other similar roofing materials are prohibited except that such materials may be used on flat or slightly sloped roofs which are not visible from the ground.
 3. Skylights. Skylights on street-facing roof slopes are prohibited. Skylights may be permitted on side roof slopes provided the front edge of the skylight is at least 10 feet back from the front edge of the main roof. Skylights on any roof area not visible from the street may be permitted. The design should be as simple as possible, of the flat type (not bubble) and painted to blend with the color of the roof.
 4. Dormers and Other Roof Alterations. New dormers shall be greater than three (3) feet from the front edge of the roof. New dormers shall match original dormers on the house (or original dormers on similar houses in the district) in roof shape and material, width of overhang, siding, window design and trim details. The ridge line of a new dormer shall not extend above the ridge line of the main roof of the house. The dormer walls shall not extend beyond the line of the main house wall below. Shed dormers behind existing dormers or gables on non-street sides of the house may be approved provided that the roof material, siding, window design and trim details match the original features of the house. Other roof alterations shall be compatible with the roof shape and other features of the house, such as siding and trim details, and shall not extend above the ridge line of the house.
 5. Chimneys. The exterior appearance of chimneys visible from the street shall be maintained in good repair. The removal of the exterior portions of such chimneys is prohibited. Chimneys not visible from the street may be removed. New chimneys shall be constructed of brick to match as closely as possible the brick on the house, or if there is no brick on the house, chimneys may be made of brick similar in dimensions and color to brick on other houses in the neighborhood. New chimneys not visible from the street may also be constructed of metal or other non-historic material.

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6. Windows and Doors.
 - a. General Criteria. The original appearance of leaded glass and other non-rectangular decorative windows (e.g., curved top windows) on any facade of the house shall be retained. Replacement of such windows shall duplicate the original in size, configuration and appearance. Picture windows are prohibited. Trim on new or remodeled windows shall match the original window trim on the house.
 - b. Street Facades. Windows and doors on the front or street facade of the house and on side faces within 10 feet of the front facade of the house shall retain their original or existing appearance, including true muntins where they exist. Replacement windows and doors may be approved if they match the original appearance.
 - c. Non-Street Side Facades. Retention of the original appearance of windows and doors on the sides of the house is encouraged. However, if replacement or new windows are proposed, the muntin design of the original windows on the house may either be replicated with true-divided lights or with exterior or interior applied grids or with grids applied between the panes of glass. New windows shall either be casement windows or double-hung windows. Sash on new windows over four (4) feet square shall be divided by muntins or mullions. Bay windows may be approved if they have sides perpendicular to the wall and if they do not extend beyond the eaves of the roof.
 - d. Rear Facade. Replacement, remodeling or installation of new doors and windows on the rear facade will not be restricted except as discussed under "General Criteria" above.
7. Porches. Porches and stairway railings shall match the original railings in appearance wherever possible. Wrought iron railings with vertical balusters at least one-half inch in width, wood railings with vertical square balusters spaced no more than three (3) inches apart, and solid wall railings covered in siding to match the house will be approved. Other designs may be permitted if they blend with the character of the house and the district. Porches may be enclosed with windows or screens provided that new windows be casements or double-hung units similar in proportion to other windows on the house. Steps may be constructed of wood, concrete or brick. If wood is used, steps shall have risers and be enclosed on the sides by lattice or a wing wall. Rear yard decks shall have a railing as described above, shall have the underside screened by lattice or evergreen shrubs, and all parts of the deck, except the flooring and steps, shall be painted or opaque-stained in a color to blend with the colors on the house.
8. Second Exits. Second exit platforms and stairways shall be as unobtrusive as possible. No second exit platforms or stairways shall be permitted on the front facade of a house. When possible, second exit stairways shall be provided on the interior of the building. When this is not possible, they shall be added onto the rear section of the house. Railings and design shall follow the railing and deck criteria listed under "Porches" above. (Renum. by ORD-08-00122, 11-22-08)

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9. Additions and Other Alterations. New additions on the front of the house are prohibited. Additions on the sides or rear shall be permitted if they are compatible with the house in architectural design, scale, color, texture, proportion of solids to voids and proportion of widths to heights of doors and windows. Materials and architectural details used in additions and alterations shall duplicate in texture, appearance, and design, the materials and details used in the original construction of the house or of other houses in the district. The Landmarks Commission may approve an exception to this policy where the existing building materials and architectural details differ from the original. Additions and exterior alterations that exactly duplicate the original materials in composition are encouraged. Additions or exterior alterations that destroy significant architectural features are prohibited. Side additions shall not detract from the design composition of the original facade. (Renum. by ORD-08-00122, 11-22-08)
 10. Foundations. The original or existing finish on the foundation shall be retained. Brick or stone shall not be covered with a cementitious or other surface. Foundation insulation shall be applied only to the interior. Basement windows may be removed provided that the space is filled with a material to match as closely as possible the appearance of the surrounding foundation and provided that the new material is inset at least one inch from the plane of the wall. (Renum. by ORD-08-00122, 11-22-08)
 11. Tuckpointing and Brick Repair. Mortar and other materials used in brick repair shall match the original in color, hardness and appearance. Brick shall not be painted. (Renum. by ORD-08-00122, 11-22-08)
 12. Storm Windows and Doors. Storm windows and doors shall be enameled, painted or otherwise coated with a colored surface; raw aluminum is prohibited. Storm door designs of wood and glass to match the original design on the house or on similar houses in the district is encouraged. Storm doors of simple design with no stylistic references (e.g., colonial cross-bars) may also be used. Storm doors with metal grilles may be approved provided that they blend with the style of the house. (Renum. by ORD-08-00122, 11-22-08)
- (e) Criteria for the Review of New Construction and Fences.
1. Accessory Buildings. Accessory buildings, as defined in Section 28.211 of these ordinances, shall be compatible with the design of the existing building on the zoning lot, shall not exceed fifteen (15) feet in height and shall be as unobtrusive as possible. Accessory buildings shall be erected in the rear yard. If the house on the lot is sided in wood or stucco, the siding on the accessory building shall match the appearance of the siding on the house. Imitation siding materials that approximate the look of the siding on the house, such as vinyl, aluminum or applied stucco-like surfaces, may be approved. If the siding on the house is brick, the garage may be sided in brick to match, clapboard, stucco, narrow-gauge vinyl or aluminum or applied stucco-like surfaces. Garage doors shall blend with the historic appearance of the neighborhood. Horizontally paneled doors and flat paneled doors are prohibited. Windows shall be either casements or double-hung units of a similar proportion to the windows on the house. Alteration of existing accessory buildings shall comply with this Subdivision (e) and with Subdivision (d) above. The roof shape may be a hip or gable of any pitch; single slope roofs are prohibited. The roof material shall match as closely as possible the color and appearance of the roof material on the house. (Am. by ORD-12-00134, 1-2-13)

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2. New Primary Buildings. New primary buildings shall match the design of other houses in the district in materials, roof shape, architectural details, the proportion of solids to voids, the proportion of widths to heights of doors and windows, the scale, height, setbacks, side yards and other visual features. The intention is to have new buildings virtually duplicate the design of other buildings in the neighborhood, since all parcels in the district are currently developed and any new construction would be replacing an existing building.
3. Fences. Chain link, metal mesh and other rustic style fences, such as rough sawn wood or split-rails, are prohibited in the front yard. Fences in the front yard shall not exceed three (3) feet in height.

(f) Conformance with Regulations; Maintenance of the District; Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability. The Marquette Bungalows Historic District shall be subject to the public policy guidelines established in Section 33.19(7) through (9) and (15) and (16) of the Madison General Ordinances in all of these matters.”

(Sec. 33.01(13) Cr. by Ord. 10,871, Adopted 3-15-94)

(14) First Settlement Historic District.

- (a) Purpose and Intent. It is hereby declared a matter of public policy that a specific area of the city be identified, designated and protected because of its special character of historic interest and significance. This area, to be called the First Settlement Historic District, shall be described generally by the map and specifically by the legal description on file in the City Clerk’s Office. The purpose and intent of this ordinance shall be to designate this area in accordance with Section 33.19(6)(d) entitled “Creation of Historic Districts” of the Madison General Ordinances.
- (b) Criteria for the Creation of the First Settlement Historic District. In that the First Settlement Historic District reflects the broad cultural, political, economic and social history of Madison, the state and the nation and in that elements within the district meet designation criteria in Section 33.19(6)(d)1. of these ordinances, specifically that they are identified with historic personages or with important local historical events and/or that they embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction or of indigenous material or craftsmanship, the area described by the map and legal description shall be designated an historic district.
- (c) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition. The Landmarks Commission shall act in these matters specifically as they regard the First Settlement Historic District in the manner specified by the Madison General Ordinances, Sections 33.19(5)(b) and (c).
- (d) Criteria for the Review of Additions, Exterior Alterations and Repairs. All additions, exterior alterations and repairs must be compatible with the historic character of the building and the First Settlement Historic District. The criteria listed below are intended to maintain an historically accurate appearance. Modern materials that do not meet the exact requirements of the criteria but which duplicate the historic appearance may be considered on an individual basis in the variance procedure listed in Section 33.19(15) below.
 1. Porches. Porches that are original to the building, or that pre-date 1930 and blend with the historic character of the building, shall be retained, rehabilitated or rebuilt to match the original in all details. Porches on street facades may be enclosed with wood-framed screens, on the condition that the railing must be retained or restored in a design compatible with the historic character of the building. Porches on street facades shall not be enclosed as a heated space. If a

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porch is on a street facade and the owner can demonstrate to the Landmarks Commission that it is beyond repair, then a new porch must be constructed in its place. Construction of new porches to approximate the dimensions of original porches is encouraged.

All porches shall present a finished appearance, e.g., all floor joists shall be hidden from view and all porches shall be finished with ceilings and frieze boards. Porch ceilings shall have the appearance of narrow beaded boards, unless another original material is approved by the Landmarks Commission. First floor porch flooring shall be tongue-in-groove boards; carpeting and two-by-four decking are prohibited. All wood on exterior porches, except flooring and stair treads, shall be painted or opaque stained.

All railings on porches shall be constructed of wood, or another material that duplicates the appearance of wood, with top and bottom rails. Bottom rails shall be raised above the floor level and shall be no higher than three and one-half (3 1/2) inches from the floor. All balusters on porch railings shall be square posts, unless the owner can demonstrate to the Landmarks Commission that a different design is original to the building. If the building code requires a forty-two (42) inch high railing, the lower portion of the railing may be solid framed panels. Railings on stairways may be either wood to match the railings on the porch or wrought iron with one-by-one plain vertical balusters. Twisted or other decorative wrought iron is prohibited. All balusters shall be constructed such that a four (4) inch ball may not pass through the railing at any point. All balusters shall be located in between the top and bottom rail and shall not extend across the face of either. Siding on porch rails is prohibited unless the existing rail is sided. Porch posts shall be trimmed with decorative molding at the top and bottom of the posts.

All porches and stairways shall be enclosed between the frieze under the first floor and the ground with a framed lattice of criss-cross design, narrow vertical boards or other openwork design. The lattice shall be designed such that a three (3) inch ball could not pass through any portion of the lattice. All stairways shall have solid wood risers.

Porches on street facades may be enclosed by storm windows. Storm windows on porches shall have the appearance of double-hung windows, with or without a transom, and shall fill the space between the top of the railing and the upper frieze board. When porches are enclosed, the railing area underneath may be filled in with solid framed panels. Porches on street facades shall not be enclosed as a four-season heated space.

2. Decks. Decks in rear yards will be approved by the Landmarks Commission provided that the design complies with Par. 1., except that tongue-in-groove flooring is not required. Decks in front and side yards may be permitted if they are not replacing an entrance porch, do not detract from the historic character of the building and neighborhood, and if they comply with Par.1.
3. Accessibility Ramps. It is the intent of this section to permit accessibility ramps wherever possible, especially when required by ADA guidelines. Accessibility ramps shall be as inconspicuous as possible. Landscape screening shall be provided where possible. The details of such ramps shall conform to the guidelines for porches in Par. 1.

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4. Windows. On the front facade and on side facades within ten (10) feet of the front facade, all original windows or pre-1930 windows that are compatible with the historic character of the building shall retain their existing historic size, appearance, and trim detail. If any of the original windows or pre-1930 windows that are compatible with the historic character of the building have true divided lights (i.e., with small panes of glass between muntin bars), replacement sash shall duplicate the existing appearance and have true divided lights. If windows have been altered in the past, restoration to the original appearance is encouraged. On side facades not within ten (10) feet of the front facade and on rear facades of the building, the sills of original windows or pre-1930 windows that are compatible with the historic character of the building may be raised to serve bathrooms and kitchens. In other respects, the design shall duplicate the original appearance of the existing window. On side facades more than ten (10) feet from the front facade and on rear facades, new windows in locations where no window previously existed may be approved, provided they retain a similar ratio of height to width as original windows on the building, are the same type of window as others on the building (e.g., double-hung or casement), and are trimmed and finished to match the appearance of the other windows.
5. Entrance Doors. If the entrance door is original or is pre-1930 and blends with the historic character of the building, it should be retained unless the owner can demonstrate to the Landmarks Commission that it is beyond repair. Metal doors may be approved, provided they blend with the historic appearance of the building. Unpaneled, modern-style doors, and doors with a fake wood grain are prohibited. All doors shall be painted or varnished.
6. Double or Multiple Doors. Double or multiple doors, such as doors leading onto patios or decks, may be permitted, provided they have frames similar to full view doors. Raw aluminum or other metallic finishes are prohibited. Patio doors shall be painted or finished with a material that resembles a painted finish. Such doors on street facades shall be hinged doors, rather than sliding doors.
7. Storm Windows and Doors. Storm windows and doors shall be enameled, painted or otherwise coated with a colored surface to resemble a painted surface. Raw aluminum or other metallic finishes on storm windows and doors are prohibited. Painted or varnished storm doors of wood and glass to match the original design on the building or on similar buildings in the district are encouraged. Storm doors of simple design with no stylistic references may be used. Full view storm doors will be permitted. Storm doors with metal grills are prohibited.
8. Skylights. Skylights on the roof slope over the main street facade

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are prohibited unless not visible from the street. Skylights may be permitted on rear roof slopes and on side roof slopes, provided the front edge of the skylight is at least ten feet back from the front edge of the main roof and provided that the skylight is not so obtrusive as to detract from the general appearance of the building. Skylights on any roof area not visible from the ground will be permitted. The design of new skylights shall be as simple as possible, of the flat (not bubble) type, and finished to blend with the color of the roof.

9. Roof Materials. Reroofing shall be done with asphalt, fiberglass or other rectangular composition shingles similar in appearance to 3-in-1- tab asphalt shingles. Sawn wood shingles also may be approved. Modern style shingles such as thick wood shakes, Dutch lap, French method, and interlock shingles are prohibited. Vents shall be located as inconspicuously as possible and shall be similar in color to the color of the roof. Rolled roofing, tar-and-gravel, rubberized membranes, and other similar roofing materials are prohibited, except that such materials may be used on flat or slightly sloped roofs that are not visible from the ground.
10. Dormers and Other Roof Alterations. New dormers shall match the appearance of original dormers on the building in roof shape and material, width of overhang, siding, window design, and trim details whenever feasible. If the original roof shape is not practical, another shape may be approved, provided that it does not detract from the historic character of the building or the neighborhood. New dormers shall be no less than twelve (12) feet from the front edge of the roof. The ridge line of a new dormer shall not extend above the ridge line of the main roof of the building unless such higher roof line is not visible from the ground. Shed dormers behind existing dormers or gables on non-street sides of the building may be approved, provided that the roof material, siding, window design and trim details match the original features of the building. Other roof alterations shall be compatible with the roof shape and other historic features of the building, such as siding and trim details, and shall not extend above the ridge line of the building unless such extension is not visible from the ground.
11. Chimneys. The exterior appearance of original or pre-1930 chimneys visible from the street shall be maintained in good repair. The removal of the exterior portions of such chimneys is prohibited. Chimneys not visible from the street may be removed. New chimneys shall be constructed of brick, stone, stucco, or other compatible material. Metal chimneys are prohibited.
12. Siding. Original wood siding or pre-1930 siding that blends with the historic character of the building shall be retained and restored as necessary, except that if the owner can demonstrate to

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the Landmarks Commission that the original siding is beyond repair, it may be replaced with wood, composite wood, or concrete clapboard siding to match the original or existing pre-1930 appearance. Restoration of original wood decorative details is encouraged. Soffits may be replaced or sided with wood or artificial materials, provided the appearance of the proposed material matches as closely as possible the original appearance.

Original brick, stone and stucco siding shall be retained. Installation of artificial siding on such buildings is prohibited. Painting of unpainted brick is prohibited. Mortar and other materials used in brick repair shall match the original in color, hardness, and appearance.

13. Foundations. All original foundation masonry, such as brick, stone, or rusticated concrete block, shall be retained unless the owner can demonstrate to the Commission that significant repairs are required, in which case replacement with materials to duplicate the original appearance is encouraged. If duplicating the original appearance is not practical, other materials may be approved, provided they blend with the historic character of the building and the district.
14. Additions. New additions on the front of the building are prohibited, except for open porches. Additions on the sides or rear shall be permitted if they are compatible with the building in architectural design, scale, color, texture, proportion of solids to voids, and proportion of widths to heights of doors and windows. Additions and exterior alterations that exactly duplicate the original materials in composition are encouraged. Additions or exterior alterations that destroy significant architectural features are prohibited. Side additions shall not detract from the design composition of the main facade. Siding on new additions shall be the same as the building, unless the building is masonry, in which case narrow-gauge clapboards will be permitted. Foundation material on new additions shall duplicate the original foundation material whenever practical. Other foundation materials may also be permitted, provided they do not detract from the historic character of the building.
15. Fire Escapes and Rescue Platforms. Fire escapes and rescue platforms shall be located such that they are as unobtrusive from the street as possible. No fire escapes or rescue platforms shall be permitted on the front facade of a building unless the owner can demonstrate to the Landmarks Commission that no other location is practical. The design of fire escapes and rescue platforms shall comply with the requirements of Par. 1., except that balusters on fire escapes and second exit platforms may be metal with one-by-one plain vertical balusters, painted to blend with the colors of the

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- house. Twisted or other decorative wrought iron is prohibited.
16. Lighting Fixtures. Lighting fixtures that are visible from the street shall be of a design that is compatible with the historic appearance of the building.
 17. Permanently Installed Air Conditioners. Permanently installed air conditioners shall be as inconspicuous as possible. Ground air conditioners shall be screened with landscaping where possible.
 18. Shutters. The installation of new shutters requires approval of the Landmarks Commission. Shutters will be permitted, provided they are compatible with the historic character of the building and are of a size that, if the shutters were workable, would cover the window opening.
 19. Repairs. Repairs to buildings shall either match the existing or the original appearance. Restoration to the original appearance is encouraged.
 20. Alterations to Post-1930 Buildings. Alterations of buildings that post-date 1930 shall be compatible with the original character of the building and shall not detract from the historic character of older buildings in the district. Alterations that bring the building into compliance with the regulations of this section regarding siding, decks, foundations, porches, the proportion of windows and doors, and the proportion of solids to voids of the street facades of such buildings are encouraged. It is not the intent of this ordinance to create fake historic buildings, but to allow modern style buildings to retain their essential style while still blending with the appearance of historic buildings in the district.
- (e) Criteria for the Review of New Primary Buildings.
1. Building Height, Scale, Proportion and Rhythm. New primary buildings shall be similar in height to the buildings directly adjacent to each side. If the buildings directly adjacent to each side are different in height, the new building shall be of a height compatible with the buildings within the visually related area of the proposed building. New primary buildings shall be compatible with the scale, proportion, and rhythm of masses and spaces of buildings within the visually related area of the proposed building.
 2. Siding Materials. Narrow gauge clapboards made of wood, composite wood material, or concrete, and/or brick and stone may be permitted. Stucco and split-faced concrete block may be permitted only as trim, rather than the primary siding material. Stucco panels and pebble dash are prohibited. If the first two floors of a proposed building are masonry, the Landmarks Commission may permit the use of artificial siding (i.e. vinyl or aluminum) on the upper floor or floors. In such circumstances, the artificial siding must conform to the following requirements:
 - a. The material shall be of the highest grade offered by the manufacturer.

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- b. The material shall have a minimum gauge of .042.
 - c. The color and sheen of the siding shall be consistent with those used in the era in which adjacent buildings were constructed.
 - d. The siding shall not have a false wood grain.
 - e. The width of each apparent clapboard shall not exceed four (4) inches.
 - f. The use of visible j-channel trim and other prefabricated elements that differ in appearance from those used on historic buildings in the neighborhood is prohibited
3. Roof Materials. Roofing materials shall be asphalt shingles; fiberglass or other composition shingles similar in appearance to multi-layered architectural shingles or 3-in-1 tab; or Dutch lap, French method or interlock shingles. Sawn wood shingles may also be approved. Thick wood shakes are prohibited. Vents shall be located as inconspicuously as possible and shall be similar in color to the color of the roof. Rolled roofing, tar-and-gravel, rubberized membranes and other similar roofing materials are prohibited except that such materials may be used on flat or slightly sloped roofs that are not visible from the ground.
 4. Roof Shape. If a primary building does not have a flat roof, the pitch of the new roof shall be no less than 4-in-12.
 5. Facade Design. Street facades shall be modulated with setbacks incorporated into the design at the first floor level. The entrance shall either be inset or projecting from the plane of the main facade. Porches on main entrances are encouraged. Street facades shall reflect the rhythm and directional expression of pre-1930 buildings within the visually related area.
 6. Windows and Doors. The proportion of width to height of doors and windows and the proportion of solids to voids in the front and side facade designs shall be similar to pre-1930 buildings within the visually related area. Windows trimmed with bead molds similar in design to other pre-1930 window trim in the district and windows and doors shall be inset at least one (1) inch from the exterior trim. The main entrance to the building shall be on the front facade. Garage doors shall be located on the side or rear facades whenever feasible. If it is not feasible to locate the garage door on the sides or rear facades, one-car garage doors will be permitted on the front facade.
- (f) Criteria for the Review of Accessory Buildings, Fences and Retaining Walls.
1. Accessory Buildings. Accessory buildings, as defined in Section 28.211 of these ordinances, shall be compatible with the design of the existing building on the zoning lot, shall not exceed fifteen (15) feet in height and shall be as unobtrusive as possible. Garage doors shall either be entirely flat or shall have

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approximately square panels. Horizontally paneled doors are prohibited. Windows shall be either double or single-hung units of a similar proportion to the windows on the building or shall be six-paned (three panes across and two panes high) units similar to those seen on 1920s era garages. Siding may either match the siding on the building or be narrow-gauge clapboard, vertical board-and batten, or a smooth stucco or stucco-like applied material. The roof shape shall have a pitch and style similar to the roof shape on the building. The roof material shall match as closely as possible the material on the building. Alteration of existing accessory buildings shall comply with this Subdivision and with Subdivision (d). (Am. by ORD-12-00134, 1-2-13)

2. Fences. Chain link and rustic style fences, such as rough sawn wood or split rails, are prohibited in the front yard.
3. Retaining Walls in Front Yards. For retaining walls in front yards, railroad ties, landscape timbers, boulders, and concrete blocks are prohibited. Poured concrete walls with a smooth rubbed finish and under twenty-four (24) inches in height, flagstone and stone ashlar are permitted. Proposals to construct front yard retaining walls of other materials must be submitted to Landmarks Commission for approval prior to installation.

(g) Conformance With Regulations; Maintenance of the District; Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability. The First Settlement Hill Historic District shall be subject to the provisions established in Sections 33.19(7) through (9), and (15) through (17) of the Madison General Ordinances.

(h) Reference to Plan. The history of the First Settlement Historic District is derived from the Downtown Historic Preservation Plan, City of Madison Department of Planning and Community and Economic Development, 1998.

(Sec. 33.01(14) Cr. by Ord. 13,001, 2-8-02)

(15) Variances.

(a) Authority. The Landmarks Commission may vary the criteria for review of additions, exterior alterations or repairs for designated landmarks, landmark sites and improvements in any Historic District and the criteria for new construction in any Historic District in harmony with the general purpose and intent to preserve the historic character of landmarks, landmark sites and of each Historic District only in the specific instances hereinafter set forth and only if the proposed project will be visually compatible with the historic character of all buildings directly affected by the project and of all buildings within the visually related area.

The variance procedure and standards are designed to prevent undue hardships caused by application of the strict letter of the regulations of this chapter and to encourage and promote improved aesthetic design by allowing for greater freedom, imagination and flexibility in the alteration of existing buildings and the construction of new buildings within an Historic District while ensuring substantial compliance with the basic intent of the ordinance.

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- (b) Application for Variance and Notice of Hearing. An application for a variance shall be filed with the Landmarks Commission. After the filing of such application, a public hearing shall be held thereon. Notice of such hearing shall be published as a Class 1 notice under the Wisconsin Statutes. At least ten (10) days prior to the hearing, the Commission shall notify the owners of record, as listed in the office of the City Assessor, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property affected. Notice of the time, place and purpose of the hearing shall also be sent to the alderperson of the ward in which the property affected is located.
- (c) Standards. The Landmarks Commission shall not vary the regulations of this ordinance unless it makes findings of fact based upon the evidence presented to it in each specific case that one or more of the following conditions is present:
1. The particular physical characteristics of the specific building or site involved would result in a substantial hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out, provided that the alleged difficulty or hardship is created by this ordinance and has not been created by any person presently having an interest in the property.
 2. In the case of the alteration of an existing building, the proposed design would incorporate materials, details, or other elements not permitted by the ordinance but which can be documented by photographs, architectural or archaeological research or other suitable evidence to have been used on other buildings of a similar vintage and style in the Historic District in which the building is located, provided that the project will not destroy significant architectural features on the building.
 3. In the case of new construction, the proposed design incorporates materials, details, setbacks, massing or other elements that are not permitted by the ordinance but which would enhance the quality of the design for the new building or structure, provided that said new building or structure otherwise complies with the criteria for new construction in the Historic District in which the building or structure is proposed to be located and provided further that it would also have a beneficial effect on the historic character of the visually related area.
- (d) Authorized Variances. Variances shall be granted by the Landmarks Commission only in accordance with the standards set forth in (13)(c) above, and may be granted only in the following instances:
1. To permit residing with a material or in a manner not permitted under this chapter.
 2. To allow additions visible from the street or alterations to street facades which are not compatible with the existing building in design, scale, color, texture, proportion of solids to voids or proportion of widths to heights of doors and windows.
 3. To allow materials and/or architectural details used in an

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alteration or addition to differ in texture, appearance and design from those used in the original construction of the existing building.

4. To permit the alteration of a roof shape otherwise prohibited under this chapter.
5. To permit the use of roofing materials otherwise prohibited under this chapter.
6. To allow use of materials for new construction which use would be otherwise prohibited under Sec. 33.19(12)(f)1.b.

(Sec. 33.01(13) Renumbered by Ord. 10,871, Adopted 3-15-94)

- (16) Penalties for Violations. Any person violating any provision of this section shall be subject to a minimum forfeiture of two hundred fifty dollars (\$250) and a maximum forfeiture of five hundred dollars (\$500) for each separate violation. A second offense within thirty-six (36) months shall be subject to a minimum forfeiture of five hundred dollars (\$500) for each separate violation. A third violation within thirty-six (36) months shall be subject to a minimum forfeiture of one thousand dollars (\$1000) for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate offense. (Renumbered by Ord. 10,871, 3-15-94; Am. by ORD-09-00119, 8-11-09)
- (17) Separability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. (Renumbered by Ord. 10,871, Adopted 3-15-94)