

**NOTE TO LANDMARKS COMMISSION**  
**July 19, 2010**

**Legistar ID # 17835**  
**Landmarks Ordinance Revisions**  
**Proposed Revisions Summary and Legislative History**

During the last several meetings, the Landmarks Commission has been reviewing the Landmarks Ordinance and discussing potential revisions. Below is a summary of changes recommended during the May 24, June 14, and July 12, 2010 Landmarks Commission Meetings:

**1. Purpose and Intent:**

33.19(1)(f) “Strengthen the economy of the City through appropriate preservation of irreplaceable historic and cultural resources.”

**2. Appeals**

At the May 24, 2010 meeting, Mr. Stephans stated that as Chair, for the record, he believes that after hearing the Commissioners views that it is the sense of the Landmarks Commission that the 2/3 supermajority requirement in the appeals language is consistent with how other City Ordinances operate, and that it doesn't seem to be an in-ordinate obstacle.

**3. Appeals**

33.19(5)(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 the 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.

*Staff note: The language above was reviewed by the City Attorney, who noted no issues with the proposed language.*

**4. University Heights Public Hearing requirement for new primary buildings and additions over 100 square feet**

The Commission agreed to ask the City Attorney's office to move the section 33.19(5)(b)(3) to the University Heights Historic District, with the Attorney's recommendation as to appropriate placement with Section 33.19(12).

**5. Rescinding of Landmarks Designation**

33.19(5)(h) 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 may shall rescind its designation of the subject property.”

*Staff note: The Commission asked staff to look into the legislative history of this language. The rescission language and six month waiting period was original to the 1969*

*Ordinance, however rescission was only granted by the Landmarks Commission. However, in 1997, the Common Council made the Landmarks Commission advisory to the Common Council on provisions of the ordinance relating to the Landmark and Designations and Creation of Historic Districts. In addition, the Common Council was given the sole responsibility for ruling on rescissions of Landmark Designations. The legislative history from 1997 is attached.*

*In addition, the Commission asked to have staff look into other cities' language regarding landmark designation rescissions. Preliminary staff review of other Landmarks Ordinances from numerous municipalities found the intent of the following clause to be typical:*

***“Any designation of a building, structure, site, object or district as historic may be amended or rescinded in the same manner as is specified for designation.”** Historic Preservation Ordinance 14-2007 of Philadelphia Code*

**6. Re-title Section 33.19(15)(d) Authorized variances for Clarification purposes to alert readers that this section is designed specifically for the Marquette Bungalows District**

33.19(15) d. Authorized Variances in the Marquette Bungalows Historic District

**7. Variance Authority amended language proposal** (*second paragraph*)

33.19(15)(a) “...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...”

**8. Variance Standards amended language proposal**

33.19(15)(c) 3. In the case of additions and/or 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 of the addition and/or new construction ~~for the new building or structure~~, provided that said addition and/or new construction ~~new building or structure~~ otherwise complies with the criteria for additions and/or new construction in the Historic District in which the addition and/or new construction ~~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.

Rebecca Cnare and Amy Scanlon  
7/21/10

Agenda Item No. \_\_\_\_\_  
Copy Mailed to Alderpersons \_\_\_\_\_

City of Madison, Wisconsin

AN ORDINANCE \_\_\_\_\_  
amending Subdivision (a) of Subsection (5) of  
Section 33.01 of the Madison General Ordinances  
and creating new Subdivision (b) and renumbering  
current Subdivisions (b) and (c) to (c) and (d) of  
Subsection (6) of Section 33.01 to make the  
Landmarks Commission advisory to the Common  
Council.

Presented July 1, 1997  
Referred CCOC, PC, Landmarks Comm.

Rereferred 9/2 cc (8-19) Landmarks, Econ. Dev. (10/21)

Reported Back 8/19; 9/2; 10/21; DEC 2 1997

Adopted  POF \_\_\_\_\_  
Rules Susp. \_\_\_\_\_ Tabled \_\_\_\_\_  
Public Hrg. \_\_\_\_\_

Mayor Signed 12-9-97  
Published 12-12-97  
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Drafted by: Eunice Gibson  
City Attorney  
  
Date: June 25, 1997  
  
Fiscal Note: No fiscal impact.  
  
SPONSOR(S): Ald. Reif, Holtzman, Smith,  
Borchardt, Rosas, Bruer,  
Schneider, Amato,  
Belman

APPROVAL OF FISCAL NOTE BY THE  
COMPTROLLER'S OFFICE IS NEEDED

Approved by:  

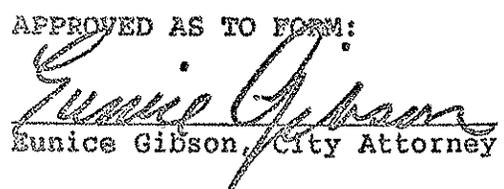

Comptroller's Office  
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ORDINANCE NO. 11,983  
ID NO. 21835

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

1. Subdivision (a) entitled "Designation" of Subsection (5) entitled "Powers and Duties" of Section 33.01 entitled "Landmarks Commission" of the Madison General Ordinances is amended to read as follows:

"(a) Designation. The commission shall have the power subject to subsection (6) hereunder, to designate 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 commission Common Council, such landmarks, landmark sites and historic districts shall be subject to all the provisions of this ordinance."

APPROVED AS TO FORM:  
  
Eunice Gibson, City Attorney

2. Subdivision (d) entitled "Appeal" of Subsection (5) entitled "Powers and Duties" of Section 33.01 entitled "Landmarks Commission" of the Madison General Ordinances is amended to read as follows:

"(d) 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 therefor, 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."

3. Subdivision (f) entitled "Sale Of Landmarks And Landmark Sites" of Subsection (5) entitled "Powers and Duties" of Section 33.01 entitled "Landmarks Commission" of the Madison General Ordinances is amended to read as follows:

"(f) 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 ~~commission~~ 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 ~~commission~~ Common Council shall rescind its designation of the subject property.
3. In the event of such rescission, the ~~commission shall notify~~ the City Clerk shall notify the Director of the Inspection Unit and the City Assessor of same, and shall cause the same to be recorded, at its own expense, in the office of the Dane County Register of

Deeds.

4. Following any such rescission, the ~~commission~~ 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.

4. Subdivision (a) entitled "Designation Of Landmarks and Landmark Sites" of Subsection (6) entitled "Procedures" of Section 33.01 entitled "Landmarks Commission" of the Madison General Ordinances is amended to read as follows:

"(a) Designation Of Landmarks and Landmark Sites. The commission may, after notice and public hearing, ~~establish~~ recommend the establishment of landmarks and landmark sites, or ~~rescind~~ recommend the rescission of such designation, after application of the criteria in subsection (4) above. 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 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, the commission may ~~designate~~ recommend the designation of the property as either a landmark or a landmark site or ~~rescind~~ recommend the rescission of such designation. After such designation or rescission recommendation has been made, notification shall be sent to the property owner or owners, and to such other persons as appeared at the public hearing. 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. ~~Notification shall also be given to~~ The City Clerk shall notify the Director of the Inspection Unit and the City Assessor. The ~~commission~~ City Clerk shall cause such designation or rescission to be recorded, at City expense, in the Dane County Register of Deeds office."

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Regarding: **Ordinance Revisions (Legistar #17835)**

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Date: January 10, 2011

Prepared By: Amy Scanlon

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### **General Information:**

For the last several months, the Landmarks Commission has been reviewing the Landmarks Ordinance and discussing potential revisions. After discussions with the Assistant City Attorney, it is recommended that the revisions to the Ordinance be completed in two phases.

The City Attorney's office has been consulted in drafting these changes and Alder Maniaci has agreed to sponsor the Ordinance Amendment. The attached ordinance reflects Phase 1 revisions as described below:

#### Phase 1

- Include language to have Certificate of Appropriateness expire after 24 months.
- Change Commission name to Historic Preservation Commission
- Include language from zoning code 28.04(3)n regarding review of development on lot adjoining s landmark or landmark site.
- Change section name to read "Designation and rescission of landmarks and landmark sites".
- Change the word "Shall" to "may" when the Common Council considers rescission related to the sale of landmark sites.
- Add language describing that landmark plaques should not be removed or altered without approval of Preservation Planner.
- Change the word "guidelines" to "requirements", "criteria", or "provisions" throughout the ordinance.
- Remove language in appeal section that relates to demolition because it seems superfluous and causes confusion.

#### Phase 2

- Variance language
- Definitions
- Tighten landmark maintenance section that is described as "keep in good repair".
- The criteria for each historic district should be reviewed in the future.

**6-14-10**

**Note to Commission:**

**The following excerpts from other Historic Preservation Boards and Commissions are only a small sample of potential language. Staff has removed language related to filing processes etc., and other language that doesn't relate directly to the findings needed to grant an appeal.**

**Concord, NC**

Any person desiring to appeal a decision of the Historic Preservation Commission may do so by filing an application with the City of Concord Planning Department and submitting the associated application fee.

- When considering such an appeal the Board of Adjustment functions with very limited and narrowly defined review authority.
- In an appeal, the Board of Adjustment is limited to reviewing only evidence heard at the Historic Preservation Commission meeting, or its duly authorized representation.
- Board of Adjustment review of such an appeal involves consideration of the Historic Preservation Commission's decision with respect to the following five questions:
  - 1) Were there errors in the law?
  - 2) Were proper procedures in both statute and ordinance followed?
  - 3) Were due process rights secured (including rights to offer evidence, cross-examine witnesses, and inspect documents)?
  - 4) Was there competent material and substantial evidence to support the decision?
  - 5) Was the decision arbitrary and capricious?
- The item or items the applicant is contesting shall be specified on the written appeal application in order for the appeal to be considered by the Board of Adjustment.
- The Board of Adjustment is authorized to overturn a decision of the Historic Preservation Commission, or to refer the item back to the Historic Preservation Commission only if it makes a finding in regard to one or more of the five questions. Appeal from the Board of Adjustment's decision shall be to the Superior Court of Cabarrus County.

**Berkeley, California:**

**.24.300 Appeals--Procedures required--City Council authority.**

Within twenty-five days following the filing of the notice of appeal, the City Council shall review the action of the commission and may do any one of the following:

1. Refer the matter back to the commission for further consideration, in which case the commission shall conduct such further investigation as it shall deem advisable and report its conclusion to the City Council;
2. If the facts stated in or ascertainable from the application, the notice of appeal, the written statement of the commission setting forth the reasons for its decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the commission and dismiss the appeal;
3. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing in the same manner as is provided for giving notice of the time and place for hearing before the commission as set forth in [Section 3.24.140](#). The City Council may reverse or affirm wholly or partly, or modify any decision, determination or requirement of the commission, and may make decisions or determinations or may impose such conditions as the facts warrant and its decision or determination shall be final. Any hearing may be continued from time to time.

## **Seattle Municipal Code**

*Chapter 25.24 - Pike Place Market Historical District*

### **SMC 25.24.080 Appeal to Hearing Examiner.**

...D. The Hearing Examiner may reverse or modify an action of the Commission only if the Hearing Examiner finds that:

1. Such action of the Commission violates the terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or
2. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

F. The Hearing Examiner's decision shall be final. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision, as provided by RCW 36.70C.040.

## **Cedar Rapids, Iowa**

### **18.11 - APPEALS TO CITY COUNCIL.**

#### **(a) Appeal to the City Council.**

...In deciding such appeal, the City Council shall consider whether the Commission has exercised its powers and followed the guidelines established by law and this chapter, and whether the Commission's action was patently arbitrary or capricious. In exercising the above mentioned powers, the City Council may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Commission from whom the appeal is taken.

#### **(b) Judicial Appeal.**

If not satisfied with the decision of the City Council, the appellant may appeal to the Iowa District Court for Linn County within 30 days after the City Council's decision.

## **In New York City – there is a separate appeals board for the Landmark Commission**

3021. Hardship appeals panel.

...

3. The panel shall review appeals from determinations of the commission denying applications for certificates of appropriateness, based on the grounds of hardship, to demolish, alter or reconstruct improvements that are exempt from real property taxes, provided that such appeals may be brought only with respect to applications made under applicable law on the grounds of hardship applicable only to tax-exempt properties...

... 5. The panel shall review the petition, consider the arguments made in the memoranda submitted to it, afford the parties the opportunity to present oral argument, and review the record of the commission including the statements of those who appeared before the commission, the documents in the record, including materials prepared by members of the commission, staff and their consultants, the statements of members of the commission and staff in the record and the findings of, and the reasons given by, the commission for its determination. The panel shall not substitute its own judgment for that of the commission. It shall not take testimony or consider any evidence that was not in the record below. If the panel finds that the determination of the commission has a rational basis supported by substantial evidence in the record, it shall affirm the determination of the commission; otherwise it shall reverse the commission's determination and remand the matter to the commission, which shall then issue a

preliminary determination of insufficient return and take such steps as are provided by law following such preliminary determination.

**Pittsburgh, PA**

§ 1101.06 CERTIFICATE OF ECONOMIC HARDSHIP.

... (b) *Standard to be applied.*

(1) *Exterior Alterations other than Demolition, New Construction, Additions, and Relocation.* The Commission shall only approve an application for a Certificate of Economic Hardship upon determination that the denial of the Certificate of Appropriateness for alterations has resulted in substantial hardship to the property owner.

(2) *Demolition, New Construction, Additions, and Relocation.* The Commission shall only approve an application for a Certificate of Economic Hardship upon a determination that the denial of the Certificate of Appropriateness, except in the case involving a Certificate of Appropriateness for alteration, has resulted in the denial of all reasonable use of and/or return from the property.

(c) *Consideration of evidence.* In applying this standard, the Commission shall consider among other things any evidence presented concerning the following:

(1) Any estimates of the cost of the proposed alteration, construction, demolition or relocation and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for it to be approved.

(2) Any opinions from a licensed engineer or architect with experience in renovation, restoration or rehabilitation as to the structural soundness of any structures or objects on the property and their suitability for continued use, renovation, restoration or rehabilitation.

(3) Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition, or relocation; after any expenditures necessary to comply with the recommendations of the Commission for changes necessary for it to approve a Certificate of Appropriateness; and in the case of a proposed demolition, after renovation of the existing property for continued use.

(4) In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation or rehabilitation of any existing structures or objects.

(5) Any and all applicable zoning provisions, the possibility of modifications to zoning provisions and incentives available to the applicant.

...

**Blacksburg Virginia;**

Sec. 3278 - Appeal to Town Council.

The applicant or any person aggrieved by a binding decision of the Historic or Design Review Board may appeal the decision to Town Council, by submitting a written notice of appeal to the Zoning Administrator, setting forth the grounds for the appeal, within thirty days of the Historic or Design Review Board's decision. Town Council shall schedule a public hearing, and shall hear and decide the appeal within sixty days of receipt by the Zoning Administrator. Failure of the Town Council to decide the appeal within this time shall constitute denial of the appeal. The Town Council may uphold, reverse, or modify the Historic or Design Review Board's decision.

Sec. 3279 - Appeal to circuit court.

The applicant or any person aggrieved by a final decision of the Town Council may appeal to the Circuit Court for Montgomery County by filing a petition at law, setting forth the alleged illegality of Town Council's action, within thirty days after the final decision is rendered by the Town Council. The filing of the petition shall stay the decision of the Town Council pending the outcome of the appeal to the court, except the filing of the petition shall not stay the decision of the Town Council if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the Town Council, in whole or in part, **if it finds upon review that the decision is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion**, or it may affirm the decision of the Town Council.

**St Petersburg Florida:**

The City of St. Petersburg Community Preservation Commission (CPC) is comprised of nine persons appointed by the Mayor and confirmed by the City Council. Actions of the Community Preservation Commission are final and are only **appealable to the Clerk of Circuit Court**.

**Savannah, Georgia (Chatham County):**

16. Appeals. ... The Board of Commissioners may approve, modify, or reject the determination made by the Commission, if the appeals body finds that the Commission abused its discretion in reaching its decision. Design criteria shall not be the basis for appeal of an adverse decision. Appeals from decisions of the Board of Commissioners may be taken to the Superior Court of Chatham County in the manner provided by law for appeals from zoning decisions of the Board of Commission. Decisions of the Preservation Professional shall be appealed first to the Commission.