



City of Madison

City of Madison
Madison, WI 53703
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Master

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1		Michael Haas	Approved as to Form
1		Ryan Pennington	Approve

History of Legislative File

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Text of Legislative File 67074

Fiscal Note

No City appropriation required.

Title

Repealing and recreating Section 28.185 to remove consideration of proposed future use for demolition applications and create limited administrative approval for some demolition categories.

Body

DRAFTER’S ANALYSIS: This ordinance repeals and recreates the existing demolition ordinance, maintaining most of the same approval process but with two notable differences:

First, the new ordinance retains the requirement that the Plan Commission approve the demolition, but removes consideration of the proposed future use. This change is because using a demolition ordinance to deny an otherwise permitted use is likely illegal and using the demolition ordinance to review an otherwise conditional use is redundant. Zoning is a legislative power. Like other cities in Wisconsin, Madison regulates land use in districts through a mix of permitted and conditional uses. Madison’s Zoning Code defines a Permitted Use as one “which may be lawfully established in a particular district or districts, provided it conforms with all requirements and regulations of the district in which such use is located.” Regarding permitted uses, the Wisconsin Supreme Court has recognized that “permitted uses...allow a landowner to use his or her land...*as of right*... and that rights of ownership and use of property have long been recognized by this state and constitutionally protected.” The Office of the City Attorney recommends the ordinance be changed to remove the consideration of proposed future permitted uses from the demolition ordinance in order to avoid future legal challenges.

The same constitutional analysis does not apply to the consideration of proposed future conditional uses because conditional uses are not “by right” uses. However, conditional uses are already separately reviewed by the Plan Commission pursuant to MGO § 28.183. Accordingly, providing for separate review of conditional uses under the demolition ordinance is redundant.

Second, the new ordinance creates an avenue for the City to allow administrative approval of demolitions under certain circumstances. All demolition permits will continue to be reviewed by the Landmarks Commission for as a required threshold, regardless if they go to the Planning Commission or administrative review. The new ordinance creates Subsection (8), which creates an avenue for the City to allow administrative approval of demolition under certain circumstances. Proposed Sub. (1)-(3) are demolitions that already are essentially allowed administrative approval under the current ordinance. Sub. (4) provides for administrative approval for demolitions where the resulting project will include city-funded affordable housing. Most significantly, this section creates a provision where more administrative approvals could be added as deemed appropriate by policy makers.

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

Section 28.185 entitled “Approval of Demolition (Razing, Wrecking) and Removal” of the Madison General Ordinances is repealed and recreated to read as follows:

“28.185 - APPROVAL OF DEMOLITION (RAZING, WRECKING) AND REMOVAL.

(1) Statement of Purpose.

It is hereby declared as a matter of public policy that the careful consideration of requests to demolish or remove existing buildings is a public necessity and required in the interest of the health, prosperity, safety, and welfare of the people. The purpose of this section is therefore to ensure the preservation of historic buildings, encourage applicants to strongly consider relocating rather than demolishing existing buildings, aid in the implementation of adopted City plans, maximize the reuse or recycling of materials resulting from a demolition, protect the public from potentially unsafe structures and public nuisances, and require the use of safe and orderly demolition or removal methods.

(2) Definitions.

Demolition. An act or process that removes, pulls down, tears down, razes, deconstructs, or destroys an existing building wall facing a public street or, during any ten (10) year period, removes, pulls down, tears down, razes, deconstructs or destroys fifty percent (50%) or more of the area of the exterior walls of a building. This definition does not include the repair or replacement of windows, doors, or siding.

(3) Requirement.

No building, as defined in MGO Sec. 29.03, shall be demolished or removed without a permit from the Building Inspection Division of the Department of Planning and Community and Economic Development.

(4) Application.

Any Eligible Applicant (See MGO Sec. 28.181(2)) may submit an application for a demolition or removal permit to the Director of the Building Inspection Division. Every application for demolition or removal shall contain the following:

- (a) A clear, detailed and completed statement and description of the building or structure proposed for demolition or removal and the reason for requesting the demolition or removal.
- (b) If known to the applicant, the date the building or structure proposed for demolition or removal was constructed.
- (c) A description of the proposed method and timeline of the demolition or removal.
- (d) A statement whether the applicant is also seeking a zoning map amendment pursuant to MGO Sec. 28.182(10), or conditional use pursuant to MGO Sec. 28.183, in conjunction with the requested demolition.

(5) Completeness Review.

See MGO Sec. 28.181(4).

(6) Notice.

A demolition request, except for applications approved administratively under sub. (8) below, requires notice as provided in MGO Sec. 28.181(5):

- (a) Preapplication. Failure to provide notice does not invalidate any action taken on the application by the Plan Commission or Common Council. The notice requirement may be waived, if approved by the Alderperson and Director of Planning and Community and Economic Development.
- (b) Mail. Notice of the required public hearing shall be sent at least ten (10) days before the public hearing.
- (c) Publication.
 - 1. A demolition or removal permit application considered with a zoning map amendment shall meet the public hearing requirements for zoning map amendments (See MGO Sec. 28.181(5)).
 - 2. A demolition or removal permit considered with a conditional use permit shall meet the public hearing requirements for conditional uses (See MGO Sec. 28.181(5)).

(7) Review for Historic Significance.

Every application for demolition or removal of a principal structure shall be reviewed by the Landmarks Commission, which shall provide input to the Building Inspection Division regarding the historic significance of the building or structure proposed for demolition or removal.

- (a) If the Landmarks Commission determines that the property with the proposed demolition or the structure proposed for removal has no known historic value, the demolition or removal may be approved administratively under sub. (8)(b) below, provided that at least one of the standards for administrative approval have been met.
- (b) If the Landmarks Commission determines that the building or structure is historically significant, then the Plan Commission must approve the demolition or removal under sub. (9) below, after considering input from the Landmarks Commission.
- (c) Nothing in this subsection eliminates the requirement in MGO Secs. 41.09(1)(c) and 41.12(3) that the demolition of landmark structures or structures in historic districts must also be approved by the Landmarks Commission through the issuance of a Certificate of Appropriateness.
- (d) This section does not apply to accessory buildings approved pursuant to sub. (8)(a) below.

(8) Administrative Approval.

- (a) Accessory Buildings: If the Director of Building Inspection determines the building proposed to be demolished or removed is an accessory building, as defined in MGO Sec. 28.211, than the approval shall be administratively reviewed.

- (b) Demolition or removal permits may be issued administratively by the Director of the Building Inspection Division whenever the Landmarks Commission has determined that the property with the proposed demolition or the structure proposed for removal has no known historic value and at least one of the following conditions is present:
 - 1. The Director of the Building Inspection Division finds that the building proposed to be demolished or removed is structurally unsound, subject to an appeal as provided in MGO Sec. 29.18. The applicant may support the request with the report of a licensed architect or engineer certifying and providing reasons that the building is structurally unsound.
 - 2. The building or buildings proposed for demolition are identified for demolition in a Campus Institutional Master Plan approved by the Common Council pursuant to MGO Sec. 28.097(6).
 - 3. The building or buildings proposed for demolition are proposed to be replaced with residential or mixed-use buildings containing affordable (income-restricted) housing units subsidized by the City of Madison.

(9) Plan Commission Approval.

- (a) Public Hearing Required. The Plan Commission shall hold a public hearing on any demolition or removal application that is not approved administratively under sec. (8) above. If the applicant for a demolition or removal permit requests an amendment to the Zoning Map pursuant to MGO Sec. 28.182(10) or a conditional use approval pursuant to Sec. MGO 28.183, the demolition or removal permit application shall be considered at the same time the Plan Commission considers the amendment to the zoning map or conditional use. The public hearing for a demolition or removal application shall meet the requirements of MGO Sec. 28.183(5)(a)1., except that a demolition or removal application considered with a zoning map amendment shall also meet the public hearing requirements in MGO Sec. 28.182(4).

- (b) Input from the Landmarks Commission. In addition to receiving input from City Staff, the Plan Commission may require the applicant to submit plans to the Landmarks Commission for comments and recommendation.

- (c) Reuse and Recycling Plan. Every applicant for demolition or removal approval that requires approval by the Plan Commission is required to get an approved Reuse and Recycling Plan approved by the City Recycling Coordinator prior to receiving demolition or removal approval.

(d) Standards of Approval. The Plan Commission shall not approve an application for demolition or removal unless it meets each of the following standards:

1. The applicant has engaged in reasonable efforts to relocate the building, including but not limited to assessing the costs of relocation, the impact of relocation on city terrace trees, and the structural soundness of the building.
2. The applicant has received a Certificate of Appropriateness from the Landmarks Commission under MGO Secs. 41.09(1)(c) and 41.12(3), if applicable.
3. The applicant has received an approved reuse and recycling plan from the City Recycling Coordinator.
4. The Plan Commission has received and considered the report of the City's historic preservation planner regarding the historic value of the property as well as any report that may be submitted by the Landmarks Commission.
5. The Plan Commission has received and considered the report of the City Forester regarding the impact a proposed building relocation could have on City terrace trees.
6. The Plan Commission has received and considered the report of the Madison Fire Department, Police Department, and/or Building Inspection Division regarding the proposed demolition, including whether any evidence of a potential fire hazard, unlawful use of the property, public nuisance, or other public health and safety concern supports demolition or removal.

(e) Conditions. Before granting a demolition or removal permit, the Plan Commission may stipulate conditions and restrictions on the proposed demolition as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified above.

(f) Decision. At the conclusion of the public hearing, the Plan Commission shall approve, approve with conditions, or deny a demolition or removal permit.

(10) Appeal of Plan Commission Decision.

(a) The Plan Commission's decision to grant or deny a demolition or removal permit may be appealed to the Common Council by:

1. The applicant, or
2. The Alderperson of the district in which the building proposed for demolition or removal is located.

- (b) The appeal shall specify the grounds, with specific reference to the findings of the Plan Commission.
- (c) The appeal shall be filed with the Zoning Administrator within ten (10) days of the final action of the Plan Commission.
- (d) The Zoning Administrator shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
- (e) After receiving the appeal from the City Clerk, the Common Council shall introduce the appeal at one Common Council meeting and set the appeal for a public hearing at the next Common Council meeting. In addition to setting the appeal for a public hearing, the City shall also provide email notice to anyone whose name appears on the list of persons wishing to receive information about demolitions. The Common Council shall make a decision on the appeal within a reasonable period of time.
- (f) The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds (2/3) of the members of the Common Council.
- (g) If the applicant for a demolition or removal permit also has requested a zoning map amendment pursuant to MGO Sec. 28.182 or a conditional use permit pursuant to MGO Sec. 28.183, the determination shall be appealed with the appeal of the conditional use or map amendment.

(11) Scope of Approval.

A demolition or removal permit approved under sub. (8) or (9) is valid for one (1) year from the date of approval.

(12) Demolition by Fire.

Demolition by Fire is prohibited unless the burn is conducted by the Madison Fire Department (MFD) in conjunction with an MFD training event and limited to no more than three (3) demolitions by fire events per year. For any permit approved for demolition by fire, the applicant shall provide written notice of the date of the proposed demolition to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within one thousand (1,000) feet of the boundaries of the property on which the demolition will occur. Such notice shall be provided at least five (5) days prior to the date of the proposed demolition.

(13) Penalty.

- (a) Any person who fails to submit documentation of compliance with an approved reuse and recycling plan shall, upon conviction thereof, be subject to a forfeiture of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense.

- (b) Any person who fails to obtain a demolition or removal permit prior to the demolition or removal shall, upon conviction thereof, be subject to a forfeiture of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000). Each day or portion thereof such violation continues shall be considered a separate offense.”

Editor’s Note:

Section 28.185 of the Madison General Ordinances currently reads as follows:

“28.185 - APPROVAL OF DEMOLITION (RAZING, WRECKING) AND REMOVAL.

(1) Statement of Purpose.

It is hereby declared a matter of public policy that the good maintenance and rehabilitation of existing buildings, the preservation of safe and sanitary housing available at reasonable prices, and the careful consideration and planning of changes in the urban landscape are a public necessity and are required in the interest of the health, prosperity, safety, and welfare of the people. The purpose of this section is to aid in the implementation of adopted City plans, protect neighborhood character, preserve historic buildings, encourage the reuse and/or relocation of existing buildings, discourage buildings falling into a state of severe disrepair from lack of maintenance by the owner, encourage compliance with building and minimum housing codes, and allow the property owner to have a decision on approval or disapproval of the proposed use of the property before he or she takes the irrevocable step of demolishing or moving his or her existing building or buildings.

(2) Applicability and Initiation.

No building as defined in MGO Sec. 29.03 shall be demolished or removed without a permit from the Building Inspection Division of the Department of Planning and Community and Economic Development.

Any Eligible Applicant (See Sec. 28.181(2)) may submit an application for a demolition or removal permits to the Director of the Building Inspection Division.

- (a) An application for a demolition or removal permit shall contain a clear, detailed and complete statement of the present or most recent use and any use proposed to be made of the property if the demolition or removal permit is approved.
- (b) An application for a permit also shall include plans for any proposed future use, including site, grading and landscaping plans, floor plans, building elevations and materials, the length of the current ownership, and photographs of the interior and exterior of the building(s). A written report of a licensed architect or engineer describing the condition of the building(s) may be submitted to substantiate the request.
- (c) If the proposed demolition is to be accomplished by fire, the application shall designate the proposed method of demolition.

(3) Completeness Review.

See Sec. 28.181(4).

(4) Notice.

A demolition request, except for the applications submitted under (6) below, requires the following types of notice (See Sec. 28.181(5)):

- (a) Preapplication. Failure to provide notice does not invalidate any action taken on the application by the Plan Commission or Common Council. The notice requirement may be waived, if approved by the Alderperson, and Director of Planning and Community and Economic Development.
- (b) Mail. Notice of the required public hearing shall be sent at least ten (10) days before the public hearing.
- (c) Publication.
 - 1. A demolition or removal permit application considered with a zoning map amendment shall meet the public hearing requirements for zoning map amendments (See Sec. 28.181(5)).
 - 2. A demolition or removal permit considered with a conditional use permit shall meet the public hearing requirements for conditional uses (See Sec. 28.181(5)).

(5) Decision.

- (a) The Plan Commission shall hold a public hearing on each application except those that do not require approval by the Plan Commission. If the applicant for a demolition or removal permit requests an amendment to the Zoning Map pursuant to Sec. 28.182(10) or a conditional use approval pursuant to Sec. 28.183, the demolition or removal permit application shall be considered with the amendment to the zoning map or conditional use. The public hearing for a demolition or removal application shall meet the requirements of Sec. 28.183(5)(a)1., except that a demolition or removal application considered with a zoning map amendment shall meet the public hearing requirements in Sec. 28.182(4).
- (b) The Plan Commission shall approve, approve with conditions, or deny a demolition or removal permit.
- (c) When reviewing a demolition application where the proposed use is non-residential, the Plan Commission may require the applicant to submit plans to the Urban Design Commission and/or the Landmarks Commission for comments and recommendation.
- (d) Appeal from Action by Plan Commission.

1. The Plan Commission's decision to grant or deny a demolition or removal permit may be appealed to the Common Council.
2. The appeal may be filed by:
 - a. The applicant, or
 - b. The Alderperson of the district in which the building proposed for demolition or removal is located.
3. The appeal shall specify the grounds, with specific reference to the findings of the Plan Commission.
4. The appeal shall be filed with the Zoning Administrator within ten (10) days of the final action of the Plan Commission.
5. The Zoning Administrator shall transmit the appeal to the City Clerk, who shall file the appeal with the Common Council.
6. The Common Council shall fix a reasonable time for hearing the appeal, and shall decide the appeal within a reasonable time.
7. The Common Council shall give public notice and due notice to the parties in interest.
8. The action of the Plan Commission shall be upheld unless it is reversed or modified by a favorable vote of two-thirds (2/3) of the members of the Common Council.
9. If the applicant for a demolition or removal permit also has requested a zoning map amendment pursuant to Sec. 28.182 or a conditional use permit pursuant to Sec. 28.183, the determination shall be appealed with the appeal of the conditional use or map amendment.

(6) Exemptions.

(a) Demolition or removal permits may be issued without the approval required in Subdivision (5) above whenever any one (1) of the following conditions is present, provided that: the subject building has not been used at any time as a single-family or multiple-family dwelling in whole or in part, is not a landmark, and is not located in an Historic District or Neighborhood Conservation District:

1. The Director of the Building Inspection Division finds that the building proposed to be demolished or removed is structurally unsound, subject to an appeal as provided in MGO Sec. 29.18, MGO. The applicant may support the request with the report of a licensed architect or engineer certifying and providing reasons that the building is structurally unsound.

2. The Director of the Building Inspection Division determines that the building proposed to be demolished or removed is an accessory building as defined in Sec. 28.211.
 3. The building or buildings proposed for demolition are identified for demolition in a Campus Institutional Master Plan approved by the Common Council pursuant to Sec. 28.097(6).
- (b) Demolition or removal permits may be issued without the approval required in sub. (5) above whenever the subject building is a single-family dwelling being demolished due to damage by fire or other natural disaster and reconstructed to a similar bulk condition, at a similar location on the zoning lot, utilizing existing setbacks, as follows:
1. Neither the length, width, nor height of the replacement building shall be more than two (2) feet greater than the length, width, or height of the building to be demolished;
 2. The location of the replacement structure shall be placed in a similar location to the existing structure. If the damaged structure has a non-conforming setback, no side of the enlarged structure may be moved closer to any lot line with which there is a non-conforming setback; and
 3. Demolition and building permits shall be issued within one (1) year of the incident of loss.

(7) Approval Standards.

Applications for demolition or removal permits shall not be approved, except as provided in (6) above, unless the following standards are met:

(a) Applications With a Proposed Future Use.

1. The Zoning Administrator issues a zoning certificate for the proposed use of the property. For the purpose of this subdivision, a zoning certificate shall mean a certification in writing that the proposed use of the property would be in compliance with the provisions of the Zoning Code.
 - a. If the Zoning Administrator finds that the proposed use of the property is not in compliance with the provisions of the Zoning Code, the applicant for a demolition or removal permit may apply for a map or text amendment pursuant to Sec. 28.182 or for a conditional use permit pursuant to Sec. 28.183 for the proposed use. All of the provisions of Secs. 28.182 and 28.183 shall apply to said applications, except that the time limit for commencement of the conditional use, pursuant to Sec. 28.183(9), shall be eighteen (18) months instead of twelve (12) months.

- b. If after the procedures provided in Paragraph 1.a. are followed, the proposed use of the property would be in compliance with the provisions of the Zoning Code, the Zoning Administrator shall grant zoning approval for the proposed use, pursuant to Sec. 28.202(3).
 2. The Plan Commission finds that both the requested demolition or removal and the proposed use are compatible with the purpose of this section and the intent and purpose expressed in the Zoning Code for the zoning district in which the property is located. Furthermore, the proposed use should be compatible with adopted neighborhood plans, the Comprehensive Plan or with any applicable neighborhood conservation district requirements. When making this finding the Commission shall consider and may give decisive weight to any relevant facts, including but not limited to:
 - a. The effects the proposed demolition or removal and proposed use of the subject property would have on the normal and orderly development and improvement of surrounding properties.
 - b. The reasonableness of efforts to relocate the building, including but not limited to the costs of relocation, the impact on city terrace trees, and the structural soundness of the building; and
 - c. The limits that the location of the building would place on efforts to relocate it, and the availability of affordable housing.
 3. In the case of landmarks or improvements located in a local Historic District, consideration and approval of demolition or removal permits by the Plan Commission shall be contingent upon the prior issuance of a certificate of appropriateness by the Landmarks Commission pursuant to Sec. 33.01(5)(c), MGO.
 4. The Plan Commission shall consider the report of the City's historic preservation planner regarding the historic value of the property as well as any report submitted by the Landmarks Commission.
 5. The Plan Commission shall consider the report of the City Forester regarding the impact a proposed building relocation could have on City terrace trees.
 6. If a demolition or removal permit is approved, it shall not be issued until the reuse and recycling plan is approved by the Recycling Coordinator.
- (b) Application With No Proposed Use. In addition to the above standards in Subsection (7)(a)3.-6.,

1. The Plan Commission finds that, based on evidence from the Madison Fire Department, Police Department, and/or Building Inspection Division, a potential fire hazard, potential unlawful use of the property, potential public nuisance, or other public health and safety concern supports demolition or removal before a future use is proposed, or
2. For a non-residential building, the Plan Commission finds that the use, bulk, and design requirements of the existing zoning district designation are adequate to ensure that development will conform to existing adopted City plans.

(8) Conditions and Guarantees.

The following conditions shall apply to all demolition or removal permits:

- (a) Before granting a demolition or removal permit, the Plan Commission may stipulate conditions and restrictions upon the proposed alternative use as deemed necessary to promote the public health, safety and general welfare of the community, and to secure compliance with the standards and requirements specified in (7) above.

Conditions may include a requirement that a property owner obtain approval from the Plan Commission, pursuant to (7) above, for an alternative use that is not known at the time of application, and/or that the owner provide proof of financial capability and an executed contract with a construction firm, in a form acceptable to the Director of the Department of Planning and Community and Economic Development, prior to any permits being issued.

- (b) Any alteration in plans for a proposed alternative use shall require Plan Commission approval, except for minor alterations as provided below. If the Plan Commission considers an alteration it shall approve the change(s) only if the new use is compatible with the intent and purpose of the zoning district in which the property is located, is compatible with the Comprehensive Plan and applicable neighborhood plan, and other relevant factors, including the effects of the proposed use on the normal and orderly development and improvement of surrounding properties.
- (c) The Zoning Administrator may issue permits for minor alterations or additions which are approved by the Director of Planning and Community and Economic Development and are compatible with the concept approved by the City Plan Commission and the standards in (7) above.
- (d) Following issuance of a Certificate of Occupancy, future additions or alterations to the proposed alternative use of the property shall not be subject to review under this section.

(9) Scope of Approval.

- (a) A demolition or removal permit is valid for one (1) year from the date of Plan

Commission approval/action. During this time, the applicant must either lawfully commence the use or obtain a building permit and begin erecting the building. If the applicant obtains a valid building permit, construction must commence within six (6) months of the date of issuance. The building permit shall not be renewed unless construction has commenced and is being diligently prosecuted.

- (b) Where the plans have not been altered since issuance of the demolition or removal permit and the permit has expired, the Director of Planning and Community and Economic Development may, after consultation with the Alderperson of the District, approve an extension for up to twenty-four (24) months from the expiration date.

(10) Reuse and Recycling Plan.

Every person who is required to submit a reuse and recycling plan pursuant to Sec. 28.185(7)(a)5. above shall submit documents showing compliance with the plan within sixty (60) days of completion of demolition.

(11) Demolition by Fire.

Demolition by Fire is prohibited unless the burn is conducted by the Madison Fire Department (MFD) in conjunction with an MFD training event and limited to no more than three (3) demolitions by fire events per year. For any permit approved for demolition by fire, the applicant shall provide written notice of the date of the proposed demolition to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within one thousand (1,000) feet of the boundaries of the property on which the demolition will occur. Such notice shall be provided at least five (5) days prior to the date of the proposed demolition.

(12) Penalty.

- (a) Any person who fails to submit documentation of compliance with an approved reuse and recycling plan shall, upon conviction thereof, be subject to a forfeiture of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense.
- (b) Any person who fails to obtain a demolition or removal permit prior to the demolition or removal shall, upon conviction thereof, be subject to a forfeiture of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000). Each day or portion thereof such violation continues shall be considered a separate offense.