



Legislation Details (With Text)

File #: 06956 **Version:** 3 **Name:** 11/6 demolition of buildings
Type: Ordinance **Status:** Passed
File created: 7/9/2007 **In control:** Attorney's Office
On agenda: 4/8/2008 **Final action:** 3/18/2008
Enactment date: 4/4/2008 **Enactment #:** ORD-08-00041

Title: AMENDED SUBSTITUTE - Renumbering Section 28.04(22) to Section 28.12(12) and amending new Section 28.12(12); renumbering current Section 28.04(23)-(27) to Section 28.04(22)-(26), respectively; renumbering current Section 28.12(12) and (13) to Section 28.12(13) and (14) of the Madison General Ordinances to change various provisions of the ordinance regulating the demolition of buildings.

Sponsors: Brenda K. Konkel

Indexes:

Code sections:

Attachments: 1. Comments.pdf, 2. Memo Demo Standards 092807.pdf, 3. AddComments 011008, 4. Landmarks Comments 012808.pdf, 5. Add Comment 021108.pdf, 6. Comment 022508.pdf, 7. 06956-FirstVersion.pdf, 8. Draft of 2/11/08 Plan Commission comments.pdf, 9. 06956 Registration Stmt.pdf

Date	Ver.	Action By	Action	Result
4/8/2008	3	COMMON COUNCIL		
3/18/2008	3	COMMON COUNCIL	Adopt and Close the Public Hearing	Pass
2/25/2008	1	PLAN COMMISSION	RECOMMEND TO COUNCIL TO ADOPT - RECESSED PUBLIC HEARING	Pass
2/11/2008	1	PLAN COMMISSION	RECOMMEND TO COUNCIL TO ADOPT - RECESSED PUBLIC HEARING	Pass
1/28/2008	1	LANDMARKS COMMISSION	Return to Lead with the Following Recommendation(s)	Pass
1/14/2008	1	LANDMARKS COMMISSION	Re-refer	Pass
12/3/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
10/29/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
10/24/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
10/10/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
9/19/2007	1	LANDMARKS COMMISSION	Refer	Pass
9/5/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
9/4/2007	1	COMMON COUNCIL	Re-refer for Recessed Public Hearing	Pass
8/20/2007	1	LANDMARKS COMMISSION	Re-refer	Pass
8/6/2007	1	PLAN COMMISSION	RECOMMEND TO COUNCIL TO RE-REFER - PUBLIC HEARING	Pass
7/17/2007	1	COMMON COUNCIL	Refer For Public Hearing	Pass
7/17/2007	1	PLAN COMMISSION	Refer	
7/12/2007	1	Attorney's Office	Referred for Introduction	

7/11/2007	1	Finance Dept/Approval Group	Fiscal Note Pending
7/9/2007	1	Attorney's Office/Approval Group	Approved As To Form
7/9/2007	1	Attorney's Office	Fiscal Note Required / Approval

Fiscal Note

The Ordinance will result in an increase in demolition permit applications, and the subsequent reallocation of staff time to review and process additional permits. No additional staff resources are required at this time. There will be some additional revenues derived from permit application fees that will partially offset City administrative expenses. In addition, there will be some nominal expense for the production of signage. No additional appropriation is anticipated at this time.

Title

AMENDED SUBSTITUTE - Renumbering Section 28.04(22) to Section 28.12(12) and amending new Section 28.12(12); renumbering current Section 28.04(23)-(27) to Section 28.04(22)-(26), respectively; renumbering current Section 28.12(12) and (13) to Section 28.12(13) and (14) of the Madison General Ordinances to change various provisions of the ordinance regulating the demolition of buildings.

Body

DRAFTER'S ANALYSIS: This ordinance is an updating of the regulations for demolishing buildings to reflect concerns that have arisen in the context of the increasing number of demolition requests in recent years. Some of the specific concerns have been demolition requests when there is no proposed use following the demolition, compliance with reuse and recycling plans, increasing the forfeitures when a demolition occurs without a permit, and issues of historic preservation and neighborhood character preservation. The practice of considering demolition or removal requests as part of an associated conditional use or rezoning request continues. Public hearing requirements also remain and include the same notice and sign requirements that apply to conditional uses and/or rezonings. Because of the procedural similarities to conditional use and rezoning requests, these regulations for demolition and removal have been moved closer to those provisions in the code.

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

1. Subsection (22) entitled "Approval of Razing, Demolition, Removal, or Wrecking" of Section 28.04 entitled "General Provisions" of the Madison General Ordinances is hereby renumbered to Section 28.12(12) and amended to read as follows:

~~"(22.12) Approval of Razing, Demolition, Removal, or Wrecking (Razing, Wrecking) and Removal.~~

- (a) 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:
 - 1. ~~Foster and encourage the preservation of existing buildings which are structurally sound, economically productive, and suitable for rehabilitation or repair.~~
 - 2. ~~Encourage voluntary compliance with building and minimum housing codes.~~
 - 3. ~~Aid in the preservation of residential neighborhoods.~~
 - 4. ~~Require the Plan Commission to evaluate proposed alternative uses of property before existing buildings are destroyed or moved.~~
 - 5. ~~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.~~
 - 6. ~~Foster and encourage adherence to the intent and purpose of the Zoning Code, as expressed in that code's general intent and purpose, Section 28.02 of the Madison General Ordinances, and as expressed in the individual Statements of Purpose for each of the zoning districts established by the code.~~
 - 7. ~~Encourage the relocation of existing buildings that are suitable for continued use at another location and to encourage the re-use and recycling of materials from buildings~~

- ~~that are razed, demolished or wrecked.~~
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.
- (b) Application for Permit.
1. No building as defined in Section 29.03 of the Madison General Ordinances shall be razed, demolished, or removed or wrecked without a permit from the Neighborhood Preservation and Inspection Division of the Department of Planning and Community and Economic Development. Applications for moving or wrecking demolition or removal permits shall be submitted to the Director of the Neighborhood Preservation and Inspection Division. An application for a moving permit shall be made pursuant to Sec. 29.12 of the Madison General Ordinances. An application for a wrecking demolition or removal permit shall contain a clear, detailed and complete statement of the present or most recent use and the any use proposed to be made of the property if the wrecking demolition or removal permit is approved. The Director of the Neighborhood Preservation and Inspection Division shall notify the District Alderperson of all applications for moving or wrecking permits. An application for a wrecking permit also shall include a site plan for any proposed future use, the documented age of the building (s) the length of the current ownership, and photographs of the building(s), and a plan for recycling materials from the building(s) to be demolished. If the proposed demolition is to be accomplished by fire, the application shall designate the proposed method of demolition.
 2. Except for applications submitted pursuant to (d), below, at least thirty (30) days prior to submitting an application for a demolition or removal permit, the applicant shall notify the Alderperson of the district where the demolition or removal is proposed. The applicant also shall notify any neighborhood association registered within the City that serves the area where the demolition or removal is proposed, any business association that serves the area and is listed by the City, and any person registered with the Department of Planning and Community and Economic Development to receive notice of proposed demolitions or removals. The above notice shall be provided sixty (60) days prior to submitting an application for demolition or removal for buildings constructed prior to 19461940. Notification shall be by mail, or electronic mail, with a copy to the Director of the Department of Planning and Community and Economic Development. Failure to provide such notification shall not invalidate any action on the application taken by the Plan Commission or Common Council but may delay consideration of the application. The notice requirement for all but the registered persons may be waived, if approved by the Alderperson, President of the Neighborhood Association, and Director of the Department of Planning and Community and Economic Development.
- (c) Standards. Applications for wrecking demolition or removal permits shall not be approved, except as provided in Section 28.04(22)(d) of the Madison General Ordinances, unless the following conditions standards are met:
1. Applications With a Proposed Future Use.
 - a. 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, Chapter 28, Madison General Ordinances.
 - a.i. 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 wrecking demolition or removal permit may follow the procedures

provided by the Zoning Code to apply for an map or text amendment pursuant to Section 28.12(10) of the Madison General Ordinances or for a conditional use permit pursuant to Section 28.12(11) for the proposed use. All of the provisions of Sections 28.12(10) and 28.12(11) shall apply to said applications, except that the time limit for commencement of the conditional use, pursuant to Section 28.12(11)(b)3., shall be eighteen (18) months instead of twelve (12) months.

b-ii. If after the procedures provided in Paragraph 1. are followed, the proposed use of the property would be in compliance with the provisions of the Zoning Code, the Zoning Administrator shall grant a zoning certificate for the proposed use, pursuant to Madison General Ordinance Section 28.12(5)(a).

2.b. 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 **must should** be consistent with adopted neighborhood plans, the Comprehensive Plan **and or** with any applicable neighborhood conservation district requirements. **If no neighborhood plan or neighborhood conservation district exists, the proposed use shall be compatible with the neighborhood's character, massing, and density.** When making this finding the Commission shall consider and may give decisive weight to any relevant facts including but not limited to 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, the reasonableness of efforts to relocate the building, including but not limited to the costs of relocation, the structural soundness of the building, and the limits that the location of the building would place on efforts to relocate it, and the availability of affordable housing after giving due consideration to the adopted master plan.

3.c. In the case of landmarks or improvements located in a local Historic District, consideration and approval of wrecking demolition or removal permits by the Plan Commission shall be contingent upon the prior issuance of a certificate of appropriateness therefor by the Landmarks Commission pursuant to Section 33.01(5)(c) of the Madison General Ordinances.

d. **For buildings constructed prior to 1946,** 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.

4.e. In the case of an application for a wrecking permit, consideration and approval of wrecking permits by the Plan Commission shall be contingent upon prior approval of the plan for recycling materials by the Recycling Coordinator. **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.**

2. Application With No Proposed Use. In addition to the above standards in (c)1.c-e:

(a) The Plan Commission finds that, based on evidence from the Madison Fire Department, Police Department, and/or Neighborhood Preservation and 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**

(b) 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.

(d) Exemptions.

1. Wrecking Demolition or removal permits may be issued without the prior approval

- referred to required in Subdivision (c) above whenever any one 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 or is not located in an Historic District or Neighborhood Conservation District:
- a. The Director of the Neighborhood Preservation and Inspection Division finds that the building proposed to be ~~wrecked or demolished~~ or removed is structurally unsound, subject to an appeal as provided in Section 29.18 of the Madison General Ordinances. The applicant may support the request with the report of a licensed architect or engineer certifying that the building is structurally unsound, and giving the reasons therefore.
 - b. The Director of the Neighborhood Preservation and Inspection Division determines that the building proposed to be ~~wrecked or demolished~~ or removed is an accessory building as defined in Section 28.03(2) of the Madison General Ordinances.
 - c. (R. by Ord. 11,914, 8-18-97)
2. ~~Wrecking Demolition or removal permits may be issued without the prior approval referred to in Subdivision (c) above, provided that the building proposed to be wrecked or demolished or removed is owned by the City of Madison and the project necessitating the demolition or removal has been recommended by the Plan Commission and approved by the Common Council.~~
 3. ~~Wrecking Demolition or removal permits not requiring the prior approval referred to required in Subdivision (c) above shall be issued, denied or deemed denied by failure to issue within seven (7) business days of the date of application.~~
 4. ~~The Common Council, upon recommendation of the Landmarks Commission, may adopt standards under which applications for wrecking permits for certain types of nonresidential buildings or structures which are located in an Historic District but which are neither landmarks nor improvements that contribute to the distinctive architectural or historic character of the District as a whole may be exempted from the public hearing requirements in Section 28.04(22)(e).~~
- (e) Every person who is required to submit a reuse and recycling plan pursuant to (c)5. above shall submit documents showing compliance with the plan within sixty (60) days of completion of demolition.
- (e)(f) Hearings on Applications for Wrecking Demolition or Removal Permits. The Plan Commission shall hold a public hearing on each application for a wrecking demolition or removal permit, except those issued under (d), above, that do not require approval by the Plan Commission. If the applicant for a demolition or removal permit requests an amendment to the Zoning Code pursuant to Section 28.12(10) or a conditional use permit pursuant to Section 28.12(1), the demolition or removal permit application shall be considered with the amendment to the Zoning Code or conditional use, and shall follow the same procedures required for other hearings by The public hearing for demolition or removal permit applications shall meet the requirements in Madison General Ordinance Section 28.12(10)(d) and (e) and (f), except that a demolition or removal permit application considered with a zoning map amendment shall meet the public hearing requirements in Section 28.12(10)(d) and (e). if the applicant for a wrecking permit requests an amendment to the Zoning Code pursuant to Section 28.12(10) or a conditional use permit pursuant to Section 28.12(1) or if said wrecking is a detail of a proposed General Development Plan for a planned development under Section 28.07 of the Madison General Ordinances, the wrecking permit application shall be considered together with said amendment to the Zoning Code, conditional use and/or General Development Plan. In addition, the hearing on the application for said wrecking permit and any appeal thereof of the decision of the Plan Commission shall follow the provisions of Madison General Ordinances Sections 28.12(10), 28.12(11) and/or 28.07(4), (5) and (6) as appropriate, including but not limited to those provisions which relate to the filing of a verified petition and the voting requirements on appeal to the Common Council. In the case of landmarks or improvements located in an Historic

District, however, the public hearing on the wrecking permit shall be held only by the Landmarks Commission pursuant to Section 33.01(5)(c); the public hearing on the proposed use of the property should a certificate of appropriateness be issued, shall be held by the Plan Commission pursuant to this subsection.

(g) Demolition by Fire. For any permit approved for demolition by fire, **the applicant shall provide written notice of the date of the proposed demolition shall be provided to the alderperson of the district where the demolition is proposed and to all owners and residents of properties within five hundred (500) one thousand (1000) 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. No demolition by fire shall be allowed on days when an Air Quality Watch or Air Quality Advisory has been issued by the Department of Natural Resources for particulate pollution.**

(f) (h) Appeals. An appeal from the decision of the City Plan Commission granting or denying a demolition or removal permit may be taken to the Common Council by the applicant for the wrecking demolition or removal permit or by the Alderperson of the district in which the building proposed to be wrecked demolished or removed is located. Such appeal must specify the grounds thereof in respect to the findings of the City Plan Commission and must be filed with the office of the Zoning Administrator within ten (10) days of the final action of the City Plan Commission. The Zoning Administrator shall transmit such appeal to the City Clerk who shall file the appeal with the Common Council. The Common Council shall fix a reasonable time for the hearing of the appeal, and give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. The action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a favorable vote of two-thirds (2/3) of the members of the Common Council voting on the matter, reverses or modifies the action of the City Plan Commission. Provided, however, that if the applicant for a wrecking demolition or removal permit has also requested an amendment to the Zoning Code pursuant to Section 28.12(10) or a conditional use permit pursuant to Section 28.12(11), the determination shall be appealed with the appeal of the conditional use or map amendment. ~~or if said wrecking is a detail of a proposed General Development Plan, action on those requests, as indicated supra in Subsection (3), is not to be appealed to the Common Council under this subsection.~~

(i) Penalty.

1. 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.

2. 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."

2. Current Subsections (23) - (27) of Section 28.04 entitled "General Provisions" of the Madison General Ordinances are renumbered to Subsections (22) - (26), respectively.

3. Current Subsections (12) and (13) of Section 28.12 entitled "Administration and Enforcement" of the Madison General Ordinances are renumbered to Subsections (13) - (14), respectively.