



MEMORANDUM

“...meeting community needs...enhancing quality of life.”

TO: Historic Preservation Commission

FROM: Don Harp, Principal Planner

DATE: April 16, 2019

RE: Discussion Item / Proposed Draft Text Amendments to Article XVII.
Section 23-651 Historic Preservation of Chapter 23 Zoning Ordinance of the
Municipal Code.

BACKGROUND:

At the March 19, 2019 Historic Preservation Commission meeting, staff discussed recent changes to the Wisconsin State Statutes affecting the local Historic Preservation Ordinance.

As a result of these changes to the Wisconsin State Statutes, the City's Zoning Ordinance must be amended to comply with the state statutes. Staff is recommending the text underlined be added and the ~~striketrough~~ text be deleted.

Comments: 2015 Wisconsin Act 176 requires cities, villages, towns, and counties hold a public hearing before designating a historic landmark or establishing a new historic district and to notify, by 1st class mail, any affected owner of the proposed designation or establishment (Wis. Stat. 62.23(7)(em)2). The Act also allows a property owner affected by a decision of a historic preservation commission to appeal the decision to the governing body of the local unit of government, and allows that governing body (Common Council) to overturn the historic preservation commission's decision by a simple majority vote (Wis. Stat. 62.23(7)(em)3).

Comments: 2017 Wisconsin Act 317 (62.23(7)(em)2m) which states, “In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.”

Based on the recommendation of the Wisconsin Historical Society, all the 180 historic preservation ordinances across the State of Wisconsin should be updated to address this legislative action affecting local historic preservation ordinances.

The City's current Historic Preservation Ordinance is consistent with 2017 Wisconsin Act 317 (62.23(7)(em)2m). The text to be added is recommended to clarify and to be consistent with current state statutes and more closely aligned with national preservation methodology.

The text recommended to be added is underlined. The text recommended to be deleted is ~~strikethrough~~.

Section 23-22. Words and terms defined.

Historic Preservation

(20) ***Historic preservation repair*** means the act or process of applying measures, except for painting, necessary to prolong or replace deteriorated, decayed or damaged existing exterior features of a local historic structure, local historic site or contributing structure or any part thereof by using ~~the like materials~~ that are identical in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. or where possible, to original materials. The term "historic preservation repair" includes the installation of roof singles, windows, doors or other architectural features where the original opening will not be enlarged, reduced or altered.

(24) ***Identical (materials)*** means for the purpose of Section 23-651, means exactly the same in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc.

(24) (25) ***Important person or persons*** means an individual or a group of individuals who has made significant contributions to Appleton, the state or the nation, including but not limited to medicine, politics, commerce, history, engineering and/or architecture.

(25) (26) ***Improvement*** means any building, structure, or object constituting a physical betterment of real property, or any part of such betterment.

(26) (27) ***Improvement parcel*** means a lot or parcel of land together with the buildings and structures thereon, which has been assigned a tax parcel number by the City Assessor's Office. The term "improvement parcel" shall also include any unimproved area of land which has been assigned a tax parcel number by the City Assessor's Office.

(27) ~~***Like materials***~~ means ~~the use of materials that are nearly identical in shape, size and design of existing materials.~~

(35) ***Similar (materials)*** means for the purpose of Section 23-651, means nearly but not exactly the same in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. or alike;

having a general resemblance, although allowing for some degree of difference. This term is to be interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, in somewhat like, or has a general likeness to some other thing but in not identical in form and substance.

~~(35)~~ (36) **Work** means demolition or historic preservation alteration or repair.

Comments: Often the Commission to holds their reorganizational meeting in April. The recommended text adds flexibility for the Commission to hold their reorganizational meeting in April or May.

Section 23-651 (g) Reorganizational meeting. The Historic Preservation Commission shall reorganize in or before May of each year by electing a chair, vice-chair, contact person and a recording secretary. All meetings of the Commission shall be held at the call of the chairman or at such times as the Commission determines.

Section 23-651 (h) Designation of local historic structures, local historic sites and local historic districts. The Historic Preservation Commission shall have the power to recommend local designation of historic structures, historic sites and historic districts within the City of Appleton limits. Such designation shall be made based on the review of the local historic structure, local historic site and local historic district designation criteria identified in subsection (i) of this section. Local designation of historic sites, historic structures and historic districts shall be recommended to the ~~Community and Economic Development Committee who will review and recommend to the Common Council~~ for a final approval. Once designated, such local historic structures, local historic site and local historic district shall be subject to all the provisions of this chapter.

Section 23-651 (k) Procedure for designation of local historic structures and sites.

(2) **Informal Public hearing at Historic Preservation Commission.** At least ten (10) days prior to such informal public hearing, the Community and Economic Development Department shall mail the informal public hearing notice, by 1st Class mail, to the alderperson of the aldermanic district, owners of record of the proposed local historic structure designation or local historic site designation and owners situated within one hundred (100) foot radius of the nominated local historic structure or site, as listed in the Office of the City Assessor. The informal public hearing notice shall identify the purpose, date, time and place of the informal public hearing.

- ~~a. Notice of public hearing for designation of local historic structures and local historic sites shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.~~
- ~~b. At least ten (10) days prior to such hearing, the Community and Economic Development Department shall notify the alderperson of the aldermanic district and property owners of record and owners of property in whole or in part situated~~

~~within a one hundred (100) foot radius of the nominated structure or site, as listed in the Office of the City Assessor.~~

~~e. a.~~ The Historic Preservation Commission shall then conduct such informal public hearing and, in addition to the notified persons, may hear expert witnesses and review records as it deems necessary.

(3) *Action by the Historic Preservation Commission.* After the close of the informal public hearing, the Historic Preservation Commission shall review the criteria in subsection (i) a., b., c., d. and e. of this section and either recommend approval or denial of the proposed local historic structure designation or local historic site designation to the ~~Community and Economic Development Committee~~ Common Council, unless time is extended by agreement between the Historic Preservation Commission and the owner or owner's agent in charge of the property.

~~(4) Action by the Community and Economic Development Committee.~~ After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the ~~Community and Economic Development Committee~~ may either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission. The ~~Community and Economic Development Committee's~~ recommendation and report to approve or deny such designation shall be forwarded to the Common Council who will make the final decision.

~~(5)~~ (4) *Action by the Common Council.*

a. ~~After receiving and reviewing the report and recommendation of the Community and Economic Development Committee, the Common Council shall either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission.~~ Notice of public hearing for proposed local historic structure designation or local historic site designation shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.

b. ~~City Clerk shall send written notice of the action taken by the Common Council to the property owner(s) or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor. At least ten (10) days prior to such public hearing, the City Clerk shall mail the public hearing notice by 1st Class mail, to the alderperson of the aldermanic district, owners of record of the proposed local historic structure designation or local historic site designation and owners situated within one hundred (100) foot radius of the nominated local historic structure or site, as listed in the Office of the City Assessor. The public hearing notice shall identify the purpose, date, time and place of the public hearing.~~

- c. After the close of the public hearing, the Common Council shall review the report and recommendation of the Historic Preservation Commission. The Common Council shall either approve or deny the proposed local historic structure designation or local historic site designation, or refer the matter back to the Historic Preservation Commission.
- d. City Clerk shall send written notice of the action taken by the Common Council to the property owner(s) or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor.

Section 23-651 (l) *Procedure for designation of local historic districts.*

- (3) ***Informal public hearing at Historic Preservation Commission.*** At least ten (10) days prior to such hearing, the Community and Economic Development Department shall mail the informal public hearing notice, by 1st Class mail, notify to the alderperson of the aldermanic district or districts, owners of record within the proposed local historic district and owners of property in whole or in part situated within a one hundred (100) foot radius of the nominated local historic district, as listed in the Office of the City Assessor. The notice of informal public hearing shall identify the purpose, date, time and place of the informal public hearing.
- (4) ***Action by the Historic Preservation Commission.*** After the close of the informal public hearing, the Historic Preservation Commission shall review the criteria in subsection (i) a., b., c., d. and e. of this section and either recommend approval or denial of the proposed local historic district designation and adoption of the proposed Local Historic Preservation Plan to the ~~Community and Economic Development Committee~~ Common Council, unless time is extended by agreement between the Historic Preservation Commission and the owner(s) or owner's agent in charge of the property.
- ~~(5) ***Action by the Community and Economic Development Committee.*** After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the Community and Economic Development Committee may either approve or deny the proposed local historic district designation and adopt the proposed Local Historic Preservation Plan, or refer the matter back to the Historic Preservation Commission. The Community and Economic Development Committee's recommendation and report to approve or deny such designation and adoption of the Local Historic Preservation Plan shall be forwarded to the Common Council who will make the final decision.~~
- ~~(6)~~ (5) ***Action by the Common Council.***
 - a. Notice of public hearing for designation of local historic districts and adoption of the Local Historic Preservation Plan shall be given by a Class 2 newspaper notice. The notice of public hearing shall identify the purpose, date, time and place of the public hearing.

- b. At least ten (10) days prior to such hearing, the City Clerk shall mail the public hearing notice by 1st Class mail, notify to the alderperson of the aldermanic district or districts, owners of record within the proposed local historic district, and owners of property in whole or in part situated within a one hundred (100) foot radius of the nominated local historic district, as listed in the Office of the City Assessor. The public hearing notice shall identify the purpose, date, time and place of the public hearing.
- c. After the close of the public hearing, the Common Council shall review ~~After receiving and reviewing the report and recommendation of the Community and Economic Development Committee-Historic Preservation Commission.~~ †The Common Council shall either approve or deny the proposed local historic district designation and the proposed Local Historic Preservation Plan, or refer the matter back to the Historic Preservation Commission. Designation of the local historic district shall constitute adoption of the proposed Local Historic Preservation Plan prepared for that local historic district and denotes the implementation of said plan.
- d. The City Clerk shall send written notice of the action taken by the Common Council to the property owners or owner's agent, Community and Economic Development Department, Inspections Supervisor and the City Assessor.

Section 23-651 (n) *Certificate of Appropriateness provision: Regulation for exterior construction, reconstruction, historic preservation alteration and demolition.*

(5) *Appeals.*

- a. If the Historic Preservation Commission denies the Certificate of Appropriateness, the Historic Preservation Commission shall, at the request of the owner or person in charge of such property, work with the owner or owner's agent in charge of such property in an attempt to obtain a Certificate of Appropriateness within the standards of this section.
- b. In addition, if the Historic Preservation Commission denies the application for a Certificate of Appropriateness due to the proposal failing to conform to the standards for granting a Certificate of Appropriateness as identified in this section, the owner or owner's agent may appeal such decision to the ~~Community and Economic Development Committee~~ Common Council.
 1. The owner or owner's agent in charge of such property shall file a written appeal specifying the grounds for such an appeal with the Director no later than thirty (30) days from the date of the decision of the Historic Preservation Commission. Failure by the owner or owner's agent in charge of such property to file a written appeal in accordance with the abovementioned provisions shall be deemed to constitute a withdrawal of the application for a Certificate of Appropriateness.

2. After consideration of the appeal, the ~~Community and Economic Development Committee~~, Common Council by majority vote may either affirm the decision of the Historic Preservation Commission or approve the issuance of the Certificate of Appropriateness, in which case the Director shall issue the Certificate of Appropriateness.

Section 23-651(n)(3) *Application process.* Application forms for a Certificate of Appropriateness shall be submitted to the Community and Economic Development Department. After submittal and acceptance of a complete application through initial review by the Director, the complete application, which includes the written application and supporting materials are then forwarded to the Historic Preservation Commission.

- a. ***Standards for granting Certificate of Appropriateness for exterior construction, reconstruction and historic preservation alterations.*** In determining whether to approve or deny a Certificate of Appropriateness for a historic preservation alteration, the Historic Preservation Commission shall approve the application if one (1) or more of the following can be demonstrated:

1. In the case of a local historic structure, local historic site or a contributing structure, the proposed work utilizes materials that are similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure. ~~and would not detrimentally change, destroy or adversely affect any exterior feature of such local historic structure, local historic site, or contributing structure upon which said work is to be done;~~
2. In the case of the construction of a new improvement upon a local historic structure, local historic site, or a contributing structure, the exterior materials of such improvement are similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure. ~~and would not adversely affect or be incompatible with the external appearance of other adjacent improvements on such local historic structure, local historic site or contributing structure;~~
3. In the case of any improvement made to a contributing structure, the proposed exterior historic preservation alteration shall conform to the purpose of this

section and to the objectives and design criteria of the local historic preservation plan for the applicable local historic district.

Section 23-651(n)(4) *Review and decision by the Historic Preservation Commission.* The Historic Preservation Commission, within twenty-five (25) business days from the date the Certificate of Appropriateness application was accepted by the Director, shall either approve or deny the application, unless the time is extended by agreement between the Historic Preservation Commission and the owner or owner's agent in charge of the property. The Historic Preservation Commission shall clearly state the reasons why the exterior materials are or not similar in design, color, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure.

Section 23-651(o) *Exempt work from Certificate of Appropriateness provisions.* Historic preservation repairs ~~not including painting,~~ made to a local historic structure or local historic site or contributing structure may be undertaken without a Certificate of Appropriateness, provided the work involves repairs to existing exterior features of a local historic structure or local historic site, or the replacement of existing exterior features of a local historic structure, local historic site or contributing structure with like—materials that are identical in design, scale, architectural appearance, and other visual qualities including, but limited to, alignment, character, context, directional expression, height, location, materials, massing, proportion, relationship of solids to voids, rhythm, setting, size, volume, etc. to the original exterior materials used in the construction of such local historic structure, local historic site, or contributing structure ~~and provided the work does not change the exterior appearance of the local historic structure, local historic site or contributing structure~~ and does not require the issuance of a building permit. Painting is exempt from the Certificate of Appropriateness provisions.

Section 23-651 (p) *Procedure to rescind a local historic structure designation, local historic site designation and local historic district designation.*

(2) *Public Hearing at Historic Preservation Commission.*

- b. At least ten (10) days prior to such hearing, the Community and Economic Development Department shall mail the public hearing notice, by 1st Class mail, notify to the alderperson of the aldermanic district, owners of record, and owners of property in whole or in part situated within a one hundred (100) foot radius of the local historic structure, local historic site or local historic district, as listed in the Office of the City Assessor.

(3) *Action by the Historic Preservation Commission.* After the close of the public hearing, the Historic Preservation Commission shall review the rescission criteria in subsection (p)(3)a.1., 2., 3., and 4. of this section and either recommend approval or denial of the proposed rescission to the ~~Community and Economic Development Committee,~~ Common Council.

~~(4) *Action by the Community and Economic Development Committee.* After receiving and reviewing the report and recommendation of the Historic Preservation Commission, the Community and Economic Development Committee may either approve or deny the proposed application to rescind a local historic site designation, local historic structure designation or local historic district designation and the applicable local historic preservation plan, or refer the matter back to the Historic Preservation Commission. The Community and Economic Development Committee's recommendation and report shall be forwarded to the Common Council who will make the final decision.~~

~~(5)~~ (4) *Action by the Common Council.*

- a. After receiving and reviewing the report and recommendation of the ~~Community and Economic Development Committee~~, Historic Preservation Commission the Common Council shall either approve, deny, or postpone the proposed application to rescind a local historic site designation, a local historic structure designation or a local historic district designation and the applicable local historic preservation plan, or refer the matter back to the Historic Preservation Commission.

If you have any questions or concerns, please feel free to contact me at 920-832-6466.

all of which shall be immediately filed in the office of the board and shall be a public record.

3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.

7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a

variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

f. A variance granted under this subdivision runs with the land.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, 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 all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.* 1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subds. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each

historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(f) *Enforcement and remedies.* 1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(gm) *Permits.* Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(h) *Nonconforming uses.* The continued lawful use of a building, premises, structure, or fixture existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure,

or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(ham) *Manufactured home communities.* Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.
2. Repair or replacement of infrastructure.

(hb) *Repair, rebuilding, and maintenance of certain nonconforming structures.* 1. In this paragraph:

a. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.

b. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(hc) *Restoration or replacement of certain nonconforming structures.* 1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(he) *Antenna facilities.* The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.

2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.

3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(hf) *Amateur radio antennas.* The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.



DATE: February 21, 2019
TO: Wisconsin Local Historic Preservation/Landmark Commissions
FROM: State Historic Preservation Office
RE: Interpretation of Recently Enacted Commission Review Legislation

State Statutes grant units of government the authority to enact ordinances to regulate historic places for the purpose of preserving these properties' significant characteristics. To do so, units of government may pass ordinances creating landmark commissions to designate historic places. Subject to these provisions, commissions may designate and regulate historic landmarks and all property within landmark historic districts to preserve the character of both individual historic landmarks as well as the character of each district.

Effective April 2018 new language related to commission review of historic properties was added to State Statutes:

In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this section, the [unit of government] shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

This language was drawn from the Secretary of the Interior's Standards for Rehabilitation, and gives very specific guidance to commissions that only apply to repairs and replacements.

Questions have arisen about whether this language requires commissions to approve all new materials. In our interpretation, this new language does not change the role of the commission, but rather empowers it to determine if a material or product is an appropriate replacement. All other powers of commissions under their local ordinances remain.

During the commission's COA review process, the commission should first determine if repair or replacement is a component of the application. If no, proceed according to established process. If yes, the commission, using its expertise, should determine if the repair or replacement materials are sufficiently "similar" to original materials. The commission, not the owner, makes this determination. If the commission rules that the material is not similar, it has the authority to deny a certificate of appropriateness. In the commission's decision documentation, it should clearly state that it reviewed this question and give factual reasons why the material is or is not similar in design, color, scale, architectural appearance, and other visual qualities.

This legislation does not give an owner unilateral approval for any material or project they propose. Ultimately it is the commission's responsibility to review each project application objectively against their ordinance and to provide a professional opinion of appropriateness.