

City of Waukesha, Wisconsin

Ordinance No. 2025-_____

**An Ordinance Amending Section 28.02, 28.03, 28.05, and 28.06
of the Landmarks Commission Ordinance.**

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

Section 1. Sections 28.02, 28.03, 28.05, and 28.06 of the Waukesha Municipal Code are hereby amended to read as follows:

28.02 Definitions

When used in this chapter, unless the context clearly requires otherwise, the following definitions shall apply:

1. Commission means the Landmarks Commission created under this chapter.
2. Improvement means anything constituting a physical betterment of real property or any part of such betterment. For the purposes of this chapter, an improvement shall not include, landscaping, paving, fencing, retaining walls, or other site work, but shall include accessory buildings.
3. Landmark means any structure having a special character, historic interest, or value as part of the development, heritage or cultural characteristics of the City, State or Nation; and which has been designated as a Landmark pursuant to provisions of this chapter.
4. Landmark Site means any parcel of land having historic or archaeological significance due to the presence of a landmark or historic occurrence;
5. Historic District means an area designated by the Commission which contains more than one landmark or landmark sites, as well as those nearby parcels which the Commission determines should fall under the provisions of this chapter to assure that their appearance and development is harmonious with such landmarks or landmark sites.
6. Certificate of Appropriateness means the certificate issued by the Commission approving alteration, rehabilitation, construction, reconstruction, or demolition of a historic structure, historic site, or any improvement in a historic district.
7. Department means the City of Waukesha Department of Community Development.

28.03 Composition And Terms

1. Composition: The Landmarks Commission shall consist of 7 Commissioners: one registered architect, one licensed real estate broker, one alderman and 4 citizen members. Each member shall have, to the highest extent practicable, a known interest in historic preservation.
2. Terms: The Mayor shall appoint the commissioners subject to confirmation by the Council. Of the initial members so appointed, 2 shall serve a term of one year; 2 shall serve a term of 2 years; and 3 shall serve a term of 3 years. Thereafter, the term for each member shall be 3 years. Members of the Commission may be appointed for succeeding terms. A vacancy occurring in the membership for any cause shall be filled by a person appointed by the Mayor and confirmed by the Council for the unexpired term.
3. Chair: The members of the Landmarks Commission shall elect a chair to serve for a term of one year or until their term on the Commission expires, whichever occurs first. The chair shall be elected annually at the Commission's first regular meeting after May 1st. The chair shall preside at the meetings of the Landmarks Commission. If the chair is absent for a meeting the Commission members shall select a substitute to preside.

28.05 Powers And Duties

1. DESIGNATION. (Am. #9-13) The Commission shall have the power, subject to Common Council approval and §28.06 of this Code, to designate landmarks, landmark sites and historic districts within the City limits, based upon the criteria established under §28.04. Once the Common Council approves their designation, such landmarks, landmark sites and historic districts shall be subject to all the provisions of this chapter.
2. RECOGNITION OF LANDMARKS AND LANDMARK SITES. Upon designation of a landmark or landmark site in accordance with §§28.04 and 28.06 hereof, the Commission shall, with the owner's permission, cause to be prepared and erected on such property, at City expense, a suitable plaque declaring that such property is a landmark or landmark site. This plaque shall be so placed as to be easily visible to passing pedestrians and shall state the accepted name of the landmark or landmark site and other information deemed proper by the Commission.
3. (Am. #47-05) REGULATION OF CONSTRUCTION, RECONSTRUCTION, EXTERIOR ALTERATION AND DEMOLITION.
 - a. Certificate Required. No owner or person in charge of a historic structure, historic site, or structure within a Historic District shall reconstruct, alter or demolish all or any part of the exterior of such property or construct any improvement unless a Certificate of Appropriateness has been granted by the Landmarks Commission. Unless such Certificate has been granted by the Commission, the Building Inspector shall not issue a permit for any such work.
 - (1) All applications for a Certificate of Appropriateness shall be made on a form furnished by the Department. Depending on the proposed work, additional submittal items may be required, including but not limited to estimates or contracts from a building professional detailing the project,

photos of impacted areas, elevation drawings and/or site plans, and material or color samples.

- (2) All applications for a Certificate of Appropriateness shall be accompanied by a non-refundable fee as shown in a fee schedule published by the Department and amended from time to time.
- (3) Site work, minor repairs, and work of an inherently temporary nature, such as repainting surfaces that have already been painted, do not require Certificate of Appropriateness approval.

b. **Factors Considered.** Upon the filing of an application for a Certificate of Appropriateness with the Commission, the Commission shall consider the following:

- (1) Whether the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement upon which said work is to be done;
- (2) Whether the proposed work is consistent with the Design Guidelines published by the Commission and amended from time to time.
- (3) In the case of the construction of a new improvement on a historic site, or within a historic district whether the exterior of such improvement would adversely affect or harmonize with the external appearance other neighboring improvements on such site or within the district;
- (4) In the case of a request for demolition, Whether the building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and State;
- (5) In the case of a request for the demolition of a deteriorated building or structure, any economic hardship or difficulty claimed by the owner shall not be self-created or the result of any failure to maintain the property in good repair.

c. **Review and Approval.** If, after applying the factors set forth in (b) above, the Commission determines that the completed application for a Certificate of Appropriateness and the proposed changes are consistent with the character and features of the property or district, it shall issue the Certificate of Appropriateness. The Commission shall make this decision within forty-five (45) days of the filing of a completed application.

- (1) The Commission may impose conditions to ensure that work will be consistent with the factors noted in Section b above.
- (2) Should the Commission find that an application does not include sufficient information to make a determination of Appropriateness, and should the applicant be unable to provide such information in a timely manner, the Commission may place an application on hold for a period

of up to one month.

- (3) In cases where work has begun without a Certificate of Appropriateness, or has been inconsistent with the conditions of an approved Certificate of Appropriateness, and the Landmarks Commission finds that corrections must be made to return the property to compliance, the Commission may impose deadlines of not less than ninety days for said corrective work to be completed.

- d. Other Permits Required. The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the City. A building permit or other municipal permit shall be invalid if it is obtained without the presentation of the Certificate of Appropriateness required for the proposed work.
 - e. Continuing Obligation. If the Commission fails to issue a Certificate of Appropriateness, the Commission shall, with the cooperation of the applicant, work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this ordinance.
 - f. Appeals. The Department shall provide notice in writing of any decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness. Said notice must include any conditions of approval and, in the case of denial, must include the reasons for denial. The applicant may appeal the decision to the Common Council by filing an appeal with the City Clerk within 30 days of service of the notice of determination upon the applicant. For purposes of this section, service shall be deemed complete 3 days after the notice is deposited in the US Mail, postage prepaid, addressed to the applicant at the address shown on the application.
 - g. Common Council Review. If a timely appeal is filed with the City Clerk, the Common Council shall promptly review the decision of the Commission applying the factors set forth in 3(b) above. The Council may reverse or affirm wholly, partly, or may modify the decision of the Commission. Procedure for Common Council review shall be as described in Section 28.06(5) of this ordinance.
4. SALE OF LANDMARKS AND LANDMARK SITES. (Am. #9-13) Any person listed as the owner of record of a landmark site at the time of its designation, who can demonstrate to the Commission that by virtue of such designation the owner is unable to find a buyer willing to preserve such landmark or landmark site, even though he has made reasonable attempts in good faith to find and attract such a buyer, may petition the Commission for a rescission of the designation. Following the filing of such petition with the secretary of the Commission:
- a. The owner and the Commission shall work together in good faith to locate a buyer for the property who is willing to abide by its designation.
 - b. (Am. #9-13) If at the end of a period not exceeding 2 months from the petition date no such buyer can be found, and if the owner still desires to obtain such rescission, the Common Council shall rescind the designation of the property.
 - c. In the event of such rescission, the Commission shall notify the City Clerk, Building Inspector, City Attorney and the City Assessor of the rescission, and

shall cause the same to be recorded, at its own expense, in the office of the Waukesha County Register of Deeds.

- d. (Am. #9-13) Following any such rescission, the subject property may not be redesignated as a landmark or landmark site within 5 years following the date of rescission, without the owner's permission.

5. REGULATION OF DEMOLITION. (Rep. #47-05)

6. OTHER DUTIES. (Ren. #47-05) The Commission shall have the following duties in addition to those previously specified:

- a. Actively work for the passage of enabling legislation which would encourage landmark owners to carry out the intent of this chapter.
- b. Work closely with appropriate individuals and agencies in attempting to include landmarks or landmark sites on the National Register of Historic Places.
- c. Work to educate and inform the citizens concerning the City's historic heritage, landmarks and landmark sites as designated in this section.
- d. As it deems advisable, receive and solicit funds for the purpose of landmarks preservation in the City. Such funds shall be placed in a special City account for that

28.06 Procedures

1. HEARINGS AND NOTIFICATIONS. (Am. #9-13) Subject to approval by the Common Council, the Commission may, after notice and public hearing, establish landmarks, landmark sites and historic districts, or rescind such designation after application of the criteria in §28.04. The Commission shall also implement the following procedures:

- a. At least 20 days prior to such hearing, the Commission shall notify the owners of record as well as owners of properties in whole or in part situated within 200 feet of the boundaries of the property affected.
- b. Notice of such hearing shall also be published as a Class 2 notice, pursuant to Wis. Stat. Chapter 985.
- c. The Commission shall also notify the following departments: Public Works, Park and Recreation and Forestry, Fire, Police, Building Inspection and City Planning. Each department shall respond to the Commission within 20 days of notification with its comments on the proposed designation or rescission.
- d. The Commission shall then conduct a public hearing, may hear expert witnesses and shall have the power to subpoena witnesses and records as it deems necessary. The Commission may conduct an independent investigation into the proposed designation or rescission.
- e. (Am. #9-13) Within 10 days after the close of the public hearing, the Commission may, subject to Common Council approval, designate the property as either a Landmark or a Landmark Site, or include it in a Historic

District, or rescind such designation. After the designation or rescission has been approved by the Common Council, notification shall be sent within 10 days to the property owner or owners and to other persons who appeared at the public hearing. Notification shall also be given to the City Clerk, City Attorney, Building Inspector and City Assessor. The Commission shall cause such designation or rescission to be recorded, at City expense, in the Waukesha County Register of Deeds office.

2. PETITION FOR HISTORIC DISTRICT ZONING. (Am. #50-80) HPD Historic Preservation Overlay District Zoning shall be applied to each Landmark or Historic District property upon Common Council approval of its designation. A clear boundary of the designation shall be provided for Plan Commission and Common Council review as part of their review.
3. VOLUNTARY RESTRICTIVE COVENANTS. The owner of any Landmark or Landmark Site may, at any time following such designation of the property, enter into a restrictive covenant with the Commission on the subject property. The Commission may assist the owner in preparing such restrictive covenant in the interest of preserving the Landmark or Landmark Site, and the owner shall record such covenant in the Waukesha County Register of Deeds office, and shall notify the City Assessor of such covenant and the conditions thereof.
4. CREATION OF HISTORIC DISTRICTS.
 - a. For preservation purposes, the Landmarks Commission may select geographically defined areas within the City to be designated as Historic Districts and shall, with the assistance of the City Planning Department, prepare a historic preservation plan in ordinance form for each area. A Historic District may be designated for any geographic area of particular historic, architectural, or cultural significance to the City in accordance with §28.04(1). Each historic preservation plan prepared for or by the Landmarks Commission shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development, and a statement of preservation objectives.
 - b. Reviewal and Adoption.
 - (1) Landmarks Commission. The Landmarks Commission shall hold a public hearing when considering the plan for a Historic District. Notice of the time, place and purpose of such hearing shall be given by publication as a Class 2 Notice pursuant to Wis. Stat. Chapter 985 and shall also be sent by the City Clerk to the Alderman of the Aldermanic district or districts in which the Historic District is located, and the owners of record, who are owners of property situated in whole or in part within the Historic District, or situated in whole or in part within 200' of the boundaries of the Historic District. Said notice is to be sent at least 10 days prior to the date of such public hearing. Within 10 days following the public hearing, the Landmarks Commission shall vote to approve, reject, or withhold action on the plan. This recommendation shall be forwarded to the City Plan Commission and the Common Council.

- (2) Plan Commission. The Plan Commission shall review the Historic District Plan and make a recommendation to the Common Council within 60 days of receiving the Landmark Commission's report.
- (3) Common Council. The Common Council, upon receipt of the recommendation from the Landmarks Commission and Plan Commission, shall hold a public hearing, notice to be given as directed in subsection (4)(b), and shall, following the public hearing, either designate or reject the Historic District. Designation of the Historic District shall constitute adoption of the plan in ordinance form prepared for that district and direct the implementation of said plan.

5 APPEAL OF A DECISION OF THE LANDMARKS COMMISSION. Upon receipt of a timely appeal of a decision of the Landmarks Commission, the Common Council shall promptly review the decision of the Commission applying the factors set forth in § 28.05(3)(d) of this ordinance.

- a. Procedure for the appeal shall be as follows: 1. Explanation by Department staff of the Landmarks Commission's Standards; 2. Presentation of the application by staff, as presented to the Landmarks Commission; 3. A statement by the Chair of the Landmarks Commission, or by a designee, in support of the Landmarks Commission's decision. 4. A statement by the applicant in support of the appeal.
- b. Each step shall be followed by an opportunity for question and clarification by the Common Council members. All questions must come from the Council and responses must be directed to the Council. Cross examination of Commission members or Department staff by the applicant or of the applicant by Landmarks Commission members shall not be permitted.
- c. After hearing from staff, the Commission, and the applicant, the Council shall deliberate and vote in open session. The Council may reverse, modify, or affirm wholly or partly the decision of the Commission.
- d. Any person or persons having a substantial interest in a property which has been designated as a Landmark or Landmark Site, may appeal the designation by requesting a review of the determination within 30 days of the date of Common Council approval, in accordance with §2.11(3)(a) of the Waukesha Municipal Code.

Section 2. This ordinance shall take effect the day after publication.

Passed the ____ day of _____, 2025.

Shawn N. Reilly, Mayor

Attest: Katie Panella, City Clerk