ORDINANCE O-13-08

AN ORDINANCE RELATING TO THE LANDMARKS COMMISSION

Introduced by Alderman Pamenter at the recommendation of the Landmarks Commission.

The Common Council of the City of Menasha does ordain as follows:

SECTION 1: Title 2, SEC. 2-4-8 repealed and recreated to read as follows:

SEC. 2-4-8 LANDMARKS COMMISSION.

(a) The Landmarks Commission shall be organized by and function under the general direction of the Common Council.

(b) It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character, special historic interest or value is a public benefit in that such protection, enhancement, perpetuation and continued use is believed to:

(1) Serve as a support and stimulus to business and industry, thereby strengthening the economy of the city.

(2) Safeguard elements of the City's historic and cultural heritage, as embodied and reflected in historic structures, sites, and districts.

(3) Stabilize and improve property values.

(4) Foster civic pride in the accomplishments of the past.

(5) Promote the use of historic structures, sites and districts for the education, pleasure and welfare of the people of the City.

(6) Integrate the modern environment with historic buildings and sites.

(c) **DEFINITIONS.** The following words and terms wherever they appear in this chapter, shall be construed as herein defined. Words not defined shall be interpreted in accordance with definitions found in any standard dictionary.

(1) Alteration. A change in the external architectural features of any historic structure or in the interior of any such structure if the interior feature is specifically included in the historic designation; a change in the landscape features of any historic site or place; or work having an adverse effect upon designated archaeological resources.

(2) Commission. The Landmarks Commission created under this section.

(3) Certificate of Appropriateness. Document issued by the Landmarks Commission, following a prescribed review procedure, certifying that the proposed actions by an applicant are found to be acceptable in terms of design criteria relating to the individual property or the historic district.

(4) Historic Structure. Any improvement which has a special character or special 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 historic structure pursuant to the provisions of this chapter.

(5) Historic Site. Any parcel of land whose historic significance is due to substantial value in tracing the history of aboriginal people, or upon which a

historic event has occurred, and which has been designated a historic site under this section, or an improvement parcel, or part thereof, on which is situated a historic structure and any abutting improvement parcel, or part thereof, used as and constituting part of the premises on which the historic structure is situated.

(6) Historic District. An area designated by the Common Council on recommendation of the Commission, composed of two or more improvement parcels that together comprise a district of special character or special 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 historic district pursuant to the provisions of this chapter.

(7) Improvement. Any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such improvement.

(8) Improved Parcel. Unit of property which includes a physical betterment constituting an improvement and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes. Provided, however, that the term "improved parcel" shall also include any unimproved area of lands which is treated as a single entity for such tax purposes.

(d) **COMPOSITION AND TERMS.**

(1) A Landmarks Commission is created whose members shall be appointed by the Mayor, subject to the confirmation by the Common Council, as follows:

a. Community Development Director as an ex officio, non-voting member;
b. Six members at large;
c. An Alderman appointed for one (1) year at annual reorganization meeting.

(2) The Mayor shall consider prospective member's interest, knowledge, or expertise in historical, architectural, geological, archeological, or cultural preservation. Consideration shall also be given as to whether any member owns property in the designated historic district or a building otherwise designated as historic by the commission.

(3) All at large members shall be appointed for three-year terms with the first appointments staggered such that three of the original appointees serve three-year terms, two serve two-year terms and the remaining member serves a one-year term. The alderman member shall be appointed by the Mayor and confirmed by the Common Council at its annual organization meeting. The Community Development Director shall serve in an advisory capacity to the Landmark's Commission for an unlimited term.

(4) Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

(5) The Landmarks Commission shall select a chair, vice-chair and secretary and shall then adopt rules and regulations for its operation consistent with the provisions of this section.

(e) **POWERS AND DUTIES.** The Landmarks Commission shall have the following powers and duties:

(1) To develop appropriate criteria and standards for identifying and evaluating neighborhoods, places, structures and improvements which might be classified as landmarks, landmark sites, historic districts or specially designated landmarks.

(2) To identify landmarks, landmark sites, and historic districts within the City subject to official designation by the Common Council; and which upon such official designation shall be subject to the provisions herein.

(3) Other Duties. In addition to those duties already specified in this Section, the Commission shall:

a. Cooperate with the historic preservation officer for the State of Wisconsin, and the State Historic Preservation Review Board, in attempting to include such properties hereunder designated as historic structures, sites, or districts in the National Register of Historic Places.

b. Where necessary and appropriate recommend to the Planning Commission that the City acquire an interest in historic properties by purchase, donation or bequest, including the use of "preservation easements", where appropriate.

c. Establish appropriate markers for officially designated landmarks and historic districts.

d. Promote public education, interest and support for the preservation and enhancement of historic landmarks, landmark sites, and historic districts.

e. To advise owners of landmarks, landmark sites or structures of the benefits, problems and techniques of preservation and encourage their participation in preservation activities.

(f) **BUDGET AND FINANCE.** For the purposes enumerated in Section 1(b) of this Chapter, the Landmarks Commission may:

(1) Any funds deemed necessary shall be included in the Community Development Department budget. The Community Development Director shall monitor all expenditures consistent with City policy.

(2) Upon authorization by the Common Council, apply for state and/or federal funding.

(3) Upon authorization by the Common Council, raise funds and accept grants or gifts from public and private sources. Such funds shall be placed in a separate account as may be established by the City Comptroller and may be used upon authorization by the Common Council.

(4) Recommend contracting for services using such funds as may be authorized in the Community Development Department's budget or from other sources as may be approved by the Common Council. All such contracts require Common Council approval and shall be administered by the Community Development Director.

(g) **DESIGNATION OF HISTORIC STRUCTURES.** For purposes of this ordinance, a historic structure, historic site, or historic district designation may be placed on any site, natural or improved, including any building, improvement, or structure located thereon, or any area of particular historic, architectural, archeological, or cultural significance to the City, such as historic structures, sites or districts which:

(1) Exemplify or reflect the broad cultural, political, economic, or social history of the nation, state, or community; or

(2) Are identified with historic personages or with important events in national, state, or local history; or

(3) Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or

(4) Are representative of the notable work of a master builder, designer, or architect who influenced his age; or

(5) Have yielded, or may be likely to yield, information important to prehistory or history.

a. Designation of historic structures and historic sites.

1. The commission may, after notice and public hearing, designate historic structures and historic sites or rescind such designation or recommendation after application of the criteria in section (4), above. At least 10 days prior to such hearing, the commission shall notify the owners of record, as listed in the office of the city assessor, who are owners or property in whole or in part situated within 100 feet of the boundaries of the property affected. These owners shall have the right to confer with the commission prior to final action by the commission on the designation. Notice of such hearing shall also be published as a Class 1 Notice under the Wisconsin Statutes. The commission shall also notify the following: department of public works, redevelopment authority, parks department, fire and police departments, health department, building inspection department, plan commission, and the city assessor. Each such department may respond to the commission with its comments on the proposed designation or rescission.

2. The commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses and shall have the power to subpoena such witnesses and records as it deems necessary. The commission may conduct an independent investigation into the proposed designation or rescission. Within ten days after the close of the public hearing, the commission may designate the property as either a historic structure or historic site, or rescind the designation. After the designation or rescission has been made, notification shall be sent to the property owner or owners. Notification shall also be given to the city clerk, building inspection department, plan commission, and the city assessor. The property owner may appeal such decision to the common council within 30 days. The commission shall cause the designation or rescission to be recorded, at city expense, in the county register of deeds office.

(h) **DESIGNATION OF HISTORIC SIGNS.**

(1) A sign may be designated to be eligible for listing on the Historic Sign Inventory when it has been in existence, but not necessarily continually visible or displayed, for a period of forty (40) years or more, and meets at least one (1) or more of the following criteria:

a. Is identified with the history of a product, business or service advertised.

b. Reflects the history of the building or a Historic District on/in which the sign is located.

c. Is integrated into the architecture of the building on which they sign is located and may be exemplary of a historically significant architectural style of the building.

d. The sign, if removed from a Historic Structure, will harm the integrity of the building or cause significant damage to its materials.

e. Is recognized as a popular focal point in the area by reason of its prominent location, long existence, large size or unusual design.

f. Exemplifies or reflects the City's cultural, social, economic, political, engineering and/or architectural history.

(2) The Commission may, after notice and public hearing, evaluate and designate a sign as historically significant or recommend rescinding a previous designation of historical significance upon application of criteria provided in this section above. A review of eligibility for listing on the Historic Sign Inventory may be initiated by the Landmarks Commission or the owner of an improvement parcel which contains a potential Historic Sign. Where a property owner petitions the Commission to review eligibility for listing on the Historic Sign Inventory, the owner shall provide sufficient supporting documentation for Commission evaluation.

At least ten (10) days prior to such hearing, the Commission shall, by regular mail or person service, notify persons listed as owners of relevant improvement parcels containing a potential Historic Sign and owners of improvement parcels sistuated within one hundred (100) feet of the boundary of the improvement parcel containing the potential Historic Sign of the date, time and place of hearing. Notice of such hearing shall also be published as a Class 2 Notice, under the Wisconsin Statutes. Publication shall cure any defect in the service of notice. The Commission shall also notify the Director of the Department of Community Development. The Department of Community Development may respond to the Commission within fifteen (15) days of notification with its comments, if any, on the proposed listing of the sign on the Historic Sign Inventory or rescission of such listing. The Commission shall then receive such reports and conduct a public hearing. It may call witnesses, including experts, and may subpoena such witnesses and records as it deems necessary. The Commission may view the sign in issue and direct the conduct of an independent investigation into the proposed listing of the sign on the Historic Sign Inventory or rescission of such listing.

The Commission shall approve or deny the designation of the sign as a Historic Sign. If approved for designation as a Historic Sign, the Commission shall direct that it be included on a Historic Sign Inventory and, if located on a building or structure designated as a Historic Structure or site, identified as such. Historic signs shall be exempt from the provision of Article F of the Menasha Code of Ordinances. The Historic Sign Inventory shall be on file and available for public inspection in the Community Development Department.

(i) **PRESERVATION AND ADOPTION OF HISTORICAL PROPERTIES.** Guideline criteria in the development of historic district plans are as follows:

(1) Regulation of construction, reconstruction, and exterior alteration shall conform to the criteria and standards in subsection (G)(1).

(2) All new structures shall be constructed to a height visually compatible with the building and environment with which they are visually related.

(3) The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.

(4) In the street elevation of a building, the proportion between the width and height in the façade should be visually compatible with the building and environment with which it is visually related.

(5) The proportions and relationships between doors and windows in the street façade should be visually compatible with the buildings and environment with which it is visually related.

(6) The rhythm of solids to voids, created by openings in the façade, should be visually compatible with the buildings and environment with which they are visually related.

(7) The existing rhythm created by existing building masses and spaces between them should be preserved.
(8) The materials used in the final façade should be visually compatible with the buildings and environment with which they are visually related.
(9) The texture inherent in the façade should be visually compatible with the buildings and environment with which it is visually related.
(10) Colors and patterns used on the façade (especially trim) should be visually compatible with the buildings and environment with which they are visually related.
(11) The design of the roof should be visually compatible with the buildings and environment with which they are visually related.
(12) The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related.
(13) The street façade should blend with other buildings via directional expression. When adjacent buildings have a dominant horizontal or vertical expression, this expression should be carried over and reflected.
(14) Architectural elements should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area.

a. Review and adoption procedure.

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 1 Notice under the Wisconsin Statutes in the official city paper. Notice of the time, place, and purpose of the public hearing shall also be sent by the city clerk to the council member of the aldermanic district or districts in which the historic district is located, and the owners of record, as listed in the Office of the city assessor, who are owners of the property within the proposed historic district or are situated in whole or in part within 100 feet of the boundaries of the proposed historic district. Said notice is to be sent at least ten days prior to the date of the public hearing. Following the public hearing, the Landmarks commission shall vote to recommend, reject, or withhold action on the plan. This recommendation shall be forwarded to the city plan commission and the common council.

2. The City Plan Commission
The plan commission shall review the historic district plan and make a recommendation to the common council. The plan commission shall make its recommendation on the historic district plan within 45 days.

3. The Common Council
The common council, upon receipt of the recommendation from the Landmarks commission and plan commission, shall hold a public hearing, with notice to be given as noted in subsection 1., above, 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. Property owners may appeal such decision to the common council within 30 days.

(j) REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND EXTERIOR ALTERATION.

(1) Certificate of Appropriateness. A Certificate of Appropriateness is required before a building permit can be issued for the demolition, new construction, exterior alteration, modification or addition to a designated historic property. Any building permit not issued in conformity with this ordinance shall be considered void. Acceptable exterior

alterations include, but are not limited to, the construction of additions, the installation of siding, windows, doors, awnings, and signage, or the application of paint or other exterior coatings.

a. Such application shall contain a description and sketch of the proposed changes.
b. A copy of the procedures for Landmarks Commission review shall be provided in writing to each applicant.
c. Within ten (10) days of the referral from the Director of Community Development, the Landmarks Commission shall schedule a meeting to review said application. The Landmarks Commission shall utilize the following criteria to evaluate the appropriateness of the proposed change.
    1. In the case of a designated historic district, structure or site, the proposed work should not detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done; and,
    2. In the case of the construction of a new structure upon a historic site, the exterior of such improvement should not adversely affect the external appearance of other neighboring improvements. Such improvement shall also harmonize with the external appearance of other neighboring improvements on such site; and,
    3. In the case of any property located in a designated historic district the proposed construction, reconstruction, or exterior alteration shall conform to the objectives and design criteria of the Historic Preservation Plan.

(2) If the Landmarks Commission determines the landmark, landmark site, or property within a historic district would be adversely affected by the proposed change or if for any other reason the Commission rejects the request, the Commission shall state in writing the reasons.

(3) Should the Landmarks Commission fail to act within the specified time period or refuse to issue a certificate of appropriateness due to the failure of the proposal to meet the guidelines, the applicant may appeal to the Common Council.

If a Certificate of Appropriateness is granted, building permit applications shall be made to the Director of Community Development. The application for a Certificate of Appropriateness must be signed by the owner or his authorized representative, and the form must be signed by the chairman of the Landmarks Commission stating its approval, denial, or approval with conditions and the reasons for the decision.

(4) When considering an application for a Certificate of Appropriateness for new construction, alteration, repair, or restoration, the Commission shall use the Secretary of the Interior's Standards for Rehabilitation as guidelines in making its decisions. In addition, the Commission may adopt more specific guidelines for local historic districts and local historic buildings. These guidelines serve as the basis for determining the approval, approval with modifications, or denial of an application. The Secretary's Standards for Rehabilitation are:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other buildings, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(k) **REGULATION OF DEMOLITION AND NEW CONSTRUCTION.** No portion of a designated historic structure or site shall be demolished, nor shall a new building be constructed or new use established in a historic district unless such demolition, construction or use complies with this Section.

(1) A permit is required as described in Section (g). Application shall be made to the Director of Community Development utilizing the procedures enumerated in Section (g)(1-2).

(2) In determining whether to issue a certificate of appropriateness for demolition, new construction or alternate use, the Landmarks Commission shall consider:

a. Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it.
b. Whether any prospective new structure, or change in use would be compatible with the buildings and environment or the district in which the subject property is located.
c. Whether the building or structure is of such architectural or historic significance that this demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and the state.
d. Whether demolition of the property would be contrary to the purpose and intent of this chapter and to the objectives of the Historic Preservation Plan.
e. Whether the building or structure is of such old and unusual or uncommon design, texture and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense.
f. Whether retention of the building or structure would encourage study of American history, architecture and design or develop and understanding of American culture and heritage.

(4) These provisions shall not apply to any building or structure which has been determined by the Building Inspector in consultation with the Community Development Director to fulfill the requirements of Sec. 66.05 Wis. Stats., and Sec. 11-7-5 and Sec. 15-5-13 City of Menasha Code, or if the City or any other governmental entity is proceeding under Ch. 32 Wis. Stats.

(l) **PENALTIES.**

(1) Any person who alters, or constructs a building or structure in violation of this chapter shall be required to restore the building or structure and its site to its appearance prior to the violation. Such restoration shall be completed within such time frame as set by the Landmarks Commission using materials, building design and construction methods approved by said Commission. Failure to complete the restoration in conformance with the requirements of the Landmarks Commission shall constitute a violation of this ordinance. Violations shall be subject to the penalties listed in Section 13-1-135 of the Menasha Code of Ordinances. Each day the violation continues shall constitute a separate offense.

(2) Any person who demolishes a building or structure in violation of Section (h) shall forfeit a sum equal to fifty percent (50%) of the value of the building or structure, should the Landmarks Commission and Common Council make a finding after a hearing that the demolished structure had major historical significance. The value shall be determined by using the assessed value from the previous year's property tax assessment as equalized by the Wisconsin Department of Revenue.

(3) The Community Development or his/her designee, with the advice and consent of the City Attorney, is authorized to issue a citation or to institute any formal proceeding to enjoin, correct, or abate any violation of this chapter.

(m) **MAINTENANCE OF HISTORIC STRUCTURES, HISTORIC SITES, AND HISTORIC DISTRICTS.** Every person in charge of an improvement or structure in a historic district shall keep in good repair all of the exterior portions and all interior portions thereof which, if not maintained, may cause or tend to cause the exterior portions of such improvement or structure to fall into a state of disrepair. This provision shall be in addition to all other provisions of law requiring such improvement to be kept in good repair.

(n) **CONDITIONS DANGEROUS TO LIFE, HEALTH, OR PROPERTY.** Nothing contained in this Section shall prohibit the making of necessary construction, reconstruction alteration or demolition of any historic structure, any improvement on a historic site or in a historic district pursuant to order of any governmental agency or pursuant to any court judgment, for the purpose of remedying emergency conditions as determined by the Community Development Director to be dangerous to life, health, or property. In such cases, no approval from the Landmarks Commission shall be necessary.

SECTION 2: This ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this 4th day of August, 2008.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi

Deborah A. Galeazzi, City Clerk