

Chapter 7

HISTORIC PRESERVATION

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Sec. 10-7-1 Title.

This Chapter shall be known as the Town of Westport Historic Preservation Ordinance.

Sec. 10-7-2 Authority, Purpose and Intent.

- (a) **Authority.** Section 60.64 of the Wisconsin Statutes authorizes town governments to adopt historic preservation ordinances, stating "The Town Board, in the exercise of its zoning and police powers . . . may regulate any place, structure, or object with a special character, historic interest, esthetic interest, or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics." The statute also gives the Town Board the authority to "create a landmarks commission to designate historic landmarks and establish historic districts." It has also been determined that towns have the authority to enact historic preservation ordinances based solely on their police powers, separate and independent from zoning powers; in other words, as a stand-alone ordinance not tied to zoning or land-use regulation authority.
- (b) **Purpose and Intent.** It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of built and natural historic resources and local sites of special character or value, are a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. Such properties provide the Town its unique identity. The purpose of this section is to:

- (1) Protect, enhance and preserve improvements, sites, landscapes, and districts which represent or reflect elements of the Town's cultural, social, economic, political and architectural history;
- (2) Safeguard the Town's historic, pre-historic and cultural heritage, as embodied and reflected in historic structures, sites, districts, landscapes, traditional land uses, distinct vegetative and natural features, or sites of special character or special architectural, archeological or historic interests or value;
- (3) Enhance the visual and aesthetic character of the Town;
- (4) Protect and enhance the Town's attractions to residents, tourists and visitors;
- (5) Promote the use of historic resources for the education, pleasure, and welfare of the people; and
- (6) Foster civic pride in the accomplishments of the past.

Sec. 10-7-3 Definitions.

Definitions. The definitions shall be as follows:

- (a) ***Alteration*** — “Alteration” means any act or process which changes one or more of the exterior features of a structure, including, but not limited to, the erection, construction, reconstruction, or moving of any improvement.
- (b) ***Certificate of Appropriateness***—“Certificate of Appropriateness” means the certificate issued by the Commission approving an application for alteration, rehabilitation, construction, reconstruction, demolition or visual impairment of an historic resource covered by this ordinance.
- (c) ***Commission***—“Commission” means the Historic Preservation Commission created under this ordinance.
- (d) ***Historic District***—“Historic district” is an area designated by the Town Board on recommendation of the Commission, wherein such district may contain, within definable geographic boundaries, one or more landmarks or landscapes along with such other buildings, places, vegetation or areas which, while not of such historic significance to be designated as landmarks, nevertheless contribute to the overall visual character of the district.
- (e) ***Historic Property***—“Historic property” means any parcel of land of substantially historic or prehistoric significance designated by this ordinance, and includes any improvements and any abutting parcel and improvements or part thereof, used as and constituting part of the historic property.
- (f) ***Historic Resources***—“Historic resources” means structures, sites, properties, or districts which are designated as historically significant.
- (g) ***Historic Structure***—“Historic structure” means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the Town, state or nation and which has been designated as an historic structure under this section.

- (h) **Improvement**—“Improvement” means any building, structure, object, site, landscape, vegetation, work of art or other object constituting a physical betterment of real property, or any part of such betterment, including roads, bridges, fences, retaining walls, monuments, lighting fixtures, signs, and the like.
- (i) **Preservation Restriction**—“Preservation restriction” means a right, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to the preservation of areas, places, buildings or structures to forbid or limit acts of demolition, alteration, use or other acts detrimental to the preservation of the buildings, places, or areas designated as a landmark or within a historic district.
- (j) **Town**—“Town” means the Town of Westport, Dane County, Wisconsin.
- (k) **Visual Impediment**—“Visual impediment” means any built structure or detrimental vegetative growth that visually obstructs designated historic resources in the Town.

Sec. 10-7-4 **Historic Preservation Commission Composition.**

- (a) **Membership.** A Historic Preservation Commission is hereby created consisting of five (5) members, including one member of the Town's Plan Commission. Each member shall have a demonstrated interest in historic preservation and possess professional knowledge or experience in at least one of the following: history, architecture, landscape architecture, real estate, land use planning, archeology, anthropology, or closely related field. The Town Chair shall appoint the commissioners subject to confirmation by the Town Board. Commissioners shall serve three-year terms. The Town Chair will designate initial appointments of three years for two Commission members, two years for two Commission members, and one year for one Commission member, thereby achieving staggered terms on the Commission. The Commission shall elect a chairperson and secretary.
- (b) **Meetings.** The Commission shall meet as necessary, generally monthly, as scheduled by the Chair, and special meetings may be called at the request of any Commissioner. Commission decisions shall be by majority vote of those present and voting. No action shall be taken by the Commission involving permitting or denying actions unless written notice is given to such owner and unless such owner shall have the opportunity to be heard at a public meeting.
- (c) **Expertise.** If members of the Commission do not have the expertise necessary to adequately make determinations or to review a particular property, the Commission, with prior approval of the Town Board, shall obtain expertise through the contracting of a consultant or consultants with this expertise, and/or by contacting a local college or the Wisconsin State Historical Society.

Sec. 10-7-5 **Criteria for Designation of Historic Resources.**

- (a) **Designation Criteria.** For purposes of this ordinance, an historic structure, historic property or historic district designation may be placed on any site or feature, natural or improved, including any building, improvement or structure located thereon, viewsheds, or any area

of particular historic, architectural, archeological or cultural significance to the Town as historic resources which:

- (1) Exemplify or reflect the broad cultural, political, economic or social history of the Town, the state or nation; or
 - (2) Are identified with historic personages or with important events in local, state or national history; or,
 - (3) Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for study of a period, style, method of construction, interior spaces, indigenous materials or craftsmanship, or the notable work of a master builder, designer or architect who influenced his or her age; or
 - (4) Exemplify historical character of local landscapes, traditional land uses, and visual aesthetics that represent an established sense of place and familiar visual qualities; or,
 - (5) Have yielded, or may be likely to yield, information important to prehistory or history.
- (b) ***Designation Guidelines.*** The Commission shall adopt specific operating guidelines for historic property and district designation providing such are in conformance with the provisions of this ordinance. Such guidelines will include the following provisions: To make such a property designation, a Town citizen, his or her representative, or a Commission member shall submit to the Commission a physical description of each property, identification of the current owners of record, a statement of its historical significance, black and white photographs of all exterior elevations of the property, a statement of location or legal description, a town plan showing the precise boundaries of the property, and any other maps or sketches which clarify the nature of the property included in the designation. The Town Clerk shall examine the legal description to ascertain that it specifies the intended property. The Commission may wish to further specify the kinds of information required to be submitted.

Sec. 10-7-6 Powers and Duties of the Historic Preservation Commission.

The Historic Preservation Commission shall have and exercise the following powers, duties and responsibilities:

- (a) Prepare a Historic Preservation Plan for the Town, to be approved by the Plan Commission and Town Board;
- (b) Conduct a survey of Town buildings, places or areas for the purpose of identifying those of historic, architectural, cultural, and sense-of-place significance and prepare an inventory of those historic resources identified;
- (c) Recommend that the Town Board designate by ordinance certain places and areas as landmarks or historic districts;
- (d) Determine an appropriate system of markers or other recognition for designated landmarks and historic districts;

- (e) Cooperate with and enlist the assistance of persons, organizations, corporations, foundations, public agencies, historical societies, and the State Historic Preservation Officer in matters involving historic preservation, education, fund-raising, renovation, rehabilitation, and reuse of historic properties.
- (f) Advise owners of landmarks and historic structures on physical and financial aspects of preservation, renovation, rehabilitation and reuse;
- (g) Review and make decisions on applications for Certificates of Appropriateness and require the presentation of such plans, drawings, elevations and other information as may be necessary to make decisions;
- (h) Promulgate standards for approval or denial of Certificates of Appropriateness;
- (i) Recommend to the Town Board that the Town accept such gifts, grants, and money as may be appropriate for the purposes of this ordinance;
- (j) May prepare and publish maps and brochures, construct exhibits, and provide other descriptive materials about the Town's heritage for educational purposes;
- (k) Make recommendations to the Town Board about the acquisition of conservation easements;
- (l) Evaluate and comment on matters before the Plan Commission affecting sites, structures, landscapes or areas of historic significance;
- (m) Seek and maintain certification of this ordinance by the state and federal governments under 36 CFR 67; 16 USC 470a(c), Section 44.44, Wisconsin Statutes, and the Wisconsin Administrative Code so that property owners are eligible for income tax credits for rehabilitation expenses; property owners are eligible to use the State Historic Building Code; the Town can participate in decision making for inclusion in the State list of locally designated historic places, National Register of Historic Places and the Certified Local Government Program, and so that the Town is eligible to apply for grants.

Sec. 10-7-7 **Designation of Historic Properties and Historic Districts.**

- (a) **Designation Authority.** The Commission shall recommend the designation of historic properties, structures and districts within the Town. Such designations shall be made based on Section 10-7-5. Designations shall be approved by the Town Board. Once designated as historic properties, structures or districts, such historic resources shall be subject to all the provisions of this ordinance.
- (b) **Historic Property Designation Process:**
 - (1) The Commission may, after notice and public hearing, recommend designation of historic properties or rescission of such designation or recommendation if unavoidable alteration has occurred, after application of the criteria in Section 10-7-5, above. At least ten (10) days prior to such hearing, the Commission shall notify the owners of record, as listed with the Town Clerk, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property affected.
 - (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. Within ten (10) days after the close of the public hearing, the Commission may recommend designation of the property as an historic property or recommend rescission of the designation. Notification shall be given to the Town Clerk.

- (3) The Town Board, upon receipt of the recommendations from the Historic Preservation Commission, after review of such recommendations by the Plan Commission, shall either designate or reject the designation of the property as an historic property, or rescind or reject rescission of the designation. The Town Board shall cause the designation or rescission to be recorded at Town expense, in the County Register of Deeds office.

(c) **Creation of a Historic District.**

- (1) A historic district may be designated by any geographic area of particular historic, architectural, cultural, or natural feature significance to the Town, after application of the criteria in Section 10-7-5 above. The historic designation shall include within it a historic preservation plan prepared by the Historic Preservation Commission. The specific plan shall be tailored to the circumstances of each district. This document shall include: a brief physical description of the district, identification of the current owners of record and functions of each property in the district, a description of its boundaries, a Town map showing the legal boundaries of the district, black and white photographs of each property, and a historical/cultural and architectural statement of significance of the district and the plan. The plan shall include the specific guidelines for future development within the area and a statement of preservation objectives. The Town Clerk shall examine the description and map to ascertain that they indicate the intended properties. Applicable ordinances shall be amended to eliminate any inconsistencies with the preservation plan. The Commission may further specify the kinds of information required to be included in the plan.
- (2) The Historic Preservation Commission shall hold a public hearing when considering the plan and designation of an historic district. Notice of the time, place, and purpose of the public hearing will be sent by the Town Clerk to the Town Board and the owners of record as listed with the Town Clerk, who are owners of the property within the proposed historic district or are situated in whole or in part within two hundred (200) feet of the boundaries of the proposed historic district. Said notice is to be sent at least ten (10) days prior to the date of the public hearing. Following the public hearing, the Historic Preservation Commission will vote to recommend, reject or withhold action on the designation and plan.
- (3) The Town Board, upon receipt of the recommendations from the Historic Preservation Commission, will hold a public hearing, notice to be given as noted in a subparagraph (2) above, and will, following the public hearing, either designate or reject the historic district. Designation of the historic district will occur in two steps: adoption of the designation and then of the plan prepared for that district. Adoption of both shall direct the implementation of a said plan. If the Town Board fails to

adopt the plan, where prudent, the Town Board and Commission will cooperatively revise the plan, hold public hearing as noted in this section, and reconsider the plan.

Sec. 10-7-8 Regulation of Construction, Reconstruction, Rehabilitation, Alteration and Demolition.

- (a) **Prohibition.** Unless a Certificate of Appropriateness has been granted by the Commission, no owner or person legally in charge of a single historic property or property within a historic district shall:
 - (1) Reconstruct, rehabilitate, alter or demolish all or any part of the exterior of such property or all or any part of the interior portions thereof;
 - (2) Construct any improvement or visual impairment upon such designated property(ies);
 - (3) Cause or permit any such work to be performed upon such property.
- (b) **Certificate of Appropriateness.** The building inspector shall not issue a permit for any such work unless a Certificate of Appropriateness has been granted by the Commission.
 - (1) **Application:** A Certificate of Appropriateness may be applied for at the office of the Building Inspector. The application shall contain such information as requested by the Commission and shall be accompanied by plans and renderings.
 - (2) **Criteria:** Upon filing of any application for a Certificate of Appropriateness with the Commission, the Commission shall consider the following factors:
 - a. The appropriateness to the historic property or historic district of the proposed alteration or demolition;
 - b. Whether such proposed alteration or demolition will further the purposes of this Historic Preservation Ordinance;
 - c. Proposed alteration or demolition for any historic structure from the visual perspective of the street, road, public way or public buildings;
 - d. Whether a proposed construction diminishes the historic character or aesthetic values or scenic qualities of a landscape or viewshed;
 - e. Reference to the "Secretary of the Interior's Standards for Rehabilitation," as published in Section 36, "Code of Federal Regulations," Part 67, and as revised from time to time; and
 - f. Reference to such specific design standards as the Commission may require for the designation of the landmark or historic district. Such specific standards shall relate to the historical significance, the architectural value, the unique design, arrangement, texture, material or color of the building, place or area in question, the relation of such improvement to similar improvements in the immediate surroundings, and the position of such improvement in relation to the road or public way and to other improvements.

- (c) **Potential Denial of Certificate of Appropriateness.** The Commission shall review completed applications presented to it for Certificates of Appropriateness and shall grant or deny the Certificate. The Commission shall approve the application, unless:
- (1) In the case of a designated historic property, the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement or adjacent lands upon which said work is to be done, including adjacent archeological sites;
 - (2) In the case of the construction of a new improvement on a historic property or within a historic district, the exterior of such improvement would adversely affect or fail to harmonize with the external appearance of other neighboring improvements on such property or within the district, or the construction of the improvement would obstruct or diminish the visual qualities of a historic property;
 - (3) In the case of any property located in a historic district, the proposed construction, reconstruction, rehabilitation, exterior alteration or demolition does not conform to the purpose and intent of this section and to the objectives and design criteria of the historic preservation plan for said district;
 - (4) 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 Town 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 is self-created or is the result of any failure to maintain the property in good repair.

The denial of a Certificate of Appropriateness shall be accompanied by a written statement indicating the reasons for denial.

- (d) **Issuance of Certificate of Appropriateness.** If the Commission determines that application for a Certificate of Appropriateness and the proposed changes are consistent with the character and features of the property or district and with the intent of Ordinance, it shall issue the Certificate of Appropriateness.
- (1) The Commission shall make this decision within 180 days of the filing of the application;
 - (2) The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the Town. A building or other permit shall be invalid if it is obtained without the presentation of the Certificate of Appropriateness required for the proposed work.
 - (3) Ordinary maintenance and repairs may be undertaken without a Certificate of Appropriateness provided the work involves repairs to existing features of a historic property or the replacement of elements of the improvement with pieces identical in appearance and provided the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.

- (e) **Appeal of Commission Decisions.** The determinations of the Historic Preservation Commission regarding Certificates of Appropriateness shall be appealable as administrative interpretations to the Town Board.

Sec. 10-7-9 Interim Control.

No building permit shall be issued by the building inspector for alteration, construction, demolition, or removal of a nominated historic property or any property or structure within a nominated historic district from the date of the meeting of the Historic Preservation Commission at which a nomination form is first presented until the final disposition of the nomination by the Town Board, unless such alteration, removal or demolition is authorized by formal resolution of the Town Board as necessary for public health, welfare or safety. In no event shall the delay be for more than two hundred forty (240) days.

Sec. 10-7-10 Penalties for Violations.

Notice of violations shall be issued by the building inspector. Any person or persons violating any provision of this ordinance shall be fined not less than \$50 nor more than \$500, plus costs and assessments, for each separate violation. Each and every day during which a violation continues shall be deemed to be a separate offense.

Sec. 10-7-11 Separability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provisions shall not be affected thereby.

Sec. 10-7-12 Historic Tree Preservation.

- (a) **Historic Trees to Protect.** Any tree or grove of trees growing on public or private property within the Town which meets the following criteria, may be designated as a historic property under the provisions of this Chapter.
- (1) **Heritage Trees.**
- a. Any Oak over 36 inches in diameter, any Hickory over 24 inches in diameter, or any other tree over 48 inches in diameter, all when measured four and one-half feet above existing grade.
 - b. Any tree or shrub with historical significance, such as those planted to commemorate an event, planted during a significant historical era, or marking the location of a historical event, whether the tree meets the size criteria of sub. a. above or not.

- c. Trees identified by the Town Board as having significant arboricultural value to the citizens of the Town, whether the tree meets the size criteria of sub. a. above or not.
- (2) **Champion Trees.** The top five trees as listed in the Wisconsin's Champion Tree program, including species such as Black Spruce (*Picea Mariana*), Northern Pin Oak (*Quercus Ellipsoidalis*) and Peachleaf Willow (*Salix Amygdaloides*).
- (3) **Remarkable Trees.** Trees that are well beyond average Town tree age curve at 150 years or greater (Sesquicentennial trees), or as may be listed by the Dane County Tree Board. The trunk diameter size shall be as follows for such trees used to determine probable age, adjusted for species: Red Oak, Norway Maple and Red Maple with a circumference greater than 12 feet; White Oak, Bur Oak and Sugar Maple with circumference greater than 8 feet; and, Ash, Silver Maple and Basswood with a circumference greater than 15 feet.
- (4) **Culturally Significant Trees.** Trees or shrubs that are recognized by the community as having a historical or cultural significance to the Town. These trees or shrubs shall be associated with a documented, community recognized historical event or a special place.
- (b) **Tree Health as Factor.** The overall health and condition of the tree shall be a criteria for Historic Tree designation. Trees in poor health or condition shall not be designated as Historic Trees.
- (c) **Damage to or Removal of Historic Trees; Penalties.** Historic Trees cannot be removed unless a Certificate of Appropriateness has been obtained under Section 10-7-8, above. If removal is permitted, the person responsible for its removal may be required to remediate the tree(s) removed by replanting as determined by the Commission. Construction of new buildings and structures shall not cause Historic Trees to be removed without a Certificate of Appropriateness and shall not significantly infringe upon the root system of Historic Trees to an extent that is likely to damage the Historic Tree or jeopardize its survival. In addition to the penalties under Section 10-7-10, any person who damages or destroys a tree or shrub designated as a Historic Property without a Certificate of Appropriateness, shall be liable for the cost of repairing the damage, or replacing the tree or shrub with one of similar species, with the exact species and size to be determined by the Commission.