

DRAFT FOR DISCUSSION

21

To: Members of the City Council
From: Mayor Tom Bates
Date: November 29, 2005
Re: Landmarks Preservation Ordinance

I. Introduction and Overview

We take this opportunity to thank all of the members of the Landmarks Preservation Commission (LPC), Planning Commission (PC), and members of the community for their participation in these revisions and recognize the many long hours all participants have given this process.

Berkeley has one of the strongest landmarks preservation ordinances in the state. In the preservation community, Berkeley's ordinance is often cited as the standard by which other cities are measured. However, it is not without controversy and it often forces the city to violate state laws governing permit timelines and procedures.

The effort to revise this ordinance, which began five years ago, has been focused on minimizing conflicts with state law and providing greater certainty in timelines and process for everyone involved. We want to meet this goal and also put forward some other clarifications procedures that can further reduce confusion and conflict over land use applications.

In particular, one dominant issue has become clear. We live in a beautiful, historic, and built-out community where a neighborhood's history and its general character are often intertwined. This has led to considerable conflict in situations where landmark protections are used as a tool to protect neighborhood character when the historic and architectural merits of such a designation are in question.

In this preliminary proposal for reconciling differing views on the LPO revisions and moving forward on changes, we are trying to find a new path that recognizes the importance of protecting neighborhood character but acknowledges that it is sometimes a different issue than historic preservation. We believe we need some new tools to use in protecting neighborhood character and to provide the LPC with strong tools to protect landmarks and historic districts.

The framework of the current proposal, agreed to by both the PC and initially by the LPC, is a major improvement in our permitting process. If approved, the LPC will have the opportunity to review nearly all discretionary permits in the City of Berkeley at the beginning of the process to see if potential historic issues exist. This is a major expansion of their purview and an important step in providing some certainty to our permit process.

In areas of town that have clear historic value, we should work more creatively to establish historic districts where the LPC has wide latitude to influence new construction through design

DRAFT FOR DISCUSSION

review and other steps. The City also should seriously consider the creation of a Historic Preservation Officer who can help coordinate the City's efforts.

But we also need to find ways to protect neighborhood character in areas that do not meet the criteria for historic districts. Currently, absent a landmark designation there is little the city can do to influence design and other important factors in residential neighborhoods. I believe the Planning Commission, with input from the ZAB and the LPC, should be directed to begin looking at options for neighborhood preservation. This should include options such as "residential conservation zones," residential design review, and other efforts.

II. Areas of Commonality

We should start by acknowledging the many areas of agreement between the Planning Commission, the Landmarks Preservation Commission, and city staff.

The areas of agreement include:

- Establishing timelines for action by the LPC and by the public for projects where an application for development is pending. These timelines, which cover both initiation and possible determination of historic resource status, ensure that everyone involved knows exactly when decisions will be made.
- Require that most discretionary applications (including most for single family homes) be placed on the LPC agenda for consideration of initiation, thereby establishing a firm decision on a site's historic status early in the development application process, prior to proceeding with the remainder of the process.
- If the LPC or public declines to initiate a site where a development application is pending, it cannot be initiated by the LPC or public during the duration of the project application. This ensures that once a decision is made it cannot be re-opened.
- Reduce the number of signatures required for public initiation from 50 to 25. This will make it easier for members of the public to initiate potential historic resources in the timelines available.
- Gives the LPC authority to approve or disapprove demolition of a designated historic resource.

III. New Issues for Discussion

In this section, we briefly outline several key issues that are not currently in the LPO revision document but we believe should be part of the package of changes under consideration.

1. Historic Surveys

The goal is to conduct a survey of the entire City, but to do it in phases as funding becomes available. Except for the downtown historic survey, which should be done as

DRAFT FOR DISCUSSION

part of the new Downtown Area Plan, other surveys would be referred to the budget process for future allocations.

- **Downtown Area**
Use survey from 1990 Downtown Plan and all structures designated as historic resources since then as the baseline document. All structures within the Downtown Area Plan will be surveyed as part of the new Downtown Area Plan. Following that survey, the LPC should act to designate all appropriate structures and set up a process for reviewing those structures and sites that need further scrutiny.
- **West Berkeley Area**
West Berkeley should be next on the list of areas for a complete historical survey as funding becomes available. Place funding for historic survey on the list of unbudgeted items to be reviewed as part of the FY 2007 budget.
- **Major Commercial Corridors**
The next priority should be to survey University Ave, San Pablo Ave, South Shattuck, North Shattuck, Adeline, Ashby, Gilman, Telegraph, Solano, Elmwood and other major corridors.

2. Historic Preservation Officer

The Council should seriously examine the creation of a City "Historic Preservation Officer" who would serve as staff to the Landmark Preservation Commission and act as the staff liaison for all historic preservation issues. The Historic Preservation Officer could also have authority over minor alteration permits for historic resources, subject to appeal to the Landmark Preservation Commission. This position could begin as half-time, if necessary, given current budget pressures.

3. Preserving Neighborhood Character

Refer to the PC and LPC several methods for increasing the City's jurisdiction over residential projects. Some of those options include:

- Creation of residential design standards and the institution of staff level design review for all residential areas. This is similar to the method used in Oakland and other cities to protect neighborhood character.
- Create "Residential Conservation Zones" that define each neighborhood's character and require major new construction to conform to that general character.

DRAFT FOR DISCUSSION

IV. Recommendations on Current Proposals from Planning and Landmark Preservation Commissions

1. Timeline/Process

Efforts to improve the process centered on “front loading” the historic designation process to conform to State Permit Streamlining Act (PSA) timelines. Each commission proposed somewhat different timelines and processes for development application review, although the basic concept and overall length of time for LPC action is the same in both ordinances. In the LPC version, initiation could occur after the first meeting. In the PC version, initiation could occur after the second meeting. The PC version gives the LPC more flexibility in achieving their objectives in this way.

One issue that has been raised by preservationists is the amount of time allowed for citizen initiation of a structure not initiated by the LPC. Currently, a structure may be initiated at any time prior to use permit approval by the Zoning Adjustments Board (ZAB) by a petition of 50 citizens. Initiation effectively stops all other proceedings, as discretionary projects are sometimes stopped towards the end of the normal permit review process as the City then begins the Landmark initiation process. This is in clear violation of the PSA as the Landmarks process proceeds. In other jurisdictions when a permit application is deemed complete, a project can no longer be initiated for historic protections.

Both the LPC and PC recommended allowing 14 calendar days for citizen initiation, and reducing the number of required signatures from 50 to 25. 14 calendar days is also the standard appeal period for ZAB decisions.

Draft Proposal:

Follow a modified version of the timeline proposed by PC as it gives LPC more flexibility within the same timeframe.

- All discretionary projects for single-family homes and duplexes involving an exterior change to a building older than 50 years are subject to review by the LPC for potential initiation. For single-family homes and duplexes, applicants would be required to provide only a very limited amount of up-front information: essentially, date of original construction; architect and a picture of the front façade. Staff would determine the exact amount and type of information required.
- For proposed demolitions of any principal structure, a more comprehensive historic assessment would be required. The LPC would establish the information requirements. For other discretionary applications, staff would review the proposed project and make a determination as part of the informal pre-application process as to the information required. Once the required information is received, staff would place the application on the LPC agenda, and the timelines described below would begin. Staff would make the determination as to when a project application is complete.

DRAFT FOR DISCUSSION

- 1st LPC Meeting: once sufficient historic and project impact information has been provided, whether or not the application had been deemed complete in regard to all other aspects, the matter would be placed on the LPC agenda for potential initiation. The LPC could act on initiation or continue the initiation decision one meeting.
- 2nd LPC Meeting: the LPC would have to choose to initiate or not initiate. If not initiated, the public would have 14 days to submit 25 signatures to initiate the project (the same period for public action after the LPC has acted as proposed in LPC draft). If not initiated by the LPC or citizen petition, the site could not be initiated for two years or until the project development review process was finished.
- 90 Day Research Period: If the project is initiated, either by the LPC or citizen petition, three months and/or 90 days would be allowed for historic research to be completed. The applicant would pay a fee to the City, which would then hire a consultant to perform the historic assessment.
- 3rd and/or 4th LPC Meeting: if initiated, the LPC would have two meetings to make a decision to designate or not designate after a historic assessment has been completed. If no designation decision has been made by the end of the 4th LPC meeting, the site would automatically be deemed not a historic resource. If not designated, the site and/or structure cannot be initiated until the project development review process is completed or for two years, if substantial new information does not arise.
- LPC decision to designate or not designate is subject to appeal to the City Council.

2. Integrity

The National Register of Historic Places (NRHP) defines integrity as “the ability of a property to convey its significance.” To be listed in the NRHP, a property must not only be shown to be significant under the National Register criteria, but it also must have integrity. Under NRHP criteria, historic properties either retain integrity (i.e. convey their significance) or they do not. Within the concept of integrity, the National Register Bulletin number 15 recognizes seven aspects or qualities that, in various combinations, define integrity. These aspects are Location, Design, Setting, Materials, Workmanship, Feeling, and Association. To retain historic integrity a property will always possess several, and usually most, of these aspects.

The California Register of Historical Resources (CRHR) defines integrity as “the authenticity of a historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource’s period of significance.” Integrity is

DRAFT FOR DISCUSSION

evaluated with regard to the retention of Location, Design, Setting, Materials, Workmanship, Feeling, and Association. However the CRHR takes a more flexible approach to integrity as it allows for the possibility that although a historical resource may not retain sufficient integrity to meet the criteria for listing in the National Register it may still be eligible for listing in the California Register if it maintains the potential to yield significant scientific or historical information or specific data.

The State Office of Historic Preservation (OHP) also recognizes that just as the CRHR definition of integrity differs from the NRHP definition because of the desire to incorporate specific state considerations of significance that do not meet Federal standards, local definitions of integrity may differ from the State standard because of the need to incorporate specific local considerations of significance.

The LPC decided to further consider the issue of integrity in a second round of LPO review. The PC, supporting the recommendation of the State Historic Preservation Officer, concluded the concept of integrity could and should be generally applicable to all historic assessments.

In their letter of July 1, 2004, OHP specifically recommended application of integrity to all property types, not just those of architectural merit.

Draft Proposal:

- Adopt the California Register of Historical Resources definition of integrity immediately.
- Use the California Register of Historical Resources definition of integrity until the LPC develops additional local standards that are unique to the City of Berkeley.

3. Structure of Merit

The treatment of Structure's of Merit has been one of the most contentious issues in the process. Structure of Merit is defined in the current LPO as "the structure does not currently meet the criteria as set out for a landmark, but it is worthy of preservation as part of a neighborhood, a block or street frontage, or as part of a group of buildings which includes landmarks." Structure of Merit designations may also protect neighborhood character. Currently modification of a Structure of Merit requires the same process (a public hearing before the LPC) as a Landmark. For CEQA purposes Structure of Merit is considered to be on a "local register of historical resources" though they may not be considered a "significant" historic resource.

State Office of Historic Preservation (OHP) raised the issue of the distinction between Landmarks and Structure of Merit in reviewing Berkeley's ordinance in 2000 and 2004 for these exact reasons. In its 2000 review OPH said while "a lower level of designation is sometimes useful in a local ordinance, this is ordinarily only done when a lower level of regulatory authority is applied to resources so designated."

DRAFT FOR DISCUSSION

The LPC is recommending relatively minor changes to the existing Structures of Merit designation and has indicated that this issue should be addressed in a second round of LPO revisions in the future. The PC is recommending several changes to the Structure of Merit designation that would reduce the protections for this type of designation, consistent with the initial recommendations from the State Historic Preservation Officer.

Draft Proposal:

- Previously designated Structures of Merit would be protected under the current regulations. The following proposed changes to Structure of Merit would only apply to new designations.
- All Structures of Merit will be considered Historic Resources under CEQA (exactly as a Landmark designation) requiring full environmental review in situations where demolition or major alteration are proposed.
- All future Structure of Merit designations will be allowed only in historic districts where the need to protect structures that contribute to the overall historic character of the area has been established. Buildings so designated will require full environmental review.
- Consider the creation of lesser designations that are explicitly not considered Historical Resources under National Register Bulletin number 15 or California Register of Historical Resources standards but are of local interest. Such designations would be strictly honorary in nature and thus not necessarily subject to a full environmental review.

For example the City of Santa Monica has a designation called "Santa Monica Points of Interest". Points of Interest are not subject to regulation as are City Landmarks and Structures of Merit.

4. Authority Over California Environmental Quality Act (CEQA) Review

One of the issues to resolve is the relationship of the LPO to the Zoning Ordinance (ZO). The Landmarks Preservation Ordinance must be considered in conjunction with the Zoning Ordinance as the Zoning Ordinance has general authority in land use matters. Both the LPO and ZO have important protections for designated historic resources. A number of protections the LPC recommended are already incorporated in the current Zoning Ordinance.

The most significant dispute in this section is determining who has authority over the level of environmental review. The LPC recommends that it have the authority to determine the level of CEQA review in regard to the impact on a designated historic resource. The Planning Commission version would have the LPC make a recommendation to the Zoning Adjustments Board (the overall reviewing body for most

DRAFT FOR DISCUSSION

projects) and require the ZAB to address the LPC's concerns and explain their reasoning if they disagree with the LPC in making CEQA determinations.

Draft Proposal:

- Adopt the Planning Commission recommendation which concluded that the ZAB should be the single body making CEQA review determinations, subject to a recommendation from the LPC, and state findings if the ZAB disagrees with the LPC, and appealable to the City Council.
- As previously noted, in cases of a potential demolition of a designated historic resource (including designated Structures of Merit) the LPC should have the authority to approve or disapprove demolition of the structure subject to appeal to the City Council.

5. Early Determination of Historic Status Unrelated to Development Application Process (aka – Request for Determination)

The Planning Commission is recommending a process whereby a property owner may submit a Request for Determination (RFD) as to whether a property is a historic resource. If a property is found not to be historic, the site could not be initiated for landmark status for one year. The Planning Commission process is detailed here.

- An application for a "Request for Determination" would be received by staff (no accompanying development application). A sign would be posted on the site prior to the application being submitted, similar to any development application. For single family homes and duplexes, applicants would be required to provide an RFD-S (essentially: date of original construction; architect and a picture of the front façade). For all other requests, a full historic assessment (RFD-C) would be required. Applicants who are considering the possibility of demolition of a single family home or duplex would be required to provide the RFD-C, or would not receive the immunity from initiation described below.
- LPC Meeting 1: LPC could initiate, decline to initiate or continue.
- LPC Meeting 2: LPC could initiate or decline to initiate. If the LPC declines, the public would have 10 days to initiate (25 signatures). If not initiated, the site could not be initiated for a minimum of 1 year, or until any development application received during that year had been acted upon.
- LPC Meeting 2 + 70 days: LPC would open public hearing on designation proposal
- LPC Meeting 2 + 250 days: LPC would have to act on designation proposal. If not designated, the site could not be initiated for a minimum

DRAFT FOR DISCUSSION

of 1 year, and potentially for 2 years if substantial new information does not arise.

- Designation or failure to designate can be appealed to City Council.

The concerns raised around this issue revolve around 1) the amount of information required to make a determination, 2) the financial costs to individual homeowners who may be contemplating an addition to their single family home and/or duplex , 3) the concern that the community does not become actively engaged unless there is a pending development application for a property, and 4) the additional workload on the LPC and staff.

The LPC's proposal is that should a property owner wish such a determination, he/she should initiate the property to be a Landmark (i.e., request that it be designated); if it fails to be designated the property could not be initiated for two years (unless substantial new information arises)

Draft Proposal

Adopt a slightly modified version of the Planning Commission recommendation for single family homes and duplexes.

- A Request for Determination would be received by staff with no accompanying development application. A sign would then be posted on the site prior to the application being submitted, similar to other development applications. For single family homes and duplexes, applicants would be required to provide an RFD-S (essentially: date of original construction; architect and a picture of the front façade).
- LPC Meeting 1: LPC could initiate, decline to initiate or continue.
- LPC Meeting 2: LPC could initiate or decline to initiate. If the LPC declines, the public would have 14 days to initiate with a petition of 25 signatures. If not initiated, the site could not be initiated for a minimum of two years, or until any development application received during that time period had been acted upon.
- 90 Day Research Period: If the project is initiated, either by the LPC or citizen petition, three months or 90 days would be allowed for historic research to be completed. The applicant would pay a fee to the City which would then hire a consultant to perform the historic assessment.
- LPC Meetings 3 and 4: LPC would have two meetings to act on the designation proposal after a historic assessment has been completed. If not designated, the site could not be designated for two years or until any development application received during that time period had been acted upon.
- The LPC could extend beyond this time period for an additional two months upon making a finding that their current workload is too heavy to make a decision.

DRAFT FOR DISCUSSION

- All other categories of Request for Determination (commercial, apartments, industrial property, demotion of landmarks and current structures of merit, etc,) would supply the same information required as is currently required for a designation request but would follow the same timeline as noted above.
- Final decisions of the LPC relating to a Request for Determination, whether citizen initiated by the LPC or citizen petition, are subject to appeal only to the City Council.
- Properties in a designated historic district shall not be eligible for request for determination.

V. Recommended Action for Nov. 29 Council Meeting

1. Discuss Issues and Give Feedback for Revisions

Provide direction for revisions in each area of this report.

2. Costs and Staff Requirements

Request the City Manager return to the Council with a summary of the costs of additional staff needed to implement the changes recommended by the commissions and the options discussed by the Council. This summary should include information about how much permit service center fees would need to increase in order to fully cover these costs without a general fund subsidy.