

ORDINANCE NO. –N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 3.24
(LANDMARKS PRESERVATION)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 3.24 is repealed and reenacted to read as follows:

Article I General Provisions

- 3.24.010 Findings and purposes of provisions.**
- 3.24.020 Established—Powers and duties transferred when.**
- 3.24.030 Membership—Appointments—Organization and officers.**
- 3.24.040 Preservation incentives.**
- 3.24.050 List of structures and sites—To be established and maintained—Contents.**
- 3.24.060 List of structures and sites—Landmarks, historic districts and structures of merit designated—Permit application review.**
- 3.24.070 Powers and duties generally.**
- 3.24.080 Annual report required.**

Article II Initiation and Designation

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- 3.24.105 Definitions.**
- 3.24.110 Landmarks and historic districts—Criteria for consideration.**
- 3.24.115 Structures of merit—Criteria for designation.**
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- 3.24.125 Process for initiating and designating landmarks, structures of merit and historic districts—No Application pending.**
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- 3.24.200 Construction, alteration or demolition—Approval required.**
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- 3.24.270 Reserved.**
- 3.24.280 Landmarks, historic districts or structures of merit—Unsafe or dangerous conditions—Effect.**
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- 3.24.300 Appeals—Procedures required—City Council authority.**

Article V Miscellaneous Provisions

- 3.24.310 Advice and guidance.**
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- 3.24.360 Enforcement—Exemption for financial hardship when.**
- 3.24.370 Enforcement—Authority.**
- 3.24.380 Enforcement—Methods authorized.**
- 3.24.390 Violation—Penalty.**
- 3.24.400 Severability.**

**Article I
General Provisions**

3.24.010 Findings and purposes of provisions.

A. It is found that structures, sites and areas of special character or special historical, architectural, archaeological or aesthetic interests or value have been and continue to be unnecessarily destroyed or impaired, despite the feasibility of preserving them.

B. It is further found that prevention of such needless destruction and impairment is essential to the health, safety and general welfare of the citizens of the City.

C. The purpose of this legislation is to promote the health, safety and general welfare of the citizens of the City through:

1. The protection, enhancement, perpetuation and use of structures, sites and areas that are reminders of past eras, events and persons important to local, state or national history, or which provide significant examples of architectural styles of the past, or are landmarks in the history of architecture, or

which are unique and irreplaceable assets to the City and its neighborhoods, or which provide for this generation and future generations examples of the physical surroundings in which past generations lived;

2. The development and maintenance of appropriate settings and environments for such structures, in such sites and areas;

3. The enhancement of property values, the stabilization of neighborhoods and areas of the City, and the increase of economic and financial benefits to the City and its inhabitants;

4. The preservation and encouragement of a City of varied architectural styles, reflecting the distinct phases of its history--cultural, social, economic, political and architectural;

5. The enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs by fostering knowledge of the living heritage of the past.

3.24.020 Established—Powers and duties transferred when.

There is established the Landmarks Preservation Commission, hereinafter referred to as the Commission. The Commission shall have and exercise the powers and perform the duties set forth in this section, Sections 3.24.030 through 3.24.080, and elsewhere in this chapter with respect to historical or architectural preservation.

3.24.030 Membership—Appointments—Organization and officers.

A. The Commission shall consist of nine members. Appointments to the Commission shall be made by Council members and vacancies on the Commission shall be filled by Council members in accordance with the provisions of Sections 2.04.030 through 2.04.120, enacted as Ordinance 4780-N.S. by the voters of the City.

1. All members of the Commission shall have a demonstrated interest or competence in, or knowledge of, historic preservation.

2. At least four Commission members shall be appointed from among persons having expertise in the disciplines of history, architecture, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, such as American studies, American civilization or cultural geography, to the extent that such persons are available in the community.

B. The Commission shall elect a chairperson from among its members at its first meeting each calendar year, and shall establish rules and regulations for its own organization and procedure, consistent with the requirements of the City of Berkeley Commissioners' Manual.

C. The Director of Planning and Development, or his or her representative, shall serve as Secretary of the Commission, without vote. The Department of Planning and Development shall provide staff assistance to the Commission.

D. The Commission shall meet at least four times per year, as required by the City's Certified Local Government agreement with the State of California. In the event the Commission has more than one regular monthly meeting, the term "regular monthly meeting" shall mean the first such meeting in any given month.

3.24.040 Preservation incentives.

A. The Commission may encourage property owners to enter into Mills Act contracts with the City of Berkeley.

B. The Commission may encourage property owners to take advantage of Federal Historic Preservation tax credits, as well as any other local, state or federal preservation incentives.

C. The Commission may encourage property owners to invoke, and the City to utilize, the State Historic Building Code.

D. The Commission may educate the public and property owners about preservation incentives.

3.24.050 List of structures and sites—To be established and maintained—Contents.

The Commission shall:

A. After June 6, 1974, undertake to establish and maintain a list of structures, sites and areas having a special historical, architectural or aesthetic interest or value. This list may include single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art, or integrated combinations thereof. After public hearings, the Commission may designate landmarks and historic districts from the list. In the establishment of the foregoing list, the Commission shall notify and solicit the views of property owners and residents of structures, sites and areas proposed by the Commission to be included in such a list.

B. Establish an initial list no later than six months from the first meeting of the Commission. The Commission shall utilize this initial list for the designation of landmarks and historic districts. Upon the completion of landmark designations from the initial list, the Commission may undertake to establish and maintain an ongoing list for the purpose of carrying out the objectives and purposes of this chapter.

3.24.060 List of structures and sites—Landmarks, historic districts and structures of merit designated—Permit application review.

From and after six months from the first meeting of the Commission, or upon the completion of the foregoing initial list of structures, sites and areas, or in the event such list is completed by the Commission prior to six months from the first meeting of the Commission, the Commission may:

A. Designate, after public hearings, structures, sites and areas including single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art or integrated combinations thereof, having a special character, or special historical, architectural, archaeological or aesthetic interest or value, as:

1. A landmark, and shall designate a landmark site for each landmark,
2. An historic district constituting a specific designated section of the City, or
3. A structure of merit, and shall designate a structure of merit site for each structure of merit;

B. Review and decide on permit applications for construction, alteration and demolition on landmark sites, in historic districts and on structure of merit sites and on initiated landmark sites, initiated historic districts and initiated structure of merit sites, as more fully set forth in Article III and Section 3.24.350 below.

3.24.070 Powers and duties generally.

The Commission may:

A. Establish and maintain a list of structures, sites and areas it deems worthy of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition;

B. Carry out, assist and collaborate in surveys, studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;

C. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;

D. Inspect, with the permission of the owner or owner's agent regarding private property, structures, sites and areas which it has reason to believe worthy of preservation;

E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally

in the protection, enhancement, perpetuation and use of property of historical, architectural, archaeological or aesthetic interest or value;

F. Consider methods other than those provided for in this chapter for encouraging and achieving historical or architectural preservation;

G. Establish such policies, rules and regulations as it deems necessary to administer and enforce this chapter, subject where necessary to the approval of the City Council.

3.24.080 Annual report required.

The Commission shall report its actions annually to the City Council not later than June 30th.

Article II Initiation and Designation

3.24.100 Landmarks, historic districts and structures of merit—Designation—Procedures required—Controls and standards.

A. Each designation of a landmark, historic district or structure of merit by the Commission shall include a description of the characteristics which justify its designation and a description of the particular features that should be preserved, and shall include the location and boundaries of the landmark site, historic district or structure of merit site. Any such designation shall be in furtherance of and in conformance with the purposes of this chapter and the standards set forth herein.

B. The property included in any such designation shall be subject to the controls and standards set forth in this chapter. In addition, the said property shall be subject to the following further controls and standards if imposed by the designation:

1. For a publicly owned landmark or structure of merit, review of proposed changes in major interior architectural features;

2. For an historic district, such further controls and standards as the Commission deems necessary or desirable, including but not limited to facade, setback, height controls, signs and public improvements.

C. The Commission may, upon receipt of any significant new information, reconsider after two years any structure of merit and designate it as a landmark, subject to all the procedures set forth in this chapter for an original landmark designation.

3.24.105 Definitions.

For purposes of this chapter, unless otherwise specified, the following terms shall have the following meanings.

A. “Initiation”: Initiation shall mean any of the actions described in subdivisions A or B of section 3.24.125 by which the City Council, specified City commissions, property owners, residents or the public may commence the process by which the Commission determines whether or not to designate a structure, site or district as a landmark, structure of merit or historic district under this chapter.

B. “Integrity”: Integrity is the authenticity of an historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource’s period of significance.

1. Structures, sites and areas eligible for designation under this chapter must retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance.

2. Historical resources that have been rehabilitated or restored may be evaluated for designation.

3. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must also be judged with reference to the particular criteria under which a resource is proposed for eligibility. Alterations over time to a resource or historic changes

in its use may themselves have historical, cultural, or architectural significance. A resource that has lost its historic character or appearance may still have sufficient integrity for designation if it maintains the potential to yield significant scientific or historical information or specific data.

4. The Commission may propose to the Council, for adoption by ordinance, modifications to the manner in which integrity is evaluated in Berkeley.

5. In determining whether a proposed landmark, structure of merit or historic district has sufficient integrity to justify its designation, the Commission shall take into consideration that integrity must be judged with reference to the particular criteria under which a resource is proposed for designation, that not all aspects of integrity will apply to every proposal for designation, and that each type of resource depends on certain aspects of integrity more than others.

C. “Application”: Application (when the first letter is capitalized) means any application for a Permit as defined in Section 23A.08.010.B.12, as well as applications for staff level design review under Chapter 23E.12.

D. “Permit”: Permit means any Permit as defined in Section 23A.08.010.B.12, as well as design review approvals issued by City staff under Chapter 23E.12.

E. “Request for Determination” or “RFD”: A Request for Determination is a written request to the City to determine whether a structure or site shall be initiated and designated under this chapter. A request shall be on a form developed by the Commission and shall include the analysis and level of information similar to that included in a form DPR 523, as promulgated by the California Office of Historic Preservation.

3.24.110 Landmarks and historic districts—Criteria for designation.

A. In order to designate a proposed landmark or historic district, the Commission must find that the proposed landmark or historic district has significant architectural, cultural, educational, historic or archaeological value, as defined below, and that it has integrity.

B. Architectural value:

1. Property that is the first, last, only or most significant architectural property of its type in the region;

2. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works or the best surviving work in a region of an architect, designer or master builder; or

3. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

C. Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City;

D. Educational value: Structures worth preserving for their usefulness as an educational force;

E. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States. History may be social, cultural, economic, political, religious or military;

F. Archaeological value: Sites, with or without structures or other above-ground features, that have archaeological value by virtue of prehistoric or historic occupation or activity, including but not limited to Native American habitation and ceremonial sites; or which have yielded, or have the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

G. 1. Any property that is listed on or has been determined by the appropriate governmental official or body charged by state or federal law with making the determination to be eligible for the National Register of Historic Places or the California Register of Historical Resources shall be presumed to have significant architectural, cultural, educational, historic or archaeological value.

2. Any property that is listed on the State Historic Resources Inventory shall be presumed to have significant architectural, cultural, educational, historic or archaeological value. The “State Historic

Resources Inventory” or “SHRI” means the survey of approximately 650 structures and sites in the City of Berkeley that was conducted by the Berkeley Architectural Heritage Association in 1977-79, and is on file at the City of Berkeley Planning and Development Department, as well as any other similar survey that meets generally accepted standards for inventories of historic resources that is conducted after January 1, 2006.

3.24.115 Structures of merit—Criteria for designation.

In order to designate a proposed structure of merit, the Commission must find that it has architectural merit and/or cultural, educational, or historic interest or value, has integrity, and satisfies one or more of the following criteria:

A. It is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block or street frontage, or is located within a defined group of buildings that includes a landmark;

B. It is an example of good architectural design that contributes to its context;

C. It has historical or cultural significance to the City and/or to the structure’s neighborhood, block, street frontage, or a defined group of buildings within which it is located; or

D. It satisfies any other local criteria of significance that may be adopted by ordinance upon recommendation of the Commission.

3.24.120 Summary of procedures and timelines for initiating and designating historic resources.

A. Proceedings for determining whether to designate structures, sites and areas as landmarks, structures of merit and historic districts under this chapter fall into one of four categories:

1. Initiation, by resolution or petition in cases where an application for a Permit **is not** pending;
2. Initiation by resolution or petition in cases where an application for a Permit **is** pending;
3. Request for Determination (“RFD”) in cases where an application for a Permit **is not** pending
4. RFD in cases where an application for a Permit **is** pending.

B. Each category has its own particular procedures and timelines, and is governed by a separate section of this chapter. The following table illustrates the general process and schedule that will be followed for each category. The column numbers in the table correspond to the numbered paragraphs of the preceding subdivision. This chart is illustrative only, and generally indicates maximum times for proceedings. Actual procedures and timelines are governed by the applicable sections of this chapter (sections 3.24.125 through 3.24.128), and in the event of a conflict, the requirements set forth in the applicable section shall govern.

Timeline	1 Initiation § 3.24.125	2 Initiation & Application § 3.24.126	3 RFD § 3.24.127	4 RFD & Application § 3.24.128
At least 21 days before 1st meeting			City receives RFD or completes peer review of report	City receives RFD and Application
1st meeting	LPC receives resolution or petition; Must set public hearing on designation	LPC sees “notice” of pending Application; May set public hearing on designation	Public hearing to consider whether to initiate	Public hearing to consider whether to initiate
2nd meeting		May set public hearing on designation	Cont. public hearing—deadline for action	Cont. public hearing—deadline for action
		May be initiated by petition no later than 21 days after 2 nd Commission meeting; ; not permitted thereafter as specified	May be initiated by petition within 30 days after 2 nd Commission meeting; not permitted thereafter as specified	May be initiated by petition no later than 21 days after 2 nd Commission meeting; ; not permitted thereafter as specified
	Public hearing on designation, within 70 days of initiation	Public hearing on designation, within 70 days of initiation	Public hearing on designation, within 70 days of initiation	Public hearing on designation at next meeting for which public notice can be provided
Decision	Decision within 210 days after beginning of public hearing on designation	Decision within 120 days after opening of public hearing on designation	Decision within 60 days after opening of public hearing on designation	Decision within 120 days after opening of public hearing on designation

3.24.125 Process for initiating and designating landmarks, structures of merit and historic districts—No Application pending.

A. Proceedings for determining whether to designate structures or properties as landmarks or structures of merit when no Application is pending may be initiated as follows:

1. Resolution of the Commission;
2. Resolution of the City Council;
3. Resolution of the Planning Commission;
4. Resolution of the Civic Arts Commission;
5. Written petition of the owners of the property to be designated or their authorized agents; or
6. Written petition of at least 25 residents of the City.

B. Proceedings for determining whether to designate historic districts may be initiated only by resolution of the Commission, the City Council, the Planning Commission or the Civic Arts Commission or by written petition subscribed by or on behalf of a majority of the property owners or residents of the proposed district.

C. A petition for initiation under paragraph A.5 or A.6 shall be filed with the Secretary upon a form prescribed by the Commission, and shall contain or be accompanied by all data required therewith by the Commission.

D. The Commission shall commence a public hearing to consider any designation proposal under this section within 70 days of the adoption of the resolution or the filing of the petition, and shall take final action on the proposed designation within 210 days after the public hearing is opened.

E. Failure to act within any of the timelines set forth in this section shall constitute a decision to take no action to initiate or designate, unless the Commission expressly determines to terminate designation proceedings without prejudice.

F. If the Commission disapproves a proposed designation, no subsequent application that is the same or substantially the same may be submitted or considered for two years from the effective date of the disapproval.

3.24.126 Process for initiating and designating landmarks, structures of merit and historic districts—Application pending.

A. Upon receiving an Application, the City shall place notice of that application at the first regular meeting that occurs no sooner than 21 days after the Application is submitted. That notice may be in the form of a list of pending development projects.

B. At that meeting, the Commission may:

1. initiate any property so listed;
2. set it for public hearing at its next regular meeting to consider initiation, in which case public notice shall be provided as set forth in section 3.24.140;
3. continue the matter; or
4. take no action.

C. At its second meeting, the Commission may initiate the property or take no action.

D. A property that is the subject of an Application may be initiated under Section 3.24.125.A or B at any time within 21 days the second Commission meeting, but not thereafter, until the expiration of the period set forth in subdivision G.

E. If the property is initiated, the Commission shall commence a public hearing to consider designation of the property within 70 days of the adoption of the resolution to initiate or the filing of the petition, and shall take final action on the proposed designation within 120 days after the opening of the public hearing. F. Failure to act within any of the applicable timelines set forth in this section shall constitute a decision to take no action to initiate or designate.

G. If a property that is the subject of an Application is not initiated or designated within the time limitations set forth in this section, this chapter, except for section 3.24.220, shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the Application is withdrawn or denied;
2. the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect; or
3. the expiration of 2 years from the date the Permit was issued.

3.24.127 Process for considering Requests for Determination—No Application pending.

A. A property owner or authorized agent thereof may request the Commission to determine whether or not a structure or property merits initiation by submitting to the City a Request for Determination (“RFD”). In such cases, where no Application is pending, the following procedures shall apply.

B. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the property the RFD refers to, in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer. Upon receiving such a request, the City shall contract with an independent consultant from a list of qualified consultants approved by the Commission to complete the historic assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own report in a form substantially similar to that approved by the Commission, which shall then be subject to peer review by the City’s consultant at the applicant’s expense.

C. The Commission shall consider a complete RFD under this section at a public hearing at the first regular meeting that occurs no less than 21 days after it is completed. Notice of the public hearing shall be provided as set forth in section 3.24.140.

1. If the Commission does not initiate the property at the first regular meeting at which it is considered, the Commission may continue the matter to its next regular meeting. At its second meeting, the Commission may initiate the property or take no action.

2. If the Commission does not initiate the property at its second meeting, the property may be initiated under Section 3.24.125.A or B within 30 days after the date of that meeting, but not thereafter, until the expiration of the period set forth in subdivision E.

3. If the property is initiated, the Commission shall commence a public hearing to consider designation of the property within 70 days of the adoption of the resolution to initiate or the filing of the petition, and shall take final action on the proposed designation within 60 days after the opening of the public hearing.

D. Any of the timelines specified in this section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this section, as they may be extended, shall constitute a decision to take no action to initiate or designate.

E. If a property that is the subject of a RFD is not initiated or designated within the time limitations set forth in this section, this chapter, with the exception of section 3.24.220 shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the expiration of 2 years from the date of any final decision under this section not to initiate or designate the property; or
2. if an Application is submitted within that period, (i) the Application is withdrawn or denied or (ii) the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect.

3.24.128 Process for considering Requests for Determination—Application pending.

A. In cases where a property owner or authorized agent thereof submits a RFD and files an Application, the RFD shall be deemed part of the Application for purposes of the Permit Streamlining Act (Gov. Code §65920 *et seq.*).

B. The Commission shall consider the RFD at a public hearing at the first regular meeting that occurs no sooner than 21 days after it is completed. Notice of the public hearing shall be provided as set forth in section 3.24.140. At that meeting, the Commission may:

1. initiate any property so listed;
2. set it for public hearing at its next regular meeting to consider initiation, in which case public notice shall be provided as set forth in section 3.24.140;

3. continue the matter; or
4. take no action.

C. At its second meeting, the Commission may initiate the property or take no action.

D. A property that is the subject of a RFD and an Application may be initiated under Section 3.24.125.A or B at any time within 21 days after the second Commission meeting, but not thereafter, until the expiration of the period set forth in subdivision G.

E. If the Commission determines to hold a public hearing to consider designating the property, or if a public hearing is otherwise required as a result of initiation under section 3.24.125.A, the matter shall be set for hearing at the next regular Commission meeting for which notice can be provided, shall take final action on the proposed designation within 120 days after the opening of the public hearing.

F. Failure to act within any of the applicable timelines set forth in this section shall constitute a decision to take no action to initiate or designate.

G. If a property that is the subject of an Application is not initiated or designated within the time limitations set forth in this section, this chapter, except for section 3.24.220, shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the Application is withdrawn or denied;
2. the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect; or
3. the expiration of 2 years from the date the Permit was issued.

3.24.130 Reserved.

3.24.140 Notice of public hearings—Hearing procedure.

A. Notice of public hearings under this article shall be given by posting thereof on or adjacent to the property involved not less than 14 days prior to the date of the hearing.

B. In addition to the posting of notice, a notice of the hearing shall be mailed not less than 14 days prior to the date of such hearing to the property owners as shown on the last equalized assessment roll, of all property, and to each residential or other unit, within 300 feet of the property referred to in the initiation; provided, however, that the failure of any such property owner or resident or unit to receive such notice shall not affect the validity of the proceedings.

C. Notice shall be given to the neighborhood group(s) that are on file with the Zoning Officer and whose regular geographic area of interest includes the area of the proposed designation and to organizations and individuals who request such notification.

D. The Commission may also give such other notice as it may deem desirable and practical, including, if requested, to organizations or individuals indicating an interest in the work of the Commission.

E. Any primary evidence upon which an applicant or property owner intends to rely shall be submitted to the Secretary no later than noon on the day prior to the day that Commission agenda packets are distributed for the meeting at which the Commission acts.

F. A record of pertinent information presented at the hearing shall be made and maintained as a permanent record.

3.24.150 Reserved.

3.24.160 Designation proposal—Notice of decision required.

A. The Commission shall promptly notify in writing the applicant, owner and residents of the property of action taken. The commission shall also mail a notice of its decision to persons requesting such notification. A copy of the notice of decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.

B. In addition, the Commission shall promptly notify all persons entitled to notice under section 3.24.140 of any decision to take no action to initiate or designate under sections 3.24.125 through 3.24.128, in the manner set forth in section 3.24.140.

3.24.170 Reserved.

3.24.180 Landmarks, historic districts and structures of merit—Designation—Recording required.

When a landmark, historic district or structure of merit has been designated by the Commission as provided above, in addition to the notification required in Section 3.24.160 above, the Commission shall cause a copy of the designation, or notice thereof, to be recorded in the Office of the County Recorder.

3.24.190 List of designated and initiated resources—referral of applications to Commission.

The Department of Planning and Development shall maintain a current record of designated landmarks, historic districts and structures of merit, as well as a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, exterior alteration or demolition, or any interior alteration subject to control pursuant to Section 3.24.200, on any initiated or designated landmark site, structure of merit site or historic district, the Department shall, except as otherwise provided in Sections 3.24.280 and 3.24.350, promptly forward such permit application to the Commission for review.

**Article III
Regulatory Authority and Environmental Review**

3.24.200 Construction, alteration or demolition—Approval required.

A. No person shall carry out any construction, alteration or demolition for which a City permit is required on an initiated or designated landmark site or structure of merit site or in an initiated or designated historic district, without approval by the Commission as set forth in Section 3.24.240, except as set forth in subsection B of this section or in Section 3.24.280, 3.24.300 or 3.24.350.

B. Approval under subsection A of this section is not required for alterations in the interior of a structure, except in the case of specific publicly owned structures where review of interior changes is imposed pursuant to Section 3.24.100.

C. Upon receipt of an application for a permit to carry out any work for which Section 3.24.200 requires Commission review, including applications for permits that would otherwise be ministerial, the City shall promptly notify the applicant in writing that the application is subject to discretionary review by the Commission under this chapter.

3.24.210 Ordinary maintenance and repairs.

A. Ordinary maintenance and repairs that are consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties may be approved as set forth in this section.

B. An application for ordinary maintenance and repairs shall include plans and specifications showing the proposed appearance, color and texture of materials and the proposed architectural design of the structure. If the application, together with its supporting plans and specifications, does not provide a sufficient basis for review, the Planning Director or the Commission shall inform the applicant of the additional data required, and the applicant shall supply said data.

C. The Planning Director shall refer the application to the Commission where it shall be placed on the next regular agenda. The Commission may approve the application, set the matter for public hearing at its next meeting, or take no action, which shall be equivalent to approval.

D. If the application is set for public hearing, it shall be treated as an application for a permit to alter a designated site or structure under sections 3.24.230 through 3.24.250.

E. For the purpose of this chapter, "ordinary maintenance and repairs" means any work the sole purpose and effect of which is to correct deterioration, decay or damage. The Commission shall establish a list of project types that would be considered consistent with this section.

F. For the purposes of this section, the term "application" refers solely to requests to conduct ordinary maintenance and repairs, and not to "Application" as defined in section 3.24.105.

3.24.220 Environmental review.

A. Notwithstanding anything to the contrary in Resolution No. 55,422-N.S., the Commission may, no later than 30 days after an Application is complete, recommend to the Zoning Adjustments Board or any other responsible City entity or officer the appropriate level of environmental review of said Application. The Zoning Adjustments Board or other City entity or officer to which the Commission's recommendation is addressed must accept the Commission's recommendation or make written findings supporting its determination to not accept the Commission's recommendation. Nothing in this subsection requires such findings if the Zoning Adjustments Board or other City entity or officer elects to conduct a higher level of environmental review than recommended by the Commission.

B. Notwithstanding anything to the contrary in this section or in Resolution No. 55,422-N.S., in cases where no City agency or officer other than the Commission has discretionary regulatory authority over an application for a project, the Commission shall have the initial authority to determine the level of environmental review.

C. All environmental documents involving structures, sites or districts initiated or designated under this chapter, listed on or determined by the appropriate governmental official or body charged by state or federal law with making the determination to be eligible for the National Register of Historic Places or the California Register of Historical Resources, or listed on the State Historic Resources Inventory, shall be provided to the Commission promptly upon completion, as part of the normal circulation of such documents for public review.

D. In cases where no City agency or officer other than the Commission has discretionary regulatory authority over an application for a development project, the Commission shall determine the adequacy of the environmental document that is prepared on the application, and shall determine whether to adopt or certify that environmental document.

E. In all cases other than those described in subdivision D of this section, the following provisions apply:

1. The Commission may provide written comments on the adequacy of the environmental document to any City entity or officer charged with adopting or certifying that document, within 30 days of the date the environmental document is issued for review, or within such longer general review period as may be set for the particular document.

2. The City entity or officer to whom the Commission's comments are directed shall either accept and implement the Commission's comments under the foregoing paragraph or provide written findings explaining its reasons for declining to do so.

3.24.230 Permit application—Public hearing notice requirements.

A. Except in the case of permits approved pursuant to Section 3.24.210, the Commission shall hold a public hearing on every permit application.

B. Notice of the public hearing shall be given in the manner set forth in section 3.24.140.

C. The Commission may also give such other notice as it may deem desirable and practical, including, if requested, to organizations or individuals indicating an interest in the work of the Commission.

3.24.240 Permit application—Decision—Time limitations—Review standards and criteria.

A. After adoption or certification of the applicable environmental document, the Commission shall approve, conditionally approve, or deny the permit application.

B. Compliance with Permit Streamlining Act. The Commission shall make its decision in compliance with the deadlines established by the Permit Streamlining Act and any other applicable state law, subject to the requirement that it take its final action on an application requiring review by the Zoning Adjustments Board prior to the last regular meeting at which the Zoning Adjustments Board may act consistent with the Permit Streamlining Act or other applicable state law. To this end the provisions of this chapter shall be construed harmoniously with, and in a manner that implements, the Permit Streamlining Act.

C. In reviewing the application, the Commission shall consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant. The Commission shall also determine whether the proposed work is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

D. Criteria for landmarks. In order to approve or conditionally approve an application for construction, alteration or demolition on an initiated or designated landmark or landmark site, the Commission must find that the proposed work will not adversely affect:

1. The exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; or

2. The special character or special historical, architectural, archaeological or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.

E. Criteria for districts. In order to approve or conditionally approve an application for construction, exterior alteration or demolition in an initiated or designated historic district, the Commission must find that the proposed work will conform to any further standards as may be embodied in the designation of the historic district and will not adversely affect:

1. The relationship and compatibility between the subject property and its neighboring structures and surroundings, including facade, setback and height;

2. The special character or special historical, architectural, archaeological or aesthetic interest or value of the district; or

3. The exterior architectural features of the subject property itself, if it is a contributor to the district.

F. Criteria for structures of merit. In order to approve or conditionally approve an application for demolition of or construction on or exterior alteration of a structure of merit or structure of merit site, the Commission must find that the proposed work will not significantly impair:

1. the particular features that should be preserved to the extent they have been stated in the notice of decision designating the structure of merit;

2. the structure of merit's compatibility with the neighborhood, block or street frontage, or defined group of buildings that include a landmark as stated in the notice of decision designating the structure of merit;

3. the structure of merit's architectural design or the manner in which that architectural design relates to its context; or

4. the structure of merit's significance to the City and/or to the structure's neighborhood, block, street frontage, or the defined group of buildings within which it is located.

G. Alternative bases for approval. Notwithstanding anything in this section to the contrary, the Commission may approve or conditionally approve construction, alteration or demolition on an initiated or designated landmark or landmark site, structure of merit or structure of merit site or in an initiated or designated historic district if it makes any of the following findings. Such findings shall be in writing and specify the facts relied upon in making such findings.

1. It has been clearly demonstrated that the designated structure is in such condition that it is not feasible to preserve or restore it and put it to use, and that such change is not due to owner neglect;

2. Failure to approve or conditionally approve the application would leave the owner with no reasonable economic use of the property considered as a whole; or

3. The special historical, architectural, archaeological or aesthetic interest or value of the particular property has been severely reduced due to physical change on it occurring since the property was designated, that in light of said reduction the public interest in keeping the property in its present state is significantly outweighed by the proposed project's public benefits, and that such change is not due to owner neglect.

H. Additional basis for denial. The Commission may deny any application for demolition, construction or alteration for which the environmental document was adopted or certified by another City agency or officer, if it makes a written finding that the environmental document is inadequate with respect to resources subject to protection under this chapter, and that finding includes a written statement of the reasons therefor. The Commission may deny an application under this subsection only if it has previously raised those asserted inadequacies in comments to the City agency or officer that adopted or certified the environmental document, prior to the date of adoption or certification, provided that the Commission has been supplied with the environmental document as required by section 3.24.220.C.

3.24.250 Notice of decision.

The Secretary shall promptly provide written notice of the Commission's decision to the owners or, where appropriate, authorized agents and residents of the property. The Secretary shall also mail notice of the decision to organizations and individuals who request such notification. A copy of the notice of decision shall be filed with the City Clerk, and the City Clerk shall present said copy to the City Council at its next regular meeting consistent with the Council's rules.

3.24.260 Reserved.

3.24.270 Reserved.

3.24.280 Landmarks, historic districts or structures of merit—Unsafe or dangerous conditions—Effect.

A. This chapter shall not prevent any construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature or part thereof, if:

1. Such condition has been declared unsafe or dangerous and an imminent danger to public health or safety by the Planning and Development Department or the Fire Department; and

2. The proposed measures have been declared necessary, by such department or departments, to correct the unsafe or dangerous condition.

B. Only such work as is reasonably necessary to correct the unsafe or dangerous condition specified pursuant to subsection A.1. may be performed pursuant to this section.

C. In the event any structure or other feature is damaged by fire or other calamity or by act of God, or by the public enemy, to such an extent that in the opinion of the aforesaid department or departments it cannot reasonably be repaired or restored, it may be removed in conformity with normal permit procedures and applicable laws.

D. This section is intended to be, and shall be construed and applied in a manner that is, consistent with and at least as protective as Public Resources Code Section 5028.

3.24.290 Landmarks, historic districts and structures of merit—Good repair and maintenance required.

A. The owner, lessee, or other person in actual charge of a landmark, a structure in an historic district or a structure of merit, shall keep in good repair all of the exterior portions of such landmark, structure in an historic district or structure of merit, all interior portions thereof when subject to control as specified in subsection B.1 of Section 3.24.100 of this chapter, and all interior portions of a building not subject to control as specified in subsection B.1 of Section 3.24.100 the maintenance of which is necessary to prevent deterioration and/or structural decay of any exterior portion.

B. For purpose of this section, “good repair” means the prevention of structural decay or structural failure or the prevention of irreparable damage to the major historic or architectural features of the structure.

C. For purpose of this section, “a landmark, a structure in an historic district, or a structure of merit” includes the landscape features and amenities of the designated landmark, district or structure of merit that have been specifically included as a part of the designation.

**Article IV
Appeals**

3.24.300 Appeals--Procedures required-- City Council authority.

A. The City Council may, upon its own motion, set any decision of the Commission for hearing and review, except as set forth in subsection I of this section.

B. In addition, except as set forth in subsection I of this section, any determination of the Commission under this Chapter may be appealed to the City Council by:

1. Resolution of the Planning Commission;
2. Resolution of the Civic Arts Commission; or
3. Any person or entity aggrieved by a decision of the Commission.

C. 1. An appeal by an aggrieved person or entity shall be taken by filing a written notice of appeal with the City Clerk within 14 days after the mailing of the notice of the decision of the Commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based.

2. An appeal by the Planning Commission or Civic Arts Commission shall be taken by a resolution that sets forth the basis of the appeal at the first meeting of the appealing Commission after the mailing of the notice of decision of the Landmarks Preservation Commission.

3. An action by the City Council on its own motion to set any decision of the Commission for hearing and review shall be taken at the first Council meeting more than 10 days after the mailing of the notice of decision of the Landmarks Preservation Commission, provided that the deadline for Council action shall be extended as set forth in Section 1.04.070.

4. The City Clerk shall immediately forward one copy of any appeal notice or-resolution to the Secretary of the Commission and one copy to the owner, or authorized agent thereof, of the property involved, if the appellant is not the property owner or authorized agent.

D. If a ground of the appeal is that the Commission's action constituted a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and the appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall apply to appeals on the ground that the Commission's decision or any condition imposed by the Commission denied the appellant any reasonable use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constituted a taking of property for public use without just compensation. When the Council grants a hearing in such appeals, it may require that testimony be under oath and subject to cross-examination by the appellant and the City Manager or his or her designee.

E. The City Clerk shall provide the Council with the written appeal or appeals and shall schedule the matter before the Council. The Secretary of the Commission shall forward the documents constituting the record on the matter to the Council. These shall include a copy of the Notice of Decision, indicating the Commission's vote, and the findings and the conditions, if any, approved by the Commission; the public hearing notice; any and all reports made by the Secretary to the Commission; correspondence and letters received by the Commission; and the application, or initiation resolution or petition, and attachments.

F. The Council shall review the action of the Commission and may take one of the following three actions:

1. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission do not warrant further hearing, the Council shall affirm the decision of the Commission and dismiss the appeal.

2. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission warrant further hearing, the Council shall set the matter for a public hearing. In such cases, the public hearing shall commence no later than 60 days from the date when the vote for a hearing is taken, unless, upon the request of the appellant, the Council establishes a later date for the hearing, except that appeals resulting from early review under BMC Section 23B.24.030 shall be set for the earliest feasible Council meeting.

3. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission warrant reconsideration of the application by the Commission or if the applicant has submitted revisions to the application, the Council shall remand the matter to the Commission for reconsideration, in which case it shall specify whether or not the Commission shall hold a new public hearing, and shall identify those issues which the Commission is directed to reconsider.

4. If none of the three actions described above has been taken by the Council within 30 days from the date the appeal first appears on the Council agenda, then the decision of the Commission shall be deemed affirmed and the appeal shall be deemed denied.

G. The City Clerk shall promptly notify in writing the appellant, owners or authorized agents of affected property, and residents of such property, of the action taken.

H. In the event the Council grants a hearing, the City shall give notice of the time and place of said hearing in the same manner as is provided for giving notice of the time and place for hearing before the Commission as set forth in Section 3.24.230. The City Council may make decisions or determinations and may impose such conditions as the facts warrant and its decision or determination shall be final. Any hearing may be continued from time to time. If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Commission shall be deemed affirmed and the appeal deemed denied.

I. Notwithstanding anything to the contrary in this section, decisions whether or not to initiate designation proceedings are not subject to appeal or review by the Council.

J. Whenever a decision of the Commission is inconsistent with a decision of the Zoning Adjustments Board with respect to the same project, the inconsistent decisions shall operate as a denial of that project. In such cases, if the applicant files an appeal as set forth in this section, the Council shall set the matter for hearing at the earliest feasible date after the later of the Commission's action or the Zoning Adjustments Board's action. No fee may be charged for appeals under this subsection.

Article V Miscellaneous Provisions

3.24.310 Advice and guidance.

The Commission may render advice and guidance with respect to any proposed work that does not require a City permit but may affect structures, sites or areas of historical, architectural, archaeological or aesthetic interest or value. Examples of the work referred to are: painting and repainting of exterior surfaces, fencing, landscaping and installation of lighting fixtures. In rendering such advice and guidance, the Commission shall be guided by the purposes and standards of this chapter and by the Secretary of the Interior's Standards for the Treatment of Historic Properties.

3.24.320 Property owned by public agencies—Cooperation—Consultation and report requirements.

A. The Commission shall take appropriate steps to notify all public agencies which own property in the City about the existence and character of designated landmarks, historic districts and structures of merit, and the Commission shall cause a current record of such landmarks, districts and structures of merit to be maintained in each public agency. In the case of any publicly owned property on a landmark site or structure of merit site, or in an historic district, which is not subject to the permit review procedures of the City, the agency owning the property shall seek the advice of the Commission prior to approval or authorization of any construction, alteration or demolition thereon, including the placement of street furniture, lighting and landscaping; and the Commission in consultation with the Design Review Committee of the Zoning Adjustments Board, in appropriate cases, shall render a report to the owner as expeditiously as possible, based on the purposes and standards of this chapter. If Commission review of a public project involving construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site is required under any other law or under the Charter, the Commission shall render the report referred to in this section to such public agency without specific request therefor.

B. All officers, boards, commissions, and departments of the City shall cooperate with the Commission in carrying out the spirit and intent of this chapter.

3.24.330 Other procedures authorized.

A. The Commission may authorize such steps as it deems desirable to recognize the value of and to encourage the protection, enhancement, perpetuation, and use of any such structure of merit, or of any designated landmark, or any structure in a designated historic district, including, but not limited to the issuance of a certificate of recognition and the authorization of a plaque to be affixed to the exterior of the structure; and the Commission shall cooperate with appropriate state and federal agencies in such efforts.

B. The Commission may make recommendations to the City Council and to any other body or agency responsible to encourage giving names pertaining to Berkeley history to streets, squares, walks, plazas, and other public places.

3.24.340 Landmarks, historic districts or structures of merit—Filing fees required when.

A. Except as set forth herein, the City Council may establish fees for applications, petitions and permits required by this Ordinance.

1. There shall be no fee for initiation of designation of a landmark, an historic district, structure of merit or structure of neighborhood interest if such initiation is by the Commission or by resolution of the City Council, the Planning Commission or the Civic Arts Commission.

2. For each petition for designation of a landmark, structure of merit or structure of neighborhood interest, the fee shall not exceed \$50.00.

3. For each petition for designation of an historic district, the fee shall not exceed \$100.00.

B. Project applicants who are qualified non-profits, and other applicants with projects valued at less than \$350,000.00, may apply to the City Manager for a fee waiver if it can be demonstrated that the payment of the fee would pose a hardship.

3.24.350 Applicability of provisions.

The provisions of Article III of this chapter, except for Section 3.24.220, shall be inapplicable to the construction, alteration or demolition of any structure or other feature on an initiated landmark site, historic district or structure of merit site, where a permit for the performance of such work was issued prior to the day that a petition has been filed or a resolution adopted to initiate the designation of the said landmark site, historic district or structure of merit site, and where such permit has not expired or been cancelled or revoked, provided that the work is started and diligently prosecuted to completion in accordance with the Building Code.

3.24.360 Enforcement—Exemption for financial hardship when.

Any owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or a structure of merit, upon presentation of clear and convincing evidence demonstrating to the satisfaction of the Commission that compliance with these regulations would work immediate and substantial hardship on such owner, lessee or other person shall be exempt from the provisions of Sections 3.24.380 and 3.24.390.

3.24.370 Enforcement—Authority.

It shall be the responsibility of the Department of Planning and Development to administer and enforce the provisions of this chapter.

3.24.380 Enforcement—Methods authorized.

In addition to the regulations of this chapter and other ordinances which govern the approval or disapproval of applications for building permits or other permits; or licenses affecting the use of land or buildings, the Director of Planning and Development shall enforce the provisions thereof by any of the following means:

A. The Director of Planning and Development may serve notice requiring the removal of any violation of this chapter upon the owner at last known address, or, where relevant, the owner's authorized agent, or tenant of the building or land, or upon the architect, builder, contractor; or other person who commits, or assists, in any such violation.

B. In addition, the City Attorney may seek injunctive relief or maintain an action in abatement to further the provisions of this chapter.

3.24.390 Violation—Penalty.

Any violation of any provisions of this chapter shall be deemed a misdemeanor but may be cited and prosecuted, in the discretion of the enforcing officer, as an infraction, and shall be punishable as set forth in Chapter 1.20 of this code.

3.24.400 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The Council hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. In enacting this ordinance, the Council intends to revise the existing Landmarks Preservation Ordinance in a manner consistent with the requirements for a Certified Local Government. It is the Council's intention that if the State Office of Historic Preservation advises the City that this ordinance is not consistent with those requirements, the Council will promptly make such revisions as may be necessary to maintain its compliance with the requirements applicable to Certified Local Governments.

Section 3. This ordinance shall not take effect until November 1, 2006.

Section 4. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.