



Office of the City Manager

INFORMATION CALENDAR

August 1, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Landmarks Preservation Ordinance Initiative Section 9212 Analysis (Impact Report)

INTRODUCTION

Under Elections Code Section 9212, the City may undertake an analysis of certain impacts of a proposed initiative. This analysis addresses an initiative that would have the voters adopt a somewhat modified version of the city's 1974 Landmarks Preservation Ordinance (LPO) intended to allow the City to designate and protect historic resources.

SUMMARY

The City first adopted a Landmarks Preservation Ordinance in 1974. That ordinance has remained in effect with little change. For over six years, the Landmarks Preservation Commission, the Planning Commission and the City Council worked on bringing the 1974 law into conformance with the requirements of State law related to cities having a timely and predictable development application process.

In anticipation of a revised ordinance being adopted, an Initiative petition was circulated and achieved sufficient signatures to be approved for the November, 2006 ballot that would have the voters adopt in large measure the 1974 Landmarks Preservation Ordinance. Although the Council held first reading of a revised ordinance on July 11, 2006 (and then another first reading on July 18 on a slightly revised version), it decided on July 25, 2006 to withdraw its proposed revised ordinance before second reading and allow a decision on the Initiative without the potential confusion of a competing measure. The Council did adopt the second reading of some related ordinance amendments, including repeal of Chapter 19.20 and amendments to the Zoning Ordinance on July 18. The following analysis analyzes the Initiative in regard to specific areas of impact identified in Election Code Section 9212.

In summary, the analysis finds that the Initiative would have somewhat unpredictable fiscal impacts due to the need for possible court defense of the Initiative, potential claims for violation of civil rights due to delayed processing of development applications, and claims of possible reduction in property value under the proposed Proposition 90 also on the ballot in November 2006, should it pass. The Initiative would have very small impacts on funding for infrastructure, but would likely continue the existing ordinance's negative impact on the provision of housing

and affordable housing, due to the long and unpredictable process for development application review and action permitted by the existing ordinance. The Initiative will also continue the negative impact on business retention and on revitalization caused by the current ordinance due to the same long and more unpredictable processing of development applications in comparison to surrounding jurisdictions.

CURRENT SITUATION AND ITS EFFECTS

The City's existing Landmarks Preservation Ordinance was adopted in 1974 and had continued with relatively little change for the subsequent 32 years and led to the designation of 286 designated historic resources as of June 2006.

The City has sought to modify the ordinance over the past six years in order to bring the City's LPO into better conformance with State laws related to the timely processing of development permit applications passed subsequent to the 1974 LPO. Those laws either conflicted with some provisions of the LPO or established alternative processes for addressing historic resources. The two laws with the most direct impact are the Permit Streamlining Act (PSA) and the California Environmental Quality Act (CEQA). These state laws establish deadlines within which the City must act on applications for discretionary permits. In addition to timelines, CEQA establishes that impacts on historic resources are impacts on the environment and that significant adverse impacts on an historic resource are also significant adverse impacts on the environment that must be substantially reduced, mitigated or avoided if feasible. If a significant adverse impact on an historic resource cannot be mitigated (such as a demolition of a designated buildings), an Environmental Impact Report must be prepared. A building being placed on a "local register of historic places" is presumed to be an historic resource under CEQA.

The PSA, in concert with CEQA, requires that local agencies take action on applications for development projects (as defined therein) within certain time frames. In general, projects determined to be exempt from CEQA should be acted on within 60 days from the date the application is complete. Projects that require some analysis (i.e., an Initial Study) and are determined to not have significant impacts (i.e., Negative Declaration) must be acted on within 240 days from the time an application is deemed complete; and projects where there is a significant environmental impact (i.e., Environmental Impact Report) must be acted on within 1 ½ years from the time the application is deemed complete.

Failure to act within these deadlines can lead to a determination that a project is deemed approved by operation of law, thereby depriving the City of the ability to disapprove the project or mitigate any impacts. The City also risks being responsible for attorney fees and damages for denial of civil rights and could, if Proposition 90 passes in November 2006, be subject to claims of "taking" of private property.

In anticipation of the adoption of the revised LPO, an initiative was circulated and approved for the November 2006 ballot. Under State Elections Code 9212, the City may undertake an

analysis of certain impacts of the Initiative. The Council requested that staff undertake such an analysis, and that analysis follows.

BACKGROUND/ANALYSIS

The proposed Landmarks Preservation Ordinance Initiative would have the voters adopt the 1974 LPO with relatively minor changes, including Chapter 19.20 with minor changes. The Initiative would lock in various provisions inconsistent with state law governing the processing of land use permits and environmental review.

This Initiative ordinance would make the following material changes to the existing LPO:

- Authorize the Planning Director to suspend for up to 180 days any application that would result in demolition or substantial alteration of a historic resource under specified circumstances, whether or not designated by the City of Berkeley, “if an emergency is deemed to exist”;
- Grant the LPC authority to prohibit demolition of historic resources;
- Significantly limit the City’s ability to permit demolitions regardless of other public interests;
- Require the City to prepare environmental impact reports with respect to certain structures that it has not designated as historic resources, because they are listed on an inventory prepared by third parties;

The City has not applied Berkeley Municipal Code Chapter 19.20 literally for many years because it would lead to a second impermissible discretionary review of demolition Building Permits for non-residential structures already approved for demolition under the Zoning Ordinance. The Initiative would restore and reinvigorate Chapter 19.20, as follows:

- provide that no application, including an application for a building permit, to demolish a nonresidential building shall be complete until it has been reviewed by the LPC at its next regular meeting following receipt of said application;
- increase from 35 to 60 days the period during which the LPC must notify the building official whether it intends to initiate proceedings to designate buildings under review pursuant to chapter 19.20;
- increase from 60 to 250 days the period during which the LPC must decide whether or not to designate a building under review pursuant to chapter 19.20;
- prohibit the building official from acting on a demolition permit pending completion of the LPC’s decision; and
- give the Planning Director the authority to suspend any application relating to a historic resource, whether or not designated by the City of Berkeley, “if an emergency is deemed to exist”.
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1. Fiscal Impacts of Initiative

The Landmarks Preservation Commission is currently provided one full time staff to support its function, plus support by interns, administrative staff and others. The proposed Initiative is not anticipated to increase the need for required staff support for the Commission. The proposed Initiative would establish some deadlines for action, but continues to provide no deadline for initiating structures in the permit review process. Months after a project application is deemed complete, an initiation could be undertaken allowing for an additional 250 days of project review before a final action is required to determine the historic status of a building for which an development application is pending. Because historic resource status is a key environmental determination, the City will continue to be unable to come to any conclusions regarding the appropriate level of CEQA review or act on a permit until historic status is determined. While the Initiative would establish some deadlines for action once a project is initiated, its lack of limits as to when projects can be initiated and the timelines for making a determination after initiation can lead to violations of the PSA. Further, when a demolition of a non-residential structure is involved, Chapter 19.20 allows for suspension of activity in relation to an application received by the Building Official under the Building Code. This suspension could occur after entitlements under the Zoning Ordinance have been given. The suspension could allow a maximum of approximately 340 days for the LPC to determine the historic status of a building proposed for demolition. This 340 days would be additive to the entitlement application period, and could lead to a conflicting determination regarding demolition after the entitlement is given under the Zoning Ordinance. Not only would 340 days violate the PSA, but this suspension could occur after other entitlements have been received and after final action under CEQA has been taken, in clear violation of the PSA. Such action could lead to liability under civil rights laws.

Despite the fact that the time frames for action by the LPC set forth in the Initiative clearly violate the Permit Streamlining Act, the Initiative also states that the ordinance should “not be interpreted contrary to the state Permit Streamlining Act.” This clear conflict between provisions is expected to require interpretation by the courts, requiring litigation, with unknown costs related to that litigation and unknown consequences related to the Court’s interpretation of how the ordinance must be applied in conformance with State law. Finally, if Proposition 90 on the November ballot were to pass, the City could be liable to compensatory claims of taking of property, since the proposition requires the payment of damages for any diminution in property values as a result of a new law.

Modifications to an ordinance adopted by initiative can only be made by a vote of the people. Therefore, any updating of the ordinance to bring it into conformance with existing or future State law or to modify it to address changed circumstances would be subject to being placed on the ballot, with increased costs for city staff, printing and other costs associated with ballot measures.

2. Effect on the internal consistency of the city's general and specific plans, consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 and 4.3 of Division 1 of Title 7 of the Government Code.

The proposed Initiative is generally consistent with provisions of the General Plan related to historic resources. Policies of the General Plan call for the LPO and Zoning ordinance to be updated to further the protection of historic resources. If adopted by the Initiative, future updates to the LPO will be subject to a vote of the people making modifications more cumbersome and difficult to implement in a timely manner. The requirement for ballot measures to modify the ordinance is also a limit on the City's actions in the future.

The Zoning Ordinance establishes certain procedures for processing applications for development and demolition. Some provisions in Title 19.20 are obsolete and probably were adopted during a period when applicants applied directly to the Building Department for demolition of most structures and may not have been required to obtain zoning approval. While a building permit for demolition is still required, virtually all applications for demolition (with the exception of some types of accessory structures) must first receive a Use Permit under the Zoning Ordinance from the Zoning Adjustments Board prior to applying for a demolition permit from the Building Department. Because the provisions in Title 19.20 are obsolete, the City Attorney has for some time harmonized these provisions with the procedures in the Zoning Ordinance. Applications for demolition permits at the Building Permit stage have not been referred to the LPC for some years if a Use Permit for the demolition has already issued, and the suspension procedures described in this section have not been applied because they would violate the PSA. In July 2006, Chapter 19.20 was repealed.

The Initiative would specifically reapply these obsolete provisions and strengthen them, and, according to Section 3.24.350 of the Initiative, would supersede the Zoning Ordinance. This section, in concert with Section 3.24.240 would allow for suspension of demolition permits for 6 months for Structures of Merit and 1 year for Landmarks, in clear violation of the PSA.

If applied as written, Title 19.20 would place applications for demolitions in double-jeopardy because, notwithstanding having received a Use Permit from the Zoning Adjustments Board, projects would nonetheless be subject to further referral to the LPC upon applying for a building permit under Title 19.20. Once an application was received by the LPC, the demolition could be delayed by a maximum of 340 days until a determination by the LPC as to whether the structure is an historic resource. If a building is then determined to be a Landmark, the demolition permit can be suspended for another year. As noted earlier, this 340 day period and suspension would begin after the usual discretionary process related to a Use Permit will have been completed and approved. Finally, if the building proposed for demolition is determined to be an historic resource, the status of the demolition under CEQA and of any other entitlements would be in question.

Section 65008 of the Government Code generally prohibits discrimination against several protected classes of people. The Initiative should not lead to any increased discrimination against protected classes.

Chapter 4.2 and 4.3 of the Government Code relate to the provision of affordable housing. The 1974 LPO has occasionally delayed the processing of development applications for housing development projects thereby having some impact on the cost of housing due to increased costs associated with delays. Such increases in costs can include the cost of holding property, increases in construction costs, increases in staff costs for processing applications, and the costs associated with preparation of additional unexpected environmental analyses. Attorneys' fees and other costs have also sometimes been required to protect applicant rights during long, involved processes. Complex multiple proceedings also increase the uncertainty of outcome which may discourage property owners from pursuing development applications for new housing development.

The Initiative would establish some deadlines for action once a site is initiated, but still allows for initiation of projects at any time prior to the time a project receiving a building permit. There are no provisions that would prevent a project having received all entitlements from being initiated for landmark status, beginning a 250 day process for historic review. At that point, a determination that a project is not an historic resource would violate the PSA (assuming that no other significant environmental issues were found) and a determination that a site is an historic resource would also violate the PSA if impacts can be mitigated. The procedures that would continue to be allowed under the Initiative would not comply with the Permit Streamlining Act that requires a timely and predictable process for review and action on development applications. As has already been noted, other provisions of the Initiative would allow for additional review when a demolition building permit is requested for non-residential structures, after entitlement has been given under the Zoning Ordinance, including a 340 day review process and a possible additional 1 year suspension if a site is determined to be a Landmark. All told, the application and review process could require 2+ years under these various provisions.

The process allowed under the Initiative would clearly continue to conflict with the PSA, in violation of State laws passed to protect the rights of applicants. As noted above, increased application time generally translates into increased costs and increased uncertainty that can have a dampening effect on applications for housing development. Therefore, the proposed Initiative would continue to have some impact on meeting housing needs.

3. Effect on the use of land, impact on housing and meeting regional housing needs.

The Initiative would continue to allow for initiating and designating historic resources and for the processing of applications to modify those resources once identified. Therefore, the Initiative would have similar impacts on land use as existing law.

As discussed in previous sections, the existing 1974 LPO has occasionally delayed the processing of applications for housing development projects, thereby having some impact on the

cost of housing due to increased costs associated with delays. Such increases in costs can include the cost of holding property, increases in construction costs, increases in staff costs for processing applications, and the costs associated with preparation of additional unexpected environmental analyses. Attorneys fees and other costs have also sometimes been necessary to protect applicant rights during long, involved processes. Complex multiple proceedings also increases uncertainty of outcome which may discourage property owners from pursuing development applications for new housing development.

The Initiative establishes some deadlines for action, but continues to allow for longer time frames for making determinations under CEQA than permitted by the PSA, continues to allow for initiation of buildings many months after an application has been filed (in further violation of the PSA) and allows for potentially very long processes for non-residential demolition permits once the zoning entitlement has been given. As noted above, increased application time and complex processes generally translate into increased costs and increased uncertainty that can have a dampening effect on applications for housing development. The proposed Initiative is therefore expected to have similar impact on meeting regional housing needs as the existing 1974 LPO, and because it is written into law by initiative, cannot be readily modified to conform to the law except by court action.

4. Impact on funding for infrastructure

Funding for infrastructure is partially related to new or increased tax revenue that, in part, is tied to the amount of new development. The proposed Initiative would maintain most of the existing 1974 LPO's lack of conformance with the PSA in regard to application timelines and increase the potential for competing and overlapping procedures and actions for certain types of projects, partially by reinvigorating an obsolete section of the BMC. Therefore, projects will continue to be slowed or discouraged by the Initiative, thereby having a marginal and comparatively small impact on funding available for infrastructure.

5. Ability to attract and retain business and employment.

Retaining and attracting new business and employment partially relates to the ease of applying for and receiving permission to construct new buildings and facilities or modify existing buildings. Because businesses and developers have locational choices, a slow, uncertain or costly process puts the City at a competitive disadvantage in relation to other cities who do conform to the requirements and timelines of the PSA and have more certain and predictable development application processes. Because the Initiative maintains longer and more uncertain processing schedules, the Initiative will continue to have a negative impact on the City's ability to attract and retain business and employment in relation to other jurisdictions.

6. Impact on use of vacant parcels

There are relatively few vacant parcels in Berkeley and these parcels, for the most part, are not generally subject to the Landmarks Ordinance unless they are adjacent to a building or site that is a landmark or structure of merit. The proposed Initiative should have no impact on such parcels.

7. Agricultural lands, open space, traffic congestion, existing business districts and developed areas designated for revitalization.

There is virtually no agricultural lands in Berkeley, and most open space is in parks or in the waterfront, areas that will be generally unaffected by the Initiative. In regard to areas designated for revitalization, as has been previously described, the proposed Initiative will maintain increased timelines and increased uncertainty of the process in violation of the Permit Streamlining Act and therefore continue the existing ordinance's detrimental impacts on the City's ability to attract and retain businesses. The General Plan identifies several areas where revitalization is desirable and to the degree that the proposed Initiative maintains practices that place the city at a competitive disadvantage in relation to other jurisdictions, the Initiative will discourage revitalization of those districts.

POSSIBLE FUTURE ACTION

None

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CONTACT PERSON

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Attachments:

1: LPO Initiative

The Landmarks Preservation Ordinance update 2006

Be it Ordained by the voters of the City of Berkeley: This ordinance will amend Chapter 3.24 and Chapter 19.20 of the Berkeley Municipal Code to read as follows:

Chapter 3.24 LANDMARKS PRESERVATION COMMISSION*

Section 3.24.010 Findings and purposes of provisions.

A. It is found that structures, sites and areas of special character or special historical, architectural, cultural, educational, 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.

* For provisions concerning review of demolition permit applications for nonresidential buildings, see Ch. 19.20 of this code.

Section 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 3.24.090, and elsewhere in this chapter with respect to historical or architectural preservation.

Section 3.24.030 Membership--Appointments--Organization and officers.

A. The commission shall consist of nine members. At least four of the nine members shall have expertise in the field of historic preservation by virtue of their profession or education. Expertise may be in, but not limited to the following: history, architecture, architectural history, archaeology, pre-history, cultural anthropology, preservation planning, landscape design or architectural design. Appointments to the commission shall be made by councilmembers and vacancies on the commission shall be filled by councilmembers 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.

B. ~~The Director of Planning and Development Assistant City Manager for Planning and Community Development~~, or his or her representative, shall serve as Secretary of the commission, without vote. The Department of Planning and ~~Community Development~~ shall provide staff assistance to the commission. The staff to the Commission shall have extensive experience and or expertise in historic preservation planning by virtue of their profession or education.

C. The commission shall elect annually in July a chairperson from among its members, and shall establish rules and regulations for its own organization and procedure. Three successive unexcused absences from regular meetings by a member shall constitute automatic termination of membership.

Section 3.24.040 Definitions.

For the purposes of this chapter certain terms used herein are defined as follows:

City: The City of Berkeley.

Commission: The Berkeley Landmarks Preservation Commission.

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

Historic District: Properties that have been designated a City of Berkeley historic district pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Historic Resource: For the purposes of this chapter, and for purposes of environmental review under the provisions of the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code, an historic resource shall be defined as:

a. Any property designated a City of Berkeley landmark, structure of merit, or located in an historic district.

b. Any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places.

c. Any property identified as significant in an historical resource survey meeting the requirements of Public Resources Code Section 5024.1(g).

d. Any property the City of Berkeley determines to be historically significant pursuant to, California Code of Regulations Section 15064.5(3).

Initiated property: Any property that is undergoing review before the Landmarks Preservation Commission to determine whether it should be designated a City of Berkeley landmark, structure of merit or, historic district pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Integrity: The authenticity of an historical resource's physical identity as evidenced by the survival of characteristics that existed during the resource's period of significance.

a. A resource that maintains enough of its historic character or appearance to be

recognizable as an historic resource and to convey the reasons for its significance whether or not it has been rehabilitated or restored.

b. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must be judged with reference to the particular criteria under which the resource is eligible to be designated. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, architectural or educational significance.

c. It is possible that an historical resource may not retain sufficient integrity to meet the criteria for listing in the California Register of Historic Resources but may still be eligible to be designated a City of Berkeley landmark, structure of merit or historic district. A resource that has lost its historic character or appearance may still have integrity if it maintains the potential to yield identifiable historical, cultural, archaeological, architectural or educational information.

Landmark: Any property that has been designated as a City of Berkeley landmark pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Permit Streamlining Act: California Government Code Section 65920.

Structure of Merit: Any property that has been designated a City of Berkeley structure of merit pursuant to Chapter 3.24 of the Berkeley Municipal Code.

The Secretary of the Interior's Guidelines for the Treatment of Historic Resources: Illustrated rehabilitation guidelines specific to the Secretary of the Interior's Standards for Rehabilitation published by the National Park Service Technical Preservation Services.

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

The commission shall:

A. ~~After June 6, 1974, u~~ Undertake to establish and maintain ~~a list~~ an ongoing list of landmarks, structures of merit and historic districts to carry out the objectives and purposes of this chapter. ~~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, structures of merit 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 u~~ Utilize this initial list for the designation of landmarks, structures of merit 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.

Section 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. The~~ commission may:

A. Designate, after public hearings, structures, sites and areas including single structures or sites, portions of structures, groups of structures, manmade or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural, cultural, educational, 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;
3. A structure of merit. ~~For the purposes of this chapter, structure of merit includes~~

~~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, cultural, educational, archaeological or aesthetic interest or value;

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 Sections 3.24.220 through 3.24.250 and 3.24.350A below;

C. Take steps to encourage or bring about preservation of structures, sites and areas where the commission has decided to suspend ~~a action on~~ permit application, as more fully set forth in Sections 3.24.220 through 3.24.250 below.

Section 3.24.070 Powers and duties generally.

In connection with the foregoing power and authority, the commission may:

A. Conduct historic surveys in order to establish and maintain lists of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition, as more fully set forth in Section 3.24.330 below;

B. Carry out, assist and collaborate in 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 structures, sites and areas that it has reason to believe worthy of preservation with the permission of the owner or the owner's agent;

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 landmarks, property in historic districts and other officially recognized property of historical or architectural interests;

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 to the approval of the City Council.

Section 3.24.080 Permit application--Suspension authorized when.

~~The Director of Planning and Development, Assistant City Manager for Planning and Community Development, prior to completion of the initial list of structures, sites and areas,~~ shall have the authority ~~to deny without prejudice recommend to the City Council that an application suspension of an application~~ for a maximum of one hundred eighty days, if in the judgment of the ~~Director of Planning and Development Assistant City Manager for Planning and Community Development,~~ an emergency is deemed to exist and ~~an historic resource structure, site or area appropriate for landmark status~~ is threatened with imminent destruction or substantial alteration.

Section 3.24.090 Annual report required.

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

Section 3.24.100 Landmarks, historic districts and structures of merit--Designation--Procedures required--Control and standards.

A. Each designation of a landmark, historic districts 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 upon designation 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.

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 section for an original landmark designation.

Section 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.

A. Landmarks and historic districts: General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:

1. Architectural ~~value:~~ ~~merit:~~
 - a. Property that is the first, last, only or most significant architectural property of its type in the region;
 - b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; ~~or~~

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

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

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

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

5. Any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places, which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

6. Archaeological value: Sites that have value by virtue of prehistoric or historic occupation or activity such as, but not limited to, Native American habitation and ceremonial sites.

7. Integrity: A resource that maintains enough of its historic character or appearance to be recognizable as a historic resource and to convey the reasons for its significance as defined further in Section 3.24.040.

B. Structures of Merit: Criteria which the commission shall use when considering a structure for structure of merit designation are as follows:

1. General criteria shall be architectural value merit and/or cultural, educational, archaeological, or historic or aesthetic interest or value. If upon assessment of a structure, the commission finds that the structure ~~does not currently meet the criteria set out for a Landmark,~~ but is worthy of preservation as a significant part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit.

2. Specific criteria include, but are not limited to one or more of the following:

a. The age of the structure is contemporary with (1) a designated landmark within its neighborhood, block, street frontage, or group of buildings, or (2) an historic period or event of significance to the City, or to the structure's neighborhood, block, street frontage, or group of buildings.

b. The structure is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block, street frontage, or group of buildings.

c. The structure is a good example of architectural design.

d. The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.

e. The structure retains its historical integrity as defined in Section 3.24.040.

Section 3.24.120 Landmarks, historic districts and structures of merit--Designation--Initiation procedures.

Initiation of a landmark or structure of merit designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least twenty five ~~fifty~~ residents of the City. Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. Where such

application is submitted for designation of an historic district, initiation may be by the commission on its own motion, or initiation may ~~the application must~~ be subscribed by, or on behalf of, a majority of the property owners or residents of the proposed district.

Section 3.24.130 Designation proposal--Public hearing--Required--Recordkeeping.

The commission shall hold a public hearing on the proposal and shall set a time and place for such hearing. Such hearing shall be held within seventy days of the filing of the application or resolution to initiate. A record of pertinent information presented at the hearing shall be made and maintained as a permanent record.

Section 3.24.140 Designation proposal--Public hearing notice requirements.

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than thirty ~~ten~~ 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 thirty days ~~ten days~~ prior to the date of such hearing to the property owner or his or her authorized agent, and not less than ten days prior to the date of such hearing to all property owners having property and each residential or other unit within three hundred feet of the property referred to in the application; provided, however, that the failure of any such property owner or resident 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 any City committee or City agency serving the area of the proposed designation which affects property owners and tenants.

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.

Section 3.24.150 Designation proposal--Time limit for determination.

The commission shall approve, disapprove or modify the proposal within one hundred eighty days ~~after the conclusion~~ of the opening of the public hearing; failure to act within said time shall constitute disapproval.

Section 3.24.160 Designation proposal--Notice of decision required.

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.

Section 3.24.170 Designation proposal--Disapproved--Waiting period for resubmission.

If a proposal initiated by application has been disapproved by the commission or by the City Council on appeal as more fully set forth in Section 3.24.300 below, no subsequent application that is the same or substantially the same may be submitted or reconsidered for at least two years from the effective date of final action by the commission or by the City Council on the original proposal.

Section 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.

Section 3.24.190 Council certification authorized when--Effect.

Notwithstanding any of the provisions of this chapter, the council may certify to the council any action of the commission in granting or denying an application for designation as a landmark or an historic district, but such action of the council shall be taken within fifteen days from the mailing of the notice of the decision of the commission. Such certification to the council shall stay all proceedings in the same manner as the filing of a notice of appeal.

Section 3.24.200 Landmarks, historic districts and structures of merit--Construction, alteration or modification--Approval required.

No person shall carry out or cause to be carried out on a designated landmark, in a designated historic district or structure of merit, any construction, alteration, or demolition for which a City permit is required, without approval by the commission pursuant to Sections 3.24.220 through 3.24.250 hereof, except in conformity with the provisions of Section 3.24.280 hereof. In addition, no such work shall take place unless all other applicable laws and regulations have been complied with, and a permit has been issued for said work.

Section 3.24.210 Review of permit applications.

A. The commission shall maintain with the Department of Planning and ~~Community~~ Development and the department's zoning and codes and inspection division a current record of designated landmarks, historic districts and structures of merit, as well as any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places ~~as~~ and a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site, or on an initiated landmark site, in an initiated historic district or on an initiated structure of merit site, the Department of Planning and ~~Community~~ Development shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 3.24.280 of this chapter, promptly forward such permit application to the commission for review.

B. The City Council shall set by resolution the fees for Landmarks Preservation Commission review of any application for a permit to carry out any construction, alteration or demolition on an initiated or designated nonresidential landmark site (or nonresidential portion thereof), in an initiated or designated historic nonresidential district (or nonresidential portion thereof), or on an initiated or designated nonresidential structure of merit (or nonresidential portion thereof.)

Landmarks Preservation Commission review of applications for permits to carry out any construction, alteration, or demolition on residential initiated or designated landmarks, residential initiated or designated historic districts and residential initiated or designated residential structures of merit, located in any zoning district and nonresidential initiated or designated landmarks, nonresidential initiated or designated historic districts and nonresidential

initiated or designated structures of merit located in residential zoning districts, are not subject to the landmarks review fees.

Applicants who are qualified non-profits and other applicants with projects valued at less than three hundred fifty thousand dollars 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.

Section 3.24.220 Permit application--Data and public hearing required--Exceptions.

A. The commission shall review the permit application in accordance with the provisions of this section and Sections 3.24.230 through 3.24.250 except:

1. When the application is for a permit to do ordinary maintenance and repairs, unless, in the opinion of the commission, approval of the said application would seriously conflict with the purposes and standards of this chapter or the provisions of the designation.

2. 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.

B. Any such permit application referred to the commission 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 by the commission, the commission shall inform the applicant of the additional data required, and the applicant shall supply said data.

C. Except for permits issued pursuant to subsection A.1, of this section, the commission shall hold a public hearing on the permit application. Such public hearing shall be held within seventy days after receipt by the commission of the application.

Section 3.24.230 Permit application--Public hearing notice requirements.

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than thirty ~~ten~~ 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 thirty days ~~ten days~~ prior to the date of such hearing to the property owner or his or her authorized agent, and not less than ten days prior to the date of such hearing to all property owners having property and each residential or other unit within three hundred feet of the property referred to in the application; provided, however, that the failure of any such property owner or resident 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 any City committee or City agency serving the area of the proposed designation which affects property owners and tenants.

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.

Section 3.24.240 Permit application--Decision--Procedure and time limitations--Notification required.

A. The commission shall consider the conformance of the proposed work with the purposes and standards in this chapter and with the provisions of the designation. The commission shall approve, suspend or disapprove the application as specified below in this section, or, with the applicant's consent, shall modify and approve the application, within thirty days after the

conclusion of the public hearing. Failure to act within said time shall constitute approval. The commission shall promptly notify in writing the owners or, where appropriate, authorized agents and residents of the property of its decision. The commission 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.

B. For such permit applications reviewed by the commission:

1. If the application is for a permit to make exterior alterations or to carry out new construction the commission shall approve, modify or disapprove the application in whole or in part, or suspend ~~action on~~ it for a period not to exceed one hundred eighty days for a landmark or a structure located in an historic district, and for a period not to exceed ninety days for a structure of merit.

2. If the application is for a permit to demolish the commission shall approve, disapprove or modify the application in whole or in part, or suspend ~~action on~~ it for a period not to exceed one year for a landmark or a ~~designated~~ structure in an historic district, and for a period not to exceed one hundred eighty days for a structure of merit; however, no demolition permit approved for a City of Berkeley landmark, ~~designated~~ structure in an historic district, or structure of merit shall be activated following the appropriate period of suspension stated above until the building permit for the replacement structure is presented to the Codes and Inspections Division of the Department of Planning and ~~Community~~ Development.

Section 3.24.250 Permit application--Effect of suspended action.

In the event ~~action on~~ the application is suspended as provided above in Section 3.24.240, the commission may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purposes of this chapter. Such steps may include, but shall not be limited to, consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies and exploration of the possibility of moving one or more structures or other features.

Section 3.24.260 Permit application--Review standards and criteria.

A. The commission shall be guided by the standards in this section in its review of permit applications for work on a landmark site, in an historic district or on a structure of merit site. In appraising the effects and relationships mentioned herein, the commission shall in all cases consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant.

B. In all instances, the proposed work shall be as appropriate for and as consistent with the purposes of this chapter as is possible within the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation. In judging the appropriateness of the proposed work, the commission shall be guided by: The Department of the Interior Guidelines for the Treatment of Historic Resources.

C. Approval of permit applications pursuant to this section may be granted only upon determination that the proposal conforms to the criteria set forth in paragraphs 1 and 2 below:

1. For permit applications for construction, alteration or repair:

a. For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; nor shall the proposed work

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

b. For applications relating to property in historic districts, the proposed work shall not adversely affect the exterior architectural features of the subject property or the relationship and congruity between the subject structure or feature and its neighboring structures and surroundings, including facade, setback and height; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the district. The proposed work shall also conform to such further standards as may be embodied in the designation of the historic district.

c. For applications relating to structure of merit sites, the proposed work shall not adversely affect the architectural features if architectural merit is the basis for designation; nor shall the proposed work adversely affect the special cultural, educational or historical interest or value if that is the basis for designation.

2. For permit applications for demolition: the commission shall find that the designated landmark, historic district or structure of merit or portion thereof is in such condition that it is not feasible to preserve or restore it, taking into consideration the ~~economic~~ feasibility of alternatives to the proposal, and balancing the interest of the public in preserving the designated landmark, historic district or structure of merit or portion thereof, and the interest of the owner of the landmark site, historic district, or structure of merit site, in its utilization.

Section 3.24.270 Permit application--Finding of hardship authorized when--Effect.

Regardless of whether or not the standards set forth in Section 3.24.260 are met, the commission may approve a permit application to carry out alterations or construction on a landmark site, in an historic district or on a structure of merit site, if the applicant presents clear and convincing evidence to the commission that such disapproval will result in work immediate and substantial hardship because of conditions peculiar to the particular structure or feature involved, and that failure to disapprove the application will be consistent with the purposes of this chapter. If hardship is found to exist under this section, the commission shall make a written finding to that effect, and shall also specify in writing the facts relied upon in making such finding. Nothing in this section shall prohibit the commission from acting to modify or to suspend ~~action on~~ any application pursuant to Sections 3.24.220 through 3.24.250 hereof.

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

None of the provisions of this chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature, or part thereof, which such condition has been declared unsafe or dangerous by the Planning and ~~Community~~ Development Department or the Fire Department, and where the proposed measures have been declared necessary, by such department or departments, to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. 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.

Section 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, "landmark, historic districts and structure of merit sites" include the landscape features and amenities of the designated district when specifically included as a part of the designation.

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

A. An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Arts Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least ~~twenty-five~~ ~~forty~~ ~~fifty~~ residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the Notice of Decision ~~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. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

B. The filing of a notice of appeal within the time and in the manner specified in subsection A above shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal, as provided herein. Within twenty-five days following the filing of the notice of appeal, the City Council shall review the action of the commission and may do any one of the following:

1. Refer the matter back to the commission for further consideration, in which case the commission shall conduct such further investigation as it shall deem advisable and report its conclusion to the City Council;

2. If the facts stated in or ascertainable from the application, the notice of appeal, the written statement of the commission setting forth the reasons for its decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the commission and dismiss the appeal;

3. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and 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 3.24.140. The City Council may reverse or affirm wholly or partly, or modify any decision, determination or requirement of the commission, and may make decisions or determinations or 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.

C. If a public hearing is set on the appeal pursuant to subsection B above, the council must decide the appeal within thirty days from the date that the public hearing on the appeal is closed. ~~opened~~. If the council is unable to act on such appeal within such time, the decision of the commission shall be automatically affirmed.

D. 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.

E. Payment of fees for an appeal from the decision of the Landmarks Preservation Commission shall be set by resolution of the City Council.

Section 3.24.310 Advice and guidance to property owners.

The commission may render advice and guidance with respect to any proposed work not requiring a City permit, on a designated landmark site, in a designated historic district or on a designated structure of merit site. 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.

Section 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 or may acquire 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 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 Planning Commission, 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.

Section 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.

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

Before accepting for filing any application hereinafter mentioned, the commission shall charge and collect the fees herein specified:

A. For each application for designation of a landmark or a structure of merit, the fee shall be fifty dollars;

B. For each application for designation of an historic district, the fee shall be one hundred dollars;

C. There shall be no fee for each application for designation of a landmark, an historic district or a structure of merit, if such application is initiated by the commission, or by resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission.

Section 3.24.350 Applicability of provisions.

A. No application for a permit to construct, alter or demolish any structure or other feature on a site, filed subsequent to the day that an application has been filed, or a resolution adopted to initiate designation of the said site as a landmark, an historic district, or a structure of merit, shall be approved while proceedings are pending on such designation; provided, however, that after one hundred eighty days have elapsed from the opening of the public hearing ~~date of initiation of~~ on said designation, unless the application has been suspended pursuant to Sections 3.24.220 through 3.24.250, if final action on such designation has not been completed, the permit application may be approved.

B. The provisions of this chapter shall be inapplicable to the construction, alteration, or demolition of any structure or other feature on a proposed 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 an application has been filed or a resolution adopted to initiate the designation of the said landmark site, ~~or~~ historic district or structure of merit and where such permit has not expired or been cancelled or revoked, provided that construction is started and diligently prosecuted to completion in accordance with the building code

C. No provision of this chapter shall be construed to prevent compliance with the state laws governing permit streamlining, the Permit Streamlining Act (PSA) Section 65920 of the Government Code, or the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code.

D. To the extent that provisions of this ordinance are in conflict with any provisions of the Berkeley Municipal Code or zoning ordinance of the City of Berkeley in effect prior to the date this ordinance is enacted, the provisions of this ordinance shall control.

E. 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.

Section 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 structure of merit, upon presentation of clear and convincing evidence demonstrating to the satisfaction of the commission that compliance with these regulations will work immediate and substantial financial hardship on such owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or a structure of merit, shall be exempt from the provisions of this section and Sections 3.24.370 through 3.24.390.

Section 3.24.370 Enforcement--Inspection services authority.

It shall be the responsibility of the Department of Planning and ~~Community~~ Development to administer and enforce the provisions of this chapter through its division of codes and inspection service.

Section 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 Assistant City Manager for Planning and ~~Community~~ Development shall enforce the provisions thereof by any of the following means:

A. The ~~Director~~ ~~Assistant City Manager~~ for Planning and ~~Community~~ 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, 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.

Section 3.24.390 Violation--Penalty.

Any violation of any provisions of this chapter shall be deemed a misdemeanor and shall be punishable as set forth in Chapter 1.20 of this code.

Chapter 19.20 REVIEW OF DEMOLITION PERMIT APPLICATIONS FOR NONRESIDENTIAL BUILDINGS

Section 19.20.010 Purposes.

The City Council finds and declares that:

A. A substantial number of Berkeley's nonresidential buildings, such as commercial, office, industrial, manufacturing, or institutional structures are valuable expression of the City's architectural and historical heritage;

B. Adequate procedures are needed to assure an opportunity to review such buildings' historical, architectural, cultural, educational or aesthetic significance before demolition permits are issued for such buildings; and

C. A process for the exploration of restoration and reuse of such buildings as alternatives to demolition promotes the welfare of the community and saves valuable resources.

Section 19.20.020 Applicability.

The procedures established by this chapter shall apply to all applications for a permit to demolish any nonresidential building or portion thereof which was constructed more than forty years prior to application, except accessory buildings containing less than three hundred square feet or unsafe buildings.

Section 19.20.030 Definitions.

A. "Accessory building" is any subordinate nonresidential building on a lot or building site, the use of which is incidental to that of the main building on the same lot or building site.

B. "Building official" refers to the Director ~~Assistant City Manager~~ of Planning and ~~Community~~ Development of the City of Berkeley or his/her authorized representative in the issuance of permits.

C. "Landmarks Preservation Ordinance" refers to that ordinance codified as Chapter 3.24 of the Berkeley Municipal Code.

D. "Unsafe building" refers to any nonresidential structure which is determined to be unsafe, hazardous and which endangers the life or health of residents or tenants therein or in the vicinity thereof and shall include:

1. Any building determined to be hazardous pursuant to Section 203 of the 1979 Uniform Building Code as adopted by Ordinance No. 5389-N.S. and any subsequent editions of such Code which may be adopted by the City of Berkeley.

2. Any building determined to be a health and safety hazard pursuant to Chapter 11.36 of the Berkeley Municipal Code.

3. Any building determined to be unsafe pursuant to the Uniform Fire Code of 1971 as adopted by Ordinance No. 4647-N.S. and any subsequent editions of such Code which may be adopted by the City of Berkeley.

Section 19.20.040 Procedures.

The following requirements shall apply to any application for issuance of a demolition permit for any nonresidential building or portion thereof which falls within the provisions of Section 19.20.020 of this chapter and shall modify the requirements, standards and procedures for demolition permits set forth in Chapter 3 of the 1979 Uniform Building Code as adopted by Ordinance No. 5389-N.S. and subsequent editions and amendments to such Code which are adopted by the City of Berkeley.

A. Each such demolition permit application shall be forwarded by the building official to the Landmarks Preservation Commission for review. Within thirty days of receiving the application the building official shall notify the applicant in writing that the application is not yet complete and the application will remain incomplete pending the expiration of the review periods set forth in this chapter. ~~no further action on such application may be taken by the building official until the expiration of the referral periods set forth in this chapter.~~

~~B. At the first regular meeting following receipt of the permit application the The Landmarks Preservation Commission shall review the application and determine whether the building involved is potentially eligible for designation as a landmark pursuant to the criteria and procedures set forth in the Landmarks Preservation Ordinance. provided, however, that its action must comply with the time limits specified in this chapter.~~

~~C. Within sixty days of receiving the application theThe Landmarks Preservation Commission shall either notify the building official either that it intends to take no action or shall initiate proceedings to designate the property. building as a landmark within thirty five days from the date the demolition permit application is filed with the building official..~~

~~D. If the commission elects to initiate such proceedings, a public hearing shall be held within seventy days of the date of initiation and a decision issued concerning such designation within 180 days of the opening of the public hearing sixty days of initiation. The building official's action on such demolition permit application shall be further stayed for an additional fifteen days after the Landmarks Preservation Commission's decision and pending completion of the commission's action on the designation and any Council action on any appeal which may be filed from the commission's action. If a property building is designated, as a landmark, action upon the demolition application will be governed by the provisions of the Landmarks Preservation Ordinance, provided, however, that any suspension of commission action on the appropriateness of a demolition permit pursuant to Berkeley Municipal Code Section 3.24.240 subsection B.2 shall not exceed a maximum of one year, such period of suspension to be measured from the date that of the application is deemed complete. application's initial filing with the building official. The building official shall issue the demolition permit upon the expiration of any such period of suspension upon the permit applicant's request. The time limits for commission designation provided for in subsection C, and Council appeals pursuant to Berkeley Municipal Code Section 3.24.300, shall be jurisdictional.~~

~~E. In the event that any of the time limits applicable are exceeded or if designation is denied, the building official shall deem the requirements met and may act upon the application in the normal manner.~~

~~F. No provision of this section shall be construed to prevent compliance with the state laws governing permit streamlining, the Permit Streamlining Act (PSA) Section 65920 of the Government Code, or the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code.~~

~~G. None of the provisions of this section shall be construed to allow demolition of a structure pursuant to Section 19.20.030 subsection D 1,2,3, if feasible measures exist to abate the unsafe or dangerous conditions. Only such work as is reasonably necessary to correct the unsafe or dangerous conditions may be performed pursuant to this section.~~

~~H. Notwithstanding any other provisions of this chapter, the Director of Planning and Development, shall have the authority to deny without prejudice an application for a maximum of one hundred eighty days, if in the judgment of the Director of Planning and Development, an emergency is deemed to exist and an historic resource is threatened with imminent destruction or substantial alteration.~~

Section 19.20.050 Rules and regulations.

The building official may issue such rules and regulations as are necessary to administer the provisions of this chapter.

