

**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 Declaration of purpose of revision—Severability.**

A. This chapter as reenacted in 2006, is the culmination of approximately six years of intense work by the City Council, various city boards and commissions, the public and staff. This work included innumerable public hearings, discussions and workshops by the Landmarks Preservation Commission and subcommittees thereof over the course of approximately four years, all of which were attended by members of the public and City staff, as well as several Planning Commission and Council meetings and public hearings.

B. This extensive public process ~~addressed included negotiations between stakeholders about a number of important, controversial and inextricably linked issues, including:~~

1. adopting a new requirement that structures and sites must have "integrity" to be designated under the LPO;
2. granting the Landmarks Preservation Commission new authority over demolitions;
3. amending the findings required in order to allow alterations and demolition of designated structures and sites;
4. establishing deadlines applicable to the designation and permitting processes;
5. creating alternative means of meeting the deadlines imposed by the Permit Streamlining Act, such as the "request for determination" process; and

6. clarifying responsibility for environmental review.

C. As a result of the extensive public process and negotiations, this chapter as reenacted in 2006 includes numerous provisions ~~compromises~~ intended to address the legitimate concerns and aspirations of all stakeholders. ~~While no group of stakeholders will be fully satisfied by this chapter as reenacted in 2006, similarly no group should be entirely dissatisfied.~~ Each of the important and controversial issues listed in this section is a critical element of the overall ~~compromise and~~ policy decision to reenact this chapter.

D. Subject to the preceding statement of the Council's intent in adopting this chapter as revised in 2006, it is the Council's intent that the validity and operative effect of the revised chapter as a whole be maintained and protected. To this end, the Council declares that, except as set for in subdivisions A-C of this section, 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, except as set for in subdivisions A-C of this section, 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. 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.