




Office of the City Manager

CONSENT CALENDAR

December 5, 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

RECOMMENDATION

Staff recommends that the Council:

1. Adopt the attached a resolution rescinding the first reading of the proposed revised Landmarks Preservation Ordinance;
2. Adopt the attached a resolution concerning environmental review of the revised Landmarks Ordinance; and
3. Adopt first reading of the attached ordinance adopting the revised Landmarks Preservation Ordinance.

SUMMARY

In July of this year the Council had intended to adopt a revised Landmarks Preservation Ordinance (LPO), and adopted the first reading of a revised ordinance, to take effect on November 1<sup>st</sup>. Ultimately, however, the Council did not adopt the second reading of the proposed ordinance, and instead decided to await the outcome of the election on the Landmarks Preservation Initiative (Measure J).

Now that the election results are final, it would be appropriate for the Council to adopt the proposed revisions, effective thirty days after the second reading.

Since this report was drafted, the question has been raised whether it would be possible to subject to a referendum a portion of the proposed revised LPO. Under the California Constitution the electors may refer all or part of a statute or ordinance. However this power is subject to the limitation that the part referred must be severable from the remainder of the ordinance.<sup>1</sup>

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<sup>1</sup> Article II, section 9 of the California Constitution states that the “referendum is the power of the electors to approve or reject statutes or parts of statutes . . .” In *Dye v. Council of Compton* (1947) 80 Cal.App.2<sup>nd</sup> 486, the Court of Appeal allowed a referendum against two parts of an ordinance to proceed, under former Article IV, section 1 of the California constitution. More

In order to be considered severable, a part of an ordinance must be grammatically, functionally, and volitionally separable from the remaining parts of the ordinance.<sup>2</sup>

It is staff's understanding, based on the lengthy process that culminated in the revised LPO, that the revised LPO embodies a global compromise involving at least the following major issues:

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

Thus, staff's understanding of the Council's intention in adopting the revised LPO is that it is not severable, at least with respect to these issues. That is, none of the provisions that address these issues is severable, and the Council would not adopt the revised LPO if it lacked even one of these provisions. In other words, the revised LPO must stand or fall as a whole.

Accordingly, the revised LPO now proposed for Council adoption (Attachment 3) is identical to the version the first reading of which was adopted by the Council in July 2006, except in two respects: (1) the November 1<sup>st</sup> effective date has been omitted; and (2) a new section 3.24.105 has been added, expressing the Council's intention, as understood by staff.

Also attached are: a resolution rescinding the first reading of the ordinance (Attachment 1) and a resolution regarding environmental review (Attachment 2). For the Council's information, we have also attached the July 11<sup>th</sup> staff report concerning this matter (Attachment 4) and the Initial Study/proposed Negative Declaration (Attachment 5).

#### FISCAL IMPACTS OF RECOMMENDATION

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recently, in *Nome v. Town of San Anselmo* (1989) 211 Cal.App.3<sup>rd</sup> 1497, the court cited *Dye* and Article II, section 9 of the California Constitution to uphold the power of referendum as to portions of an ordinance. In *Dye*, the Court's holding rested substantially on the fact that the parts of the ordinance at issue were severable from the remaining portions of the ordinance. Similarly, in *Nome* the portion of the ordinance being referred was severable from the remainder.

<sup>2</sup> See, *Barlow v. Davis* (1999) 72 Cal.App.4<sup>th</sup> 1258, 1264.) This means that even if a part of an ordinance is mechanically separable, remaining sections must be viable standing alone and capable of independent application, and further, that the remaining ordinance must be "complete in itself and would have been adopted without the invalidated portion." (*Id.* at 1265-1266.)

None; see discussion in attachment 4.

CURRENT SITUATION AND ITS EFFECTS

See preceding discussion in Summary; see also discussion in attachment 4.

ALTERNATIVE ACTIONS CONSIDERED

None; see discussion in attachment 4.

CONTACT PERSON

Dan Marks, Director, Planning and Development Department 981-7400

Attachments:

- 1: Resolution rescinding first reading of revised Landmarks Preservation Ordinance, Chapter 3.24 of the Berkeley Municipal Code
- 2: Resolution concerning environmental review
- 3: Revised Landmarks Preservation Ordinance, Chapter 3.24 of the Berkeley Municipal Code
- 4: July 11, 2006 staff report
- 5: Initial Study/proposed Negative Declaration

RESOLUTION NO. - N.S.

RESCINDING FIRST READING OF AN ORDINANCE REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 3.24 (LANDMARKS PRESERVATION ORDINANCE) REVISED TO INCLUDE AN EFFECTIVE DATE OF NOVEMBER 1, 2006

WHEREAS, on July 18, 2006, the City Council adopted the first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Chapter 3.24 (Landmarks Preservation Ordinance) revised to include an effective date of November 1, 2006; and

WHEREAS, on July 25, 2006, the City Council determined not to adopt a second reading of that ordinance; and

WHEREAS, the Council now wishes to adopt an Ordinance repealing and reenacting Berkeley Municipal Code Chapter 3.24 (Landmarks Preservation Ordinance), to be effective thirty days after its second reading.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, that the first reading of an Ordinance repealing and reenacting Berkeley Municipal Code Chapter 3.24 (Landmarks Preservation Ordinance) revised to include an effective date of November 1, 2006, which took place on July 18, 2006, is hereby rescinded.

RESOLUTION NO. - N.S.

DETERMINING THAT PREVIOUSLY ADOPTED INITIAL STUDY AND  
NEGATIVE DECLARATION MAY BE RELIED UPON FOR ADOPTION OF  
REVISED LANDMARKS PRESERVATION ORDINANCE

WHEREAS, on May 1, 2006 the City of Berkeley released for public comment a draft Initial Study and proposed Negative Declaration on:

1. proposed revisions to the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24);
2. adoption of associated amendments to the Zoning Ordinance (Berkeley Municipal Code Title 23); and
3. repeal of Berkeley Municipal Code Chapter 19.20; and

WHEREAS, on June 8, 2006 the comment period for the Initial Study and proposed Negative Declaration closed and the record of the Initial Study and proposed Negative Declaration, including all comments received can be found at the Department of Planning and Development, 2120 Milvia Street, Berkeley CA, 94720; and

WHEREAS, on July 11, 2006, the City Council considered the Initial Study and proposed Negative Declaration, together with any comments received during the public review process, and found, on the basis of the whole record before it, that there was no substantial evidence that the proposed revisions to the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24), adoption of associated amendments to the Zoning Ordinance (Berkeley Municipal Code Title 23) and repeal of Berkeley Municipal Code Chapter 19.20 might have a significant adverse impact on the environment; and

WHEREAS, this determination reflected the City Council's independent judgment and analysis; and

WHEREAS, on July 11, 2006, the City Council, having reviewed and independently considered the Initial Study and proposed Negative Declaration, adopted Resolution 63,380 – N.S., thereby adopting the Negative Declaration; and

WHEREAS, on July 11, 2006, the City Council adopted the first reading of ordinances amending Berkeley Municipal Code Sections 23B.24.030 and 23B.32.050 (Zoning Ordinance) and repealing Berkeley Municipal Code Chapter 19.20 (Demolition Permit Applications); and

WHEREAS, on July 18, 2006, the City Council adopted the second reading of ordinances amending Berkeley Municipal Code Sections 23B.24.030 and 23B.32.050 (Zoning Ordinance) and repealing Berkeley Municipal Code Chapter 19.20 (Demolition Permit Applications), both with an effective date of August 17, 2006; and

WHEREAS, on July 26, 2006, the City filed a Notice of Determination concerning its actions as described above; and

WHEREAS, there having been no challenge to the Initial Study and Negative Declaration, the Initial Study is conclusively deemed adequate and in compliance with the law in all respects; and

WHEREAS, the City Council is now considering whether to adopt the proposed revisions to the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24) substantially as analyzed in the Initial Study.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, that the proposed revisions to the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24) adopted concurrently herewith may be based on the existing Initial Study and Negative Declaration as adopted on July 11, 2006, and that none of the conditions set forth in Public Resources Codes section 21166, California Code of Regulations 15162 or any other applicable regulation require any additional environmental review.

## 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**

- 3.24.100 Landmarks, historic districts and structures of merit—Designation—  
Procedures required—Controls and standards.**
- 3.24.105 Definitions.**
- 3.24.110 Landmarks and historic districts—Criteria for consideration.**
- 3.24.115 Structures of merit—Criteria for designation.**
- 3.24.120 Summary of procedures and timelines for initiating and designating  
historic resources.**
- 3.24.125 Process for initiating and designating landmarks, structures of merit and  
historic districts—No Application pending.**
- 3.24.126 Process for initiating and designating landmarks, structures of merit and  
historic districts—Application pending.**
- 3.24.127 Process for considering Requests for Determination—No Application  
pending.**
- 3.24.128 Process for considering Requests for Determination—Application  
pending.**
- 3.24.130 Reserved.**
- 3.24.140 Notice of public hearings—Hearing procedure.**
- 3.24.150 Reserved.**
- 3.24.160 Designation proposal—Notice of decision required.**
- 3.24.170 Reserved.**
- 3.24.180 Landmarks, historic districts and structures of merit—Designation –  
Recording required.**

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

**Article III Regulatory Authority and Environmental Review**

- 3.24.200 Construction, alteration or demolition—Approval required.
- 3.24.210 Ordinary maintenance and repairs.
- 3.24.220 Environmental review.
- 3.24.230 Permit application—Public hearing notice requirements.
- 3.24.240 Permit application—Decision—Time limitations—Review standards and criteria.
- 3.24.250 Notice of decision.
- 3.24.260 Reserved.
- 3.24.270 Reserved.
- 3.24.280 Landmarks, historic districts or structures of merit—Unsafe or dangerous conditions—Effect.
- 3.24.290 Landmarks, historic districts and structures of merit—Good repair and maintenance required.

**Article IV Appeals**

- 3.24.300 Appeals—Procedures required—City Council authority.

**Article V Miscellaneous Provisions**

- 3.24.310 Advice and guidance.
- 3.24.320 Property owned by public agencies—Cooperation—Consultation and report requirements.
- 3.24.330 Other procedures authorized.
- 3.24.340 Landmarks, historic districts or structures of merit—Filing fees required when.
- 3.24.350 Applicability of provisions.
- 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.

<b>Timeline</b>	<b>1 Initiation § 3.24.125</b>	<b>2 Initiation &amp; Application § 3.24.126</b>	<b>3 RFD § 3.24.127</b>	<b>4 RFD &amp; Application § 3.24.128</b>
<b>At least 21 days before 1<sup>st</sup> meeting</b>			City receives RFD or completes peer review of report	City receives RFD and Application
<b>1<sup>st</sup> meeting</b>	LPC receives resolution or petition; <b>Must</b> set public hearing on designation	LPC sees “notice” of pending Application; <b>May</b> set public hearing on designation	Public hearing to consider whether to initiate	Public hearing to consider whether to initiate
<b>2<sup>nd</sup> meeting</b>		<b>May</b> 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 <sup>nd</sup> Commission meeting; not permitted thereafter as specified	May be initiated by petition within 30 days after 2 <sup>nd</sup> Commission meeting; not permitted thereafter as specified	May be initiated by petition no later than 21 days after 2 <sup>nd</sup> 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
<b>Decision</b>	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 therefore. 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 therefore.

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. 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.



Office of the City Manager

## ATTACHMENT 4

### ACTION CALENDAR

July 11, 2006

To: Honorable Mayor and  
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Landmarks Preservation Ordinance, June 2006

### SUMMARY

Attached is the June 29, 2006 proposed Landmarks Preservation Ordinance recommended by the Landmarks Preservation Commission, and a draft Negative Declaration/Initial Study (Neg. Dec./I.S.) for a previous April, 2006 version of the Landmarks Preservation Ordinance. Staff found no significant adverse environmental impacts from the April, 2006 draft LPO, and believes that the current version is sufficiently similar in content that the analysis, findings and conclusions of the Draft Neg. Dec./I.S. apply to it also. Because the LPC's draft LPO was completed on June 29<sup>th</sup>, staff does not have sufficient time to prepare an evaluation prior to the Council packet being finalized for the July 11, 2006 meeting. Staff is also preparing an analysis of the LPO Initiative and a ballot statement for the Council's review on July 25. Because the ballot statement should compare the existing ordinance to the Initiative, it is important for the Council to make a decision as to whether it would like to adopt this revised ordinance at its July 11 meeting in order to give staff sufficient time to prepare the appropriate ballot analysis. In order to give the Council maximum time to review the ordinance, staff is distributing the draft now, and will follow with an analysis of its provisions and a response to comments it has received on the Draft Negative Declaration/Initial Study as a to be delivered item as soon as it can be completed.

### RECOMMENDATION

Staff recommends that the Council hold a public hearing and upon conclusion, adopt the proposed revisions to the City's Landmarks Preservation Ordinance (Berkeley Municipal Code (BMC) Chapter 3.24; adopt associated amendments to the Zoning Ordinance (BMC Title 23); and repeal BMC Chapter 19.20 related to suspension and review of permits to demolish non-residential buildings over 40 years old. Staff also recommends that the effective date of Chapter 3.24 be November 1, 2006.

## CURRENT SITUATION AND ITS EFFECTS

The Landmarks Preservation Ordinance (LPO) was first adopted in 1974. It contained certain key provisions, including:

- Process for initiating and designating Landmarks, Structures of Merit and historic districts. Berkeley's ordinance is unusual in comparison to other historic preservation ordinances in that it allows for initiation by the public with little or no supporting information, and leaves the preparation of landmark applications largely to community members and Landmarks Commissioners.
- Process for reviewing and approving (or denying) applications for modifications to designated Landmarks, Structures of Merit and historic districts.
- Suspension of processing of applications for demolitions for six months for Structures of Merit, and one year for Landmarks.

As a result of the LPO, the City has designated 4 Historic Districts, 30 Structures of Merit and 242 Landmarks. The LPO and other actions by the city brought the wholesale demolition and replacement of older buildings that occurred in the 1960's and early 1970's largely to a halt as the City began to more actively protect and preserve its architectural and cultural heritage.

### Why Change the LPO?

Subsequent to the adoption of the LPO, a number of State laws have been passed that either conflict with some provisions of the LPO or establish what could be considered 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). Each of these state laws establishes firm deadlines within which the City must act on applications for discretionary permits. In addition to timelines, CEQA establishes that historic resources are environmental resources and that significant adverse impacts on an historic resource are also significant adverse impacts on the environment that must be mitigated. If a significant adverse impact on an historic resource cannot be mitigated (such as most demolitions of designated buildings), an Environmental Impact Report must be prepared. A building being placed on a "local register of historic places" is considered sufficient to be considered an historic resource under CEQA.

The PSA, in concert with CEQA, states that discretionary permits must be acted on within certain time frames. In particular,

- Projects exempt from CEQA: 60 days from the date the application is complete.
- Projects with an Initial Study and no significant impacts (Negative Declaration): Negative Declaration must be adopted within 180 days from the date the

application is complete and action on the project must be taken within 60 days thereafter.

- Projects with an EIR: EIR must be certified within 1 year from the date the application is complete and action on the project must be taken within 180 days thereafter.

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.

Under the existing LPO, any site or structure can be initiated anytime (with 50 signatures), and initiation effectively stops all other proceedings until the Landmarks Preservation Commission (LPC) decides whether something is an historic resource. From the time a site is initiated, the Landmarks Preservation Commission (LPC) has 70 days to open the public hearing, can continue the hearing for an unlimited number of additional meetings, and then has another 180 days to act after the public hearing is closed. This means that designation proceedings can last for a year or more. Because landmark applications are prepared largely by volunteers, the process of gathering the necessary information often requires several months, resulting in violation of the PSA with respect to pending applications for development projects as the Landmarks process proceeds. Projects are also subject to two parallel processes as they move through the ZAB entitlement process (as required by the PSA) and the Landmarks process, with each potentially arriving at different conclusions regarding the same project.

## BACKGROUND

Due to the above described conflicts with the requirements of State law, on July 27, 2000 the City Council directed that the Landmarks Preservation Commission (LPC) and Planning Commission revise the Landmarks Preservation Ordinance (LPO) and requisite Zoning Ordinance provisions and bring them into conformance with various provisions of State law mandating strict timelines for the processing of discretionary development applications. The LPC, as the lead commission on this issue, worked on proposed revisions periodically over the following 4 years.

On February 17, 2004, the Council generally endorsed the recommendations of the Mayor's Task Force (MTF) on Planning and Development, including several recommendations in regard to modifying the LPO. Among the key recommendations of the MTF was that there be a process whereby property owners could get a determination from the LPC as to the historic resource status of a property without necessarily initiating a property to be a landmark (the only process available under the existing LPO). The Council also directed that the LPC complete its work on a draft revised LPO by May, 2004. In May 2004, the LPC completed a draft revised ordinance and forwarded it to the State Historic Preservation Officer (SHPO) for comment, as required by the City's status as a Certified Local Government. SHPO responded in a letter dated July 1,

2004, with various relatively minor comments, but requiring no further changes. In July, 2004, the LPC made its final recommendation on the LPO and associated modifications to the Zoning Ordinance, and these were forwarded to the Planning Commission.

The Planning Commission (PC) reviewed the LPC's proposed changes to the LPO and decided to make its own recommendations. On May 25, 2005, after nine additional months of effort, public hearings and its own subcommittee, the Planning Commission recommended certain modifications to the proposal put forward by the LPC.

On July 12, 2005, the staff presented both the LPC's and Planning Commission's recommendations to the Council for final direction. Just prior to the City Council's review, the LPC chose to withdraw its recommended draft ordinance. The Council held public hearings over the subsequent months leading to a proposal presented by the Mayor on March 7, 2006, modified by Councilmember Capitelli. The Council then endorsed the Mayor and Councilmember Capitelli's proposals and directed staff to prepare a revised ordinance and environmental assessment in conformance with this direction and return to Council for possible adoption on July 11, 2006. Staff was further directed to bring the revised ordinance and environmental assessment to the LPC and Planning Commission for comments prior to the July decision.

Subsequent to the Council's action, in April, 2006, a notice was filed of an intent to circulate an initiative to place a revised Landmarks Preservation Ordinance on the ballot (attached). Staff has been directed by the City Council to prepare an analysis of that initiative.

Based on the Council's March 7 direction, Staff drafted an ordinance and an Initial Study and Draft Negative Declaration and circulated them to the Landmarks Commission at a meeting on May 4, 2006 (attached April 14, 2006 draft ordinance) for its comments. At later meetings, the LPC provided comments on the I.S./Draft Neg. Dec. (enclosed).

After the Initiative began circulating, the Mayor continued to meet with certain members of the historic preservation community to see if a compromise could be reached. The Mayor's office announced on June 12<sup>th</sup> that it had arrived at a tentative agreement on principles and that revised ordinance language was being prepared reflecting those principles. Revised ordinance language was distributed to the Council for its June 20, 2006 meeting where it directed that it be forwarded to the LPC and the Planning Commission for comments prior to the July 11, 2006 Council meeting.

On June 22<sup>nd</sup> and June 29<sup>th</sup>, the LPC held special meetings to discuss the proposed LPO, focusing entirely on the June 2006 Draft Ordinance. The LPC recommended certain changes to the draft ordinance and on June 29, 2005, recommended approval of the ordinance by a 7 to 2 vote. The Planning Commission received various drafts over its past three meetings, but on June 28, 2006 chose to take no position in regard to a recommendation because it did not have sufficient time to evaluate the latest proposals.

Staff believes that the LPC June 29<sup>th</sup> draft meets the major objectives set forth by the Council and can therefore recommend its approval. Staff also requests that the effective date for the revised LPO be set as November 1<sup>st</sup> in order to give staff time to prepare various forms and establish the list of consultants called for in the draft LPO Ordinance and that the current ordinance remains in effect until that date.

Because the LPC's draft LPO was completed on June 29<sup>th</sup>, staff does not have sufficient time to prepare a full evaluation prior to the Council packet being finalized for the July 11, 2006, meeting. Staff is also preparing an analysis of the LPO Initiative and a ballot statement for the Council's review on July 25<sup>th</sup>. Because the ballot statement should compare the existing ordinance to the Initiative, it is important for the Council to make a decision as to whether it would like to adopt this revised ordinance at its July 11<sup>th</sup> meeting, in order to give staff sufficient time to prepare the appropriate ballot analysis. In order to give the Council maximum time to review the ordinance, staff is distributing the draft now, and will follow with an analysis of its provisions and a response to comments it has received on the Draft I.S./Neg.Dec. as a to-be-delivered item as soon as it can be completed.

#### CONTACT PERSON

Dan Marks, Director, Planning and Development Department 981-7400

#### Attachments:

- 1: Landmarks Preservation Ordinance, Chapter 3.24 of the Berkeley Municipal Code
- 2: Amendments to the Zoning Ordinance (BMC Title 23)
3. Repeal of BMC Chapter 19.20
4. Draft Negative Declaration/Initial Study



**N O T I C E O F  
I N T E N T T O  
A D O P T  
N E G A T I V E  
D E C L A R A T I O N**

**Landmarks Preservation Ordinance and Associated Zoning Ordinance Modifications  
May 1, 2006**

**PURPOSE**

The City of Berkeley has prepared an Initial Study (attached) and determined that there is no substantial evidence that the proposed “project,” (a revised Landmarks Preservation Ordinance and associated modifications to the Zoning Ordinance) may cause a significant impact on the environment. Accordingly, under Public Resources Code Section 21080, the City of Berkeley proposes to adopt a Negative Declaration (ND). The purpose of this document is to briefly describe the project and the conclusions of the attached Initial Study. This ND was prepared pursuant to CEQA and the CEQA Guidelines (Public Resources Code, Division 13 and California Code of Regulations, Title 14, Chapter 3) for the project described below.

**PUBLIC REVIEW AND COMMENT**

**From May 1, 2006 to June 8, 2006**, the ND and its initial study of environmental effects are available for public review during normal office hours at the following locations:

- |                         |                                       |
|-------------------------|---------------------------------------|
| Berkeley Public Library | Permit Service Center, Zoning Counter |
| 2090 Kittredge Street   | 2120 Milvia Street                    |
| Berkeley, CA 94704      | Berkeley, CA 94704                    |

During this period, written comments may be submitted to:

Dan Marks, Director of Planning and Development  
2120 Milvia Street  
Berkeley, CA 94704

The Landmarks Preservation Commission is scheduled to consider this Initial Study and Negative Declaration at its meeting on May 4, 2006 at 7 PM at the North Berkeley Senior Center, 1901 Hearst Ave, Berkeley, CA. The Planning Commission is scheduled to consider this Initial Study and Negative Declaration on June 8, 2006 at 7 PM at the North Berkeley Senior Center. The City Council is tentatively scheduled to consider adoption of the LPO and Negative Declaration on July 11, 2006 in the City Council chambers of Old City Hall, 2134 Martin Luther King Jr. Way, Berkeley, CA.

**PROJECT DESCRIPTION**

The proposed project consists of revisions to the City's Landmarks Preservation Ordinance (BMC Chapter 3.24 ); associated conforming changes in the Zoning Ordinance (BMC Sections 23B.24.030 , 23B.32.050 and 23C.08.050) ; and repeal of BMC chapter 19.20, which regulates review of proposals to demolish certain nonresidential buildings. These revisions are intended, among other goals, to bring the Landmarks Preservation Ordinance (LPO) into conformance with the Permit Streamlining Act (Government Code Sections 65920 et seq. ) and the California Environmental Quality Act (Public Resources Code Sections 21000 et seq. ). Section 65962.6 of the Government Code requires disclosure of the presence of any hazardous waste on a project site. The proposed project is a Citywide ordinance affecting all properties in the City, some of which may be affected by hazardous waste. However, because there is no physical development or other impact on such sites from the proposed project, this section is not applicable.

**PROJECT APPLICANT**

City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94703-2715

**MANDATORY FINDING OF SIGNIFICANCE**

Based on the attached Initial Study, the City has found no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment.

Prepared by: Dan Marks, Director of Planning and Development  
Phone: (510) 981-7401

Date: May 1, 2006

Attachments: Initial Study  
Draft Ordinance

cc: Alameda County Clerk/Recorder  
Landmarks Preservation Commission  
Planning Commission  
Berkeley Architectural Heritage Association  
Main Library  
State Office of Historic Preservation  
California State Clearing House

C I T Y O F B E R K E L E Y  
E N V I R O N M E N T A L I N I T I A L S T U D Y

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1. Project Title: Landmarks Preservation Ordinance Revisions (2006); associated amendments to Zoning Ordinance sections 23B.24.030 , 23B.32.050 and 23C.08.050; and repeal of BMC chapter 19.20.

2. Lead Agency Name and Address: City of Berkeley

3. Contact Person and Phone Number: Dan Marks, 510-981-7401

4. Project Location: Citywide

5. Project Sponsor's Name and Address: City of Berkeley

6. General Plan Designation: All

7. Zoning: All

8. Description of project:

The proposed project consists of revisions to the City's Landmarks Preservation Ordinance (BMC Chapter 3.24 ); associated conforming changes in the Zoning Ordinance (BMC Sections 23B.24.030 , 23B.32.050 and 23C.08.050) ; and repeal of BMC chapter 19.20, which regulates review of proposals to demolish certain nonresidential buildings. These revisions are intended, among other goals, to bring the Landmarks Preservation Ordinance (LPO) into conformance with the Permit Streamlining Act (Government Code Sections 65920 et seq. ) and the California Environmental Quality Act (Public Resources Code Sections 21000 et seq. ).

The LPO was first adopted in 1974. It contained certain key provisions, including:

- Process for initiating and designating Landmarks, Structures of Merit and historic districts. Berkeley's ordinance is unusual in comparison to other historic preservation ordinances in that it allows for initiation by the public with little or no supporting information, and leaves the preparation of landmark applications largely to community members and Landmarks Commissioners.
- Process for reviewing and approving (or denying) applications for modifications to designated Landmarks, Structures of Merit and historic districts.
- Suspension of processing of applications for demolitions for six months for Structures of Merit, and one year for Landmarks.

As a result of the LPO, 265 Landmarks, 4 historic districts and 27 Structures of Merit have been designated in Berkeley (as of July, 2005).

Subsequent to the adoption of the LPO, a number of State laws have been passed that either conflict with some provisions of the LPO or establish what could be considered 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). Each of these state laws establishes 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 most demolitions of 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 particular,

- Projects exempt from CEQA: 60 days from the date the application is complete.
- Projects with an Initial Study and no significant impacts (Negative Declaration): must be adopted within 180 days from the date the application is complete and action on the project must be taken within 60 days thereafter.
- Projects with an EIR: must be certified within 1 year from the date the application is complete and action on the project must be taken within an additional 180 days thereafter.

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.

Under the existing LPO, any site or structure can be initiated anytime (with 50 signatures), and initiation effectively stops all other proceedings until the Landmarks Preservation Commission (LPC) decides whether or not to designate it as a landmark or structure of merit. From the time a site is initiated, the Landmarks Preservation Commission (LPC) has 70 days to open the public hearing, can continue the hearing for additional meetings, and then has another 180 days to act after the public hearing is closed. This means that designation proceedings can last for a year or more. Because landmark applications are prepared by volunteers, the process of gathering the necessary information often requires several months, resulting in violation of the PSA with respect to applications for development projects as the Landmarks process proceeds. Projects are also subject to two parallel processes as they move through the ZAB entitlement process (as required by the PSA) and the Landmarks process, with each potentially arriving at different conclusions regarding the same project.

## **Project**

In summary, the proposed ordinance would modify the existing ordinance in the following key ways:

- “Frontload” the historic determination process by requiring LPC review of all discretionary applications for development so as to enable the City to meet PSA deadline requirements for action on discretionary permits while allowing ample time for public and Commission review of projects that might have an adverse impact on historic resources. This modification would increase the purview of the LPC over proposed discretionary projects.
- Change the threshold for automatic review of demolitions of non-residential structures from 40 years to 50 years. The proposed provisions related to review of all discretionary applications would apply to all buildings 50 years of age or older. Current provisions for review of demolition of non-residential structures applies to buildings 40 years of age or older. The new provisions allow for much more comprehensive review by LPC; and because all demolition

applications and most commercial development projects are discretionary, these are also subject to LPC referral and can be reviewed by the LPC at its discretion, similar to its powers today.

- Repeal of LPC’s suspension authority. The LPO currently grants the LPC authority to suspend processing of applications to demolish structures of merit and landmarks for 180 days and 1 year, respectively. Since at least 1997, the City Attorney has advised that in practice such suspensions would cause the City to violate the Permit Streamlining Act (Gov. Code 65950 et seq.). Since that date, the LPC has not suspended any applications for demolition permits.
- Give the LPC authority over demolitions of designated resources and modify the findings required for demolition of such resources. The current ordinance does not give the LPC authority to deny an application to demolish a designated historic resource, but only to comment on it. The revised ordinance would give the LPC authority to deny demolitions. The revised ordinance would modify the findings necessary to permit demolitions. While the current ordinance requires the decision making body to apply criteria related to economic feasibility and the impacts on a property owner, the proposed ordinance would allow demolition only if the LPC (and City Council, on appeal) finds that the condition is significantly deteriorated and/or that the achievement of public goals significantly outweighs the value of preserving the structure.
- Authorize the LPC to establish analytical criteria that consultants would be required to use in preparing historic evaluations of a site.
- Establish deadlines for the LPC and the public for initiation and action on sites or structures that are the subject of an application for a development project, that would enable the City to better comply with PSA and CEQA deadlines.
- Establish a new process for determining historic significance for sites and structures not subject to a development project application.
- If the LPC or public fail to initiate a site where an application for a development project is pending, the revised ordinance would not allow it to be initiated by the LPC or public during the pendency of the project application. However, the project would still be subject to CEQA and if new information is presented as to a significant adverse impact on an historic resource, it would be subject to all CEQA provisions afforded an historic resource.
- Reduce the number of signatures required for public initiation from 50 to 25.
- Apply “integrity” to all determinations that a site or structure is a historic resource (Section 3.24.110 (C). Comments (July 1, 2004) from the State Office of Historic Preservation (SHPO) on an earlier draft LPO stated: “I would apply integrity to all property types, not just those of architectural merit. This would bring the city’s procedures in line with the national Register and California register.” Both CEQA and the CEQA Guidelines employ “integrity” as defined in the applicable California Register regulations as a defining quality of historic resources. (Pub. Res. Code §21084.1 & §5024.1; 14 Cal. Code Regs. 15064.5(a)(3); 14 Cal.Code Regs. §4852(c).) The use of standards for integrity assist the public and decision makers in understanding the importance of designated landmarks and the particular factors or qualities of those landmarks that are directly linked to the reason for the designation.

9. Surrounding Land uses and Setting: The City of Berkeley is a largely built-out city of approximately 110,000 people with structures dating from the late 19<sup>th</sup> century. Most of the City was built-out in the earlier part of the 20<sup>th</sup> century, and most new development that occurs in the City is “redevelopment” of previously developed property. The University of California is the dominant institution in Berkeley but is not subject to the City’s land use authority and therefore the Landmarks Preservation Ordinance does not apply to University property, although the City has designated many U.C. buildings as City Landmarks.

10. Other public agencies whose approval is required: DNA

The City of Berkeley has been designated by the State Office of Historic Preservation (SHPO) as a Certified Local Government (CLG), indicating that it meets certain standards and giving it certain rights and privileges in regard to how it addresses historic resources. In order to retain its status as a CLG, the City is obligated to refer changes in its historic preservation ordinance to SHPO for its review to ensure that the City continues to meet CLG requirements. The City is not required to have revisions to the LPO reviewed by SHPO, but would risk losing its CLG status if it did not.

## I N I T I A L S T U D Y C H E C K L I S T

### ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> Aesthetics         | <input type="checkbox"/> Agriculture Resources              | <input type="checkbox"/> Air Quality                    |
| <input type="checkbox"/> Biological Resources          | <input checked="" type="checkbox"/> Cultural Resources      | <input type="checkbox"/> Geology /Soils                 |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality          | <input checked="" type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources             | <input type="checkbox"/> Noise                              | <input type="checkbox"/> Population / Housing           |
| <input type="checkbox"/> Public Services               | <input type="checkbox"/> Recreation                         | <input type="checkbox"/> Transportation/Traffic         |
| <input type="checkbox"/> Utilities / Service Systems   | <input type="checkbox"/> Mandatory Findings of Significance |   |

## D E T E R M I N A T I O N

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	<input checked="" type="checkbox"/>
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the	<input type="checkbox"/>

project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	<input type="checkbox"/>
I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	<input type="checkbox"/>
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	<input type="checkbox"/>

\_\_\_\_\_  
 Planning Director

\_\_\_\_\_  
 Date

Initial Study prepared by: Dan Marks, Director of Planning and Development  
 2120 Milvia Street  
 Berkeley CA 94704

CHECK LIST

I. AESTHETICS -- Would the project<sup>1</sup>:

- a) Have a substantial adverse effect on a scenic vista?


Not applicable. The proposed project is modification of the City's regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development or lead directly to development that may affect a scenic vista.

- b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

There are no State Scenic Highways within the City of Berkeley. Therefore the project will have no effect. [Ref. 1]

- c) Substantially degrade the existing visual character or quality of the site and its surroundings?

Revisions to the LPO could affect the City's ability to protect its historic and cultural resources, thereby having an impact on the visual character or quality of sites and their surroundings. If the revisions would substantially reduce protections to historic resources thereby allowing inappropriate modification or demolition of those resources, then the aesthetic character of the community could be adversely affected. However, as described in the Section V, Cultural Resources, there is no significant impact on the City's ability to identify and protect its historic resources, and therefore there are no impacts on visual character or quality of sites and their surroundings.

<sup>1</sup> The headers of column check boxes are defined as follows: PSI : Potentially Significant Impact, <SwM : Less Than Significant With Mitigation, LS : Less Than Significant Impact,  : No Impact

- d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Not applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development or lead directly to development that may affect light.

**II. AGRICULTURE RESOURCES:** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- c) Involves other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?

Comment to sections II a -c: Not applicable, according to the *Adopted General Plan (2001-2002)* there is no significant agricultural resources in Berkeley. None is shown in that document’s Existing Land Use map and the Land Use Diagram. Further, the *Land Management Element* states that “Agriculture in Berkeley is limited to personal and community gardens.” (Ref 1)

**III. AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

- a) Conflict with or obstruct implementation of the applicable air quality plan?
- b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?
- c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non- attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

d) Expose sensitive receptors to substantial pollutant concentrations?

e) Create objectionable odors affecting a substantial number of people?

Responses III a-e: Not applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect air quality in the City.

**IV. BIOLOGICAL RESOURCES -- Would the project:**

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Responses III a-e: Not applicable. The proposed project is modification of the City’s regulations related to historic resources. Although the project may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect biological resources in the City.

**V. CULTURAL RESOURCES -- Would the project:**

- a) Cause a substantial adverse change in the significance of a historical resource as defined in 15064.5?

The CEQA Guidelines (Section 15964.5 a) indicates that an historical resource is a structure or site that meets any of several criteria, including listing in the California Register (or eligibility for listing) and listing on a local register of significant properties. This section also states that the fact that a resource is not so listed or previously identified does not preclude a local agency from determining that it may be an historic resource.

Section 15964 (b) indicates that a “[ s]ubstantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historic resource would be materially impaired”.

The proposed revisions to the Landmarks Preservation Ordinance would not modify any existing historic resource designation or directly permit the alteration or demolition of any specific historic resource.

Existing protections and procedures related to modification or demolition of historic resources would generally remain, with exceptions discussed below. As described below, those exceptions do not modify existing protections in a manner that would cause a significant negative impact on an existing resource. The majority of the proposed changes in the proposed LPO revision would prospectively affect future historic designations by modifying some of the processes used in making historic determinations and by modifying some of the criteria used in determining whether a particular site or structure is an historic resource.

Accordingly, the key issue to be assessed under the California Environmental Quality Act in regard to the designation process is whether any of the proposed changes in process or criteria would have a significant impact on an historic resource. Put another way, would any of the revisions in the LPO modify the designation process in a manner that would significantly limit the potential of an undesignated historic resource to be identified and provided the protections under CEQA and the Landmarks Preservation Ordinance.

Proposed Modifications Related to Existing Structures

The proposed modifications would make three changes to existing protections for designated structures:  
Suspension Authority (Section 3.24.240)

The LPO currently grants the LPC authority to suspend processing of applications to demolish structures of merit and landmarks for 180 days and 1 year, respectively. Since at least 1997, the City Attorney has advised that in practice such suspensions would cause the City to violate the Permit Streamlining Act (Gov. Code 65950 et seq.). Since that date, the LPC has not suspended any applications for demolition permits. In addition, any significant adverse impact on a designated resource is subject to CEQA. If the impact can be mitigated, a Negative Declaration is prepared, requiring several months of analysis and public process prior to any action on the permit. If the impact cannot be mitigated, several more months are required to

prepare an Environmental Impact Report. Because of the application of CEQA, the need for suspension procedures is largely moot.

#### Administrative Approval of Repairs (Section 3.24.220)

The LPO currently requires that all repairs of designated structures be reviewed and approved by the LPC, after a public hearing. The proposed LPO would allow staff to approve repairs consistent with the Secretary of Interior Standards, after posting the site and providing notice to neighbors. The staff approval can be appealed to the LPC. While allowing very limiting streamlining of the process, there are sufficient safeguards (including more public notice than is currently provided) in this process to protect designated resources from inappropriate actions that could have a significant adverse impact on a site's historic status. Moreover, the CEQA Guidelines specifically indicate that (Section 15064.5 (b) (3) that [g]enerally, a project that follows the Secretary of Interior Standards . . . shall be considered mitigated to a level of less than a significant impact on the historical resource."

#### Demolition Authority

The revised ordinance would give the LPC authority to approve or disapprove demolition of a designated historic resource. This is a power it does not currently have and would provide an additional layer of protection of designated historic resources. The revised ordinance would also modify the findings required for demolition of a designated historic structure (Section 3.24.240 (H)). The current ordinance allows for demolition only if the decision making body finds that it is not feasible to preserve or restore it, taking into consideration economic feasibility and balancing the interests of the property owner and the public. The proposed ordinance would allow demolition only if the decisions making body finds that 1) due to physical conditions related to the particular property involved, failure to approve or conditionally approve the application would leave the owner with no reasonable economic use of the property considered as a whole; 2) that the special historical, architectural, archaeological or aesthetic interest or value of the particular property was so impaired that the proposed project outweighed the public benefits of retaining the impaired structure; or that the proposed project (requiring the demolition) is necessary to achieve an important public policy that substantially outweighs the detriment caused by the loss of the resource. The existing findings related to the economic interests of private property owners would generally be supplanted by findings related to over-riding public benefits. Although the City has rarely made findings for demolition, the new authority given to LPC to review and act on proposed demolitions and the requirement for an over-riding public benefit finding are more protective of historic resources compared to the current LPO.

#### LPC Review of Discretionary Projects Affecting Properties over 50 Years of Age

The proposed revisions would repeal BMC chapter 19.20, which requires that (with limited exceptions) demolitions of most non-residential structures over 40 years old must be referred to the LPC. This would be replaced by the requirement applicable to all structures over 50 years old, that demolitions and alterations that require discretionary entitlements be referred to the LPC at the beginning of the entitlement process.

The proposed ordinance is more protective of historic resources for several reasons. First, it applies to all buildings, not just non-residential buildings. Second, the limitation of LPC review to discretionary entitlements does not significantly limit the number of projects that will be reviewed relative to chapter 19.20 because almost all demolitions require discretionary entitlements. Third, since both of these provisions apply only to structures that have not already been identified as historic resources or potential

historic resources, the limitation on LPC review would have no effect on the protection of identified actual or potential historic resources. Finally, the proposed revisions allow for LPC review of structures under 50 years old if appropriate. Under these circumstances the change in the LPC review trigger from 40 to 50 years is insignificant and any impact on historic resources is speculative.

Timelines for LPC Review

The proposed modifications to the LPO would “frontload” the historic determination process by requiring earlier LPC review of sites proposed for development so as to enable the City to meet the PSA deadline requirements for applications for development projects, while allowing ample time for public and Commission review of projects that might have an adverse impact on an historic resources. Under the existing LPO, the LPC has 70 days to open a public hearing on a designation application, and 180 days to act on the designation once the hearing is closed, but may keep the hearing open indefinitely. A site may be initiated at any time, up to and including after an action has been taken to approve all other discretionary entitlements by the Zoning Adjustments Board (ZAB). The proposed modifications would require earlier notice than is currently provided and allow approximately 180 days for Commission initiation and determination on a site when an application for a development project is pending. The proposed ordinance would allow for approximately 250 days for Commission determination on a site where no development application is pending.

Although there would be firm timelines placed on the LPC’s deliberations, the LPC and public’s review is enhanced by several new provisions, including

- Increased review of proposed development projects. All projects requiring discretionary review would be reviewed by the LPC at a public meeting.
- New notice provisions that require conspicuous early notice of the LPC’s early review
- 25 signatures required to initiate rather than the current requirement for 50 signatures. The revised ordinance still requires no showing that a site has potential to be an historic resource in order for it to be initiated by the public.

Properly understood, the proposed revisions significantly enhance the LPC’s and the public’s ability to scrutinize proposals that might affect as yet unidentified or undesignated historic resources, and to ensure their protection. Moreover, if in the course of a discretionary entitlement process new information were to arise very late in the process as to an unidentified historic resource, the protections of CEQA would continue to apply, regardless of whether it was designated an historic resource by the LPC.

Integrity

The proposed revisions would apply “integrity” to all historic determinations (Section 3.24.110 (C). Comments (July 1, 2004) from the State Office of Historic Preservation (SHPO) on an earlier draft LPO stated: “I would apply integrity to all property types, not just those of architectural merit. This would bring the city’s procedures in line with the national Register and California register.” Both CEQA and the CEQA Guidelines employ “integrity” as defined in the applicable California Register regulations as a defining quality of historic resources. (Pub. Res. Code §21084.1 & §5024.1; 14 Cal. Code Regs. 15064.5(a)(3); 14 Cal.Code Regs. §4852(c).) The use of standards for integrity assist the public and decision makers in understanding the importance of designated landmarks and the particular factors or qualities of those landmarks that are directly linked to the reason for the designation. This application of integrity would make the City’s procedures more consistent with the standards that are used and have been established by the preservation community for both the National and California Registers, while allowing for local standards of integrity to also be applied. Therefore, including integrity in the Berkeley LPO as a criterion for local listing would not result in an adverse impact on historic structures. At most it might

result in an adverse impact on structures that lack integrity and are therefore not considered historic resources under CEQA.

**STRUCTURES OF MERIT**

The proposed ordinance would modify the definition of Structures of Merit as follows:

Existing:

*General criteria shall be architectural merit and/or cultural, educational, or historic interest or value. If upon assessment of a structure, the commission finds that the structure does not currently meet the criteria as set out for a landmark, but it is worthy of preservation as part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit. Specific criteria include, but are not limited to one or more of the following: 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. 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. The structure is a good example of architectural design. The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.*

Proposed:

*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, satisfies the criteria set forth [below] . . . and has integrity . . . It is compatible in size, scale, style, materials or design with a designated landmark structure within its block or street frontage, or is located within a defined group of buildings that includes a landmark; or it is an example of good architectural design that relates to its context and has historical significance to the City and/or to the structure's block, street frontage, or a defined group of buildings within which it is located.*

As can be seen by comparing the two sections, the proposed language is largely a more refined and somewhat shorter version of the first. An important distinction is the application of integrity that has been discussed earlier. However, in other respects, the criteria continue to allow broad discretion to the LPC to identify historically significant structures that are not necessarily "landmarks" but nevertheless have importance to the City as historic resources.

In conclusion, there is no evidence that the proposed modifications to the Landmarks Preservation Ordinance or the associated Zoning Ordinance changes would have a significant adverse effect on the City's ability to protect historic or cultural resources.

- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

The proposed ordinance would add archaeological value as a criterion or designation in Section 3.24.110.a.. Although the City has consistently interpreted the Landmarks Preservation Ordinance as applying to archaeological resources, the proposed modification will now explicitly include archaeological resources, thereby increasing protection of those resources.

- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

The proposed project is modification of the City's regulations related to historic resources. Although it may

affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may directly or indirectly affect a unique paleontological resource or site or unique geologic feature.

- d) Disturb any human remains, including those interred outside of formal cemeteries?

The proposed ordinance modifications will not affect current requirements for addressing human remains when discovered during normal excavation for a development project. These are addressed in standard conditions applied to development projects, when there is no known history of a site being used for disposition of human remains. The proposed project will not in itself increase the level of development in the City of Berkeley or lead directly to development that would lead to disturbance of human remains.

**VI. GEOLOGY AND SOILS -- Would the project:**

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
  - ii) Strong seismic ground shaking?
  - iii) Seismic-related ground failure, including liquefaction?
  - iv) Landslides?
- b) Result in substantial soil erosion or the loss of topsoil?
- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?
- d) Be located on expansive soil, as defined in Table 18- 1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

Responses VI a-e: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect geologic conditions in the City.

**VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:**

- a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?
- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?
- d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?
- f) or a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?
- g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

- h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

Responses VII a-h: Not Applicable. The proposed project is modification of the City's regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect hazards or hazardous materials in the City or affect safety hazards related to airports.

**VIII. HYDROLOGY AND WATER QUALITY -- Would the project:**

- a) Violate any water quality standards or waste discharge requirements?
- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?
- c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?
- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
- e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?
- f) Otherwise substantially degrade water quality?
- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

- h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- j) Inundation by seiche, tsunami, or mudflow?

Responses VIII a-j: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect the City’s hydrology or expose people to greater risk due to flooding or other hydrological conditions.

**IX. LAND USE AND PLANNING** - Would the project:

- a) Physically divide an established community?

Responses IX a: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself physically divide an established community.

- b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

The City’s General Plan includes several policies related to the preservation of historic resources, Policy LU-2 states:

*Protect Berkeley’s character by identifying, restoring, and preserving historic buildings*

As described in Section V, Cultural Resources, the proposed modifications in the LPO are consistent with this policy.

The Urban Design and Preservation Element includes the following relevant objectives:

1. Protection of Existing Resources - Preserve historically or culturally important structures, sites, and areas and protect the character of Berkeley’s neighborhoods and districts.

As described in Section V, Cultural Resources, the proposed modifications in the LPO are consistent with this policy.

2. Preservation Incentives - Provide incentives for the preservation of historic and cultural resources.

The proposed modifications to the LPO do not modify any provisions related to incentives and therefore have no impact on this objective.

4. Outreach - Promote awareness and understanding of Berkeley's built environment and cultural heritage, and of how to preserve and improve them.

The proposed modifications in the LPO do not modify any provisions related to outreach and therefore have no impact on this objective.

The following Urban Design and Preservation Element policies also apply:

*Policy UD-1 Techniques: Use a wide variety of regulatory, incentive, and outreach techniques to suitably protect Berkeley's existing built environment and cultural heritage.*

Actions:

- A. *Identify and protect historically significant structures, sites, districts, and neighborhoods.*

As described in Section V, Cultural Resources, the proposed modifications in the LPO are consistent with this recommended action.

- B. *Develop a comprehensive program that will indicate, in more detail, needed in-depth surveys and other actions to protect Berkeley's built environment and cultural heritage.*

The proposed modifications in the LPO do not modify any provisions related to surveying and therefore have no impact on this recommended action.

- C. *Conserve and update the Landmarks Preservation Ordinance.*

As described in Section V, Cultural Resources, the proposed modifications in the LPO are consistent with this recommended action.

- D. *Encourage widespread public participation in the identification and designation of historically or culturally important buildings, sites, and areas.*

As described in Section V, Cultural Resources, the proposed modifications in the LPO continue to allow for widespread public participation in the identification and designation of historic resources and are therefore consistent with this recommended action.

- E. *Review and revise the Zoning Ordinance, in general, as appropriate to further the protection of historic and cultural resources.*

The proposed modifications to the Zoning Ordinance are consistent with the recommended changes in the LPO. As described in Section V, Cultural Resources, the proposed modifications in the LPO are consistent with this recommended action.

*Policy UD-2 Regulation of Significant Properties. Increase the extent of regulatory protection that applies to structures, sites, and areas that are historically or culturally significant.*

As described in Section V, Cultural Resources, the proposed modifications to the LPO would significantly increase protections by granting the LPC new authority to prohibit demolition of designated structures based on historical value, and ensuring review of every discretionary project by the LPC.

Actions:

- A. *Continue the designation of additional landmarks, structures of merit, and historic districts as a crucial function in preserving historical resources.*

As described in Section V, Cultural Resources, the proposed modifications in the LPO will continue to allow for substantial opportunity to designate historic resources and increase the LPC's purview over discretionary applications to ensure that historic resources are identified and protected.

- B. *Consider revising the Landmarks Preservation Ordinance so as to prohibit demolition of designated landmarks, except in unusual cases where rigorous prescribed findings are made by the Landmarks Preservation Commission and/or the City Council.*

As described in Section V, Cultural Resources, the proposed modifications in the LPO will give the LPC authority over demolition of designated landmarks and establishes rigorous prescribed findings for allowing such demolition, consistent with this action.

- C. *For any public or private project that may adversely affect an archaeological site, consult with the North Central Information Center of the California Historical Resources Information System, require site evaluation as may be indicated, and attempt to prevent or mitigate any adverse impacts*

The proposed ordinance would add archaeological value as a criterion or designation in Section 3.24.110.a. The LPO provisions would not otherwise affect the City's standard procedures under CEQA which require analysis of any potential archaeological resource, including consultation with appropriate information centers regarding any identified resource and that mitigations be applied when appropriate.

- Policy UD-4 Inventory: On an ongoing basis, maintain, expand, and update the inventory of historic and cultural resources.*

Actions:

- A. *Actively expand the inventory of historic and cultural resources, with particular attention to areas where development pressure is expected, and make the inventory results prominently available to citizens and potential developers.*

- B. *Fully incorporate the identity of inventoried historic and cultural resources into the City's Geographic Information System and permit system.*

- C. *Acquire and maintain generalized information on what parts of Berkeley, and which types of sites, are sufficiently likely to contain notable archaeological materials as to warrant further, site-specific investigation.*

The proposed modifications in the LPO do not modify any provisions related to surveying and therefore have no impact on this recommended policy or related actions.

- c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

Responses IX-c: Not Applicable. There are no adopted habitat conservation plans or natural community conservation plans in Berkeley or in adjacent communities that could be affected. Moreover, the proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect natural communities.

**X. MINERAL RESOURCES -- Would the project:**

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?
- b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

Responses X a-b: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect mineral resources in the City.

**XI. NOISE -- Would the project result in:**

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?
- c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?
- d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

Responses XI a-d: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the

level of development in the City of Berkeley or lead directly to development that may affect noise levels in the City or expose people to high noise or vibration levels.

- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?
- f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

Responses XII e-f: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect noise levels in the City. Moreover, the closest airport is Oakland International which is approximately 7.5 miles from Berkeley (1).

**XII. POPULATION AND HOUSING -- Would the project:**

- a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
- c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

Responses XII a-c: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect the level of population or housing in the City.

**XIII. PUBLIC SERVICES**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Responses XIII: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect public services in the City.

**XIV. RECREATION --**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Responses XIV a-b: Not Applicable. The proposed project is modification of the City’s regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect recreational resources in the City.

**XV. TRANSPORTATION/TRAFFIC** -- Would the project:

- |    |   |                          |                          |                          |                                     |
|----|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) | Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) | Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) | Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) | Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) | Result in inadequate emergency access?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) | Result in inadequate parking capacity?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|    |   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) | Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?   |                          |                          |                          |                                     |

Responses XVa-g: Not Applicable. The proposed project is modification of the City's regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect transportation or parking in the City.

**XVI. UTILITIES AND SERVICE SYSTEMS** -- Would the project:

- |    |   |                          |                          |                          |                                     |
|----|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) | Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) | Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

- |    |  |                          |                          |                          |                                     |
|----|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| c) | Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) | Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) | Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) | Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) | Comply with federal, state, and local statutes and regulations related to solid waste?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Responses XVI a-g: Not Applicable. The proposed project is modification of the City's regulations related to historic resources. Although it may affect the designation of historic resources, it will not in itself increase the level of development in the City of Berkeley or lead directly to development that may affect utilities and service systems in the City.

**XVII. MANDATORY FINDINGS OF SIGNIFICANCE --**

- |    |   |                          |                          |                          |                                     |
|----|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) | Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) | Does the project have impacts that are individually limited, but cumulatively considerable? (Cumulatively considerable) means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? Impact Mitigation Impact

## 18. SOURCE REFERENCES

1. General Plan, City of Berkeley, Adopted 2001-2002
2. California Division of Aeronautics “California Airport Data”

## APPENDIX A

### INSTRUCTIONS FOR THE EVALUATION OF ENVIRONMENTAL IMPACTS:<sup>2</sup>

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e. g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e. g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. "Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 17, "Earlier Analysis," may be cross-referenced).
5. Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c) (3) (D). In this case, a brief discussion should identify the following:
  - a) Earlier Analysis Used. Identify and state where they are available for review.
  - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - c) Mitigation Measures. For effects that are "Less than Significant with
6. Mitigation Measures Incorporated", describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
7. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should,

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<sup>2</sup>These are the instructions attached to the Suggested Initial Study form in the State CEQA Guidelines.

where appropriate, include a reference to the page or pages where the statement is substantiated.

8. A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
9. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.