



Landmarks Preservation Commission

INFORMATION CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council
 From: Landmarks Preservation Commission (LPC)
 Submitted by: Christopher Adams, Chairperson, Landmarks Preservation Commission
 Subject: LPC Annual Report to City Council for the period May 2019 to May 2020

INTRODUCTION

The LPC has prepared a report on its activities during the period May 2019 through May 2020; see Attachment 1, "LPC Annual Report to the City Council." Reports on the Commission's activities are required on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

CURRENT SITUATION AND ITS EFFECTS

On July 2, 2020, the Commission voted to adopt the attached report and forward it to City Council (Vote: 7-0-2-0; Yes: Adams, Allen, Crandall, Finacom, Johnson, Montgomery, Schwartz; No: none; Abstain: Abranches Da Silva, Enchill; Absent: none).

The Commissioners' Manual (2019) requires that the Commission Secretary submit the Commission's report to City Council agenda process within three weeks of receiving the final document; however, due to an internal oversight, this transmittal was delayed.

BACKGROUND

On July 2, 2020, Chairperson Finacom prepared and presented a draft of the report to the LPC and the Commission voted to adopt the final version of the report and to forward it to City Council.

Among the Commission's accomplishments during the reporting period, the Executive Summary of Attachment 1 (see page 1) highlights the following Commission activities:

- Designated a total of five properties as City Landmarks or Structures of Merit;
- Granted seven requests for Structural Alteration of existing properties on the City's register;
- Studied and then recommended City Council approval of three Mills Act contracts for repair and rehabilitation of existing City Landmarks;
- Reviewed thirteen demolition referrals of non-residential buildings over forty years old and took no action to initiate these properties; and
- Hosted and participated in an on-line historic preservation training, to which the public was invited.

The report describes these and other accomplishments in detail, and it identifies issues the Commission would like to consider in the coming year(s).

ENVIRONMENTAL SUSTAINABILITY

Historic preservation practices encourage the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

Other reports on the City's historic preservation-related activities, such as a copy of the City's Certified Local Government (CLG) annual report to the State Historic Preservation Office (SHPO), could be forwarded to Council on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no financial impacts associated with reporting this information to City Council.

CONTACT PERSON

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Attachment:

- 1: Landmarks Preservation Commission Report to City Council on Commission Activities, adopted July 2, 2020

FINAL DRAFT
REVIEWED BY COMMISSION AT JULY 2 2019 MEETING

Landmarks Preservation Commission Annual Report to the City Council for the period May 2019 to May 2020.

Background: The Landmarks Preservation Ordinance mandates (BMC Section 3.24.090) that *“The commission shall report its actions annually to the City Council not later than June 30.”* This report covers the reporting period implied by that provision. Because of this ordinance requirement this reports meets the Governor’s standards for conducting of *“legally mandated business”* during the COVID-19 crisis.

Executive Summary: During the reporting period the Commission:

1. held eight regular Commission meetings and some subcommittee meetings. Two regularly scheduled meetings were cancelled because of the COVID-19 crisis and Shelter-in-Place orders;
2. approved five Landmark designations;
3. had under consideration two other Landmark nominations;
4. reviewed for historic significance thirteen demolition referrals of buildings over 40 years old. Considered, and took no action to initiate these properties;
5. approved three Mills Act contracts and sent them forward to the Council;
6. reviewed seven Structural Alteration Permits for existing Landmark properties. They were approved generally as proposed, with appropriate conditions;
7. placed one property on the Commission’s “Potential Initiations” list for possible Landmark consideration in the future.

These actions and activities are summarized in more detail at the end of this report.

The Commission also has several issues to raise for, and recommendations to make to, the Council as part of this report. The following pages summarize these items. Most of these are items previously raised by the Commission with the Council and most of them reflect the same wording as last year’s report. The Commission continues to believe it would be helpful, when circumstances permit, for the Council to eventually have a work session with the Commission to discuss some of these items.

Religious Exemptions: The Commission once again encourages the Council to seek changes at the State level that would clarify and reform the conditions under which a religious property owner can claim hardship exemption from landmark designation. Changes might include a requirement that the owners detail and demonstrate in writing the economic circumstances they believe would cause hardship, and that they hold the mandated public meeting to consider asserting the hardship claim in the actual community where the proposed landmark is designated. (In Berkeley’s case, owners of a religious property held the required “public meeting” in Thousand Oaks, California.)

Ordinance Review: In 2017 the City of Berkeley was sued by the owners of a recently designated Landmark building. The City prevailed in court, although the decision has been appealed. The trial judge did suggest that Berkeley should clarify some terminology in the Landmarks Preservation Ordinance. The Commission's Policies and Procedures subcommittee has been working on a suggested set of revisions but this work has been interrupted by the loss of one Commissioner who was a member of the subcommittee as well as the COVID-19 crisis.

Mills Act Fees: The Mills Act is a State law which allows designated Landmark property owners, under City review, to re-allocate a portion of their property taxes (typically the taxes that would go to the County) to a targeted program of investment in rehabilitation of their historic property. The Commission notes that all Landmark property owners who apply for State Mills Act contracts are currently charged the same, substantial, fees by the City, regardless of size or use of the property. In some cases the fees charged may exceed the property tax benefit to the owners of smaller properties such as many single family homes, while owners of large commercial properties may reap substantial benefits. The City should consider more equitable, graduated, fee levels to permit use of the Mills Act and promote preservation, particularly by owners of limited means.

Some members of the Commission also believe that the City should place a moratorium on the granting of Mills Act applications until the city has an opportunity to study the financial impact of Mills Act applications that are already in force and assess whether from a financial standpoint Mills Acts should be continued. They believe a study should evaluate the fiscal impact on the budget of the City, the School District, and other government entities.

The process for monitoring Mills Act contracts should also be reviewed and clarified to ensure that property owners follow their obligations under the Mills Act and that the City has the means to effectively monitor the contracts. The process of acting on possible violations of Mills Act contracts is not clear to the Commission.

Historic Districts: Commission members and community members have periodically noted the desirability of Berkeley updating and improving its process for creating historic overlays / districts that would provide preservation safeguards for geographically and historically related groups of buildings or sites. Many other cities with good preservation programs utilize a system of historic overlays / districts for historic neighborhoods. The Commission would like to explore this issue with the Council and seek ways to create a workable historic overlay / district program.

It is particularly important to note this year that Berkeley is deficient in historic studies identifying places, neighborhoods, and themes associated with the history of People of Color in Berkeley, including the history of Berkeley's African-American community and the history of Indigenous Peoples associated with the Berkeley area. In order to redress this, the City and Commission should work towards a program of community engagement and identification of key sites associated with this under-represented area of local history and formal Landmark designation.

Potential View Ordinance: During discussion of the Campanile Way landmark application in 2017/18, Planning Staff suggested the Commission consider proposing a view ordinance that would specifically address the protection and preservation of historic views, particularly those that are public in nature. We again urge this work be undertaken.

Certified Local Government Grant Application: The State provides annual grants (recently averaging \$40,000) to Certified Local Governments to pursue specific preservation initiatives and projects, such as neighborhood surveys. For two years Berkeley was unable to apply for this grant because a source of local matching funds has not been confirmed early enough in the application process. This year the Council had, at the request of the Vice-Chair, set aside matching funds to back a grant application. The Commission was working towards an application for the 2020/21 Fiscal Year, but the work was interrupted by the COVID-19 shutdown and crisis and the filing deadline was missed. This was understandable and, in some respects, unavoidable.

Staff and Council support will be needed for preparation and submission of an application in Spring, 2021 for the 2021/22 year. To facilitate this, we recommend the Council set aside in the budget for that year an amount equal to matching funds for one of these grants (approximately \$27,000). This money would not be committed until the Council reviewed and approved a specific grant application. Some of the matching funds might also be raised by cash or in-kind contributions from community groups or associations such as Business Improvement Districts.

The proposed 2020 application theme adopted by the Commission would have focused on a study of historic resources along two of Berkeley's major commercial avenues, San Pablo Avenue and University Avenue. These are parts of Berkeley where development pressure is intense and all parties—the City, property owners, developers, businesses, and adjacent neighborhoods—would benefit from a clear identification of potential historic resources along those streets.

Measure T-1 Properties: Measure T-1 bond funding is affecting numerous designated City Landmark properties and potential historic resources. The Commission has established a subcommittee and good working relationship with Parks & Recreation and Public Works leadership. This year is crucial as several Landmark properties, particularly those in the Civic Center, undergo Measure T studies. It remains important that the City plan comprehensively and intelligently for the future of the Civic Center historic district and all the historic designated properties in that area, especially those that are partially vacant or in need of substantial rehabilitation (including the Veterans Memorial, Maudelle Shirek Building / City Hall, and Main Berkeley Post Office). However, we are not sure at present how Measure T-1 and the scheduling of projects will be affected by the ongoing COVID-19 and associated financial and economic crisis.

Archaeological Resources: We reiterate our past recommendation that the City should review and discuss currently ambiguous procedures for identification,

documentation, management and protection of historic era and pre-historic archaeological resources in Berkeley. The City should identify and review State laws pertaining to archaeological resources and ensure that the City is in compliance; otherwise, Berkeley's CLG status could be endangered. The City should also ask the State Legislature to clarify the wording of new state laws that have created ambiguities in the definition of local historic resources and needless conflict and confusion.

Relations with Exempt Property Owners: The Commission has continued to work with owners of properties exempt from direct City regulation (including the University of California, and Berkeley Unified School District) to bring their projects involving historic properties to the Commission for courtesy reviews and comment. This process should be continued and strengthened. It is noted that the University has not come to the Commission in the past year, despite the fact that the University has announced plans to demolish and/or purchase a number of prominent City of Berkeley Landmarks.

Inclusion in Landmark Designation: Earlier in 2019 the Commission approved a proposal from the Chair that the LPC hold one or more community listening sessions or workshops to hear from the public, and discuss, what types of historic resources or areas of Berkeley's architectural or cultural history are under-represented in landmark designations to date. This did not take place, and further action is understandably complicated by the ongoing COVID-19 crisis. Still, we hope to pursue some form of community engagement in the coming year.

Processing of Landmark Appeals: In 2018 the Commission wrote to the Council regarding the improper processing of two appeal petitions submitted to the City. Both were appeals of landmark designations submitted by parties with no standing under the BMC to make appeals of landmark designations. The Council has made no response to this letter so we reiterate the issues in this year's report.

Those who have standing under the Ordinance to make an appeal are 50 or more residents of Berkeley, the Civic Arts Commission, the Planning Commission, or the owner of the property that is under consideration for Landmark designation. This is more restrictive than the appeal process for ZAB decisions. The City Council may also independently set a landmark designation for appeal.

Relevant excerpt from the LPO:

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

A. 1. An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Despite the fact that one appeal was filed by one individual who stated he represented an Oakland-based organization and did not submit any resident petition, and the other

appeal was filed by a resident petition that was apparently not verified before acceptance, the City Clerk nonetheless accepted both appeals and the Council held public hearings and took action on them (sustaining one landmark designation, and overturning another).

We later asked the City Council to address the flawed processing of these appeals. No Council consideration was undertaken and no further information was formally received by the Commission from the Council or City staff. We renew this request. Improper processing of landmark issues endangers the City's valued CLG status with the State of California since being a Certified Local Government means, in part, that the City is expected to adhere to the rules of its preservation ordinance.

Commission Meetings:

During the reporting period the Commission conducted a full schedule of monthly meetings from June 2019 through March, 2020, with the exception of a January 2020 recess. The COVID-19 crisis and Shelter in Place orders paused Commission meetings in April and May; they resumed in June in limited form.

There were eight regular Commission meetings held in the twelve month review period.

The Commission has a practice of establishing subcommittees to address some specific projects and issues. Most subcommittees have been formed to provide flexibility so a few members of the Commission with special interest or expertise in a particular building or preservation issue can go review a proposed project's details on-site, rather than having the full commission undertake the review. The subcommittee reports its actions or recommendations back to the full Commission. Subcommittee meetings are publicly noticed and open to the public. This has proved to be an effective way of evaluating project details, especially when site visits are made. Subcommittees are typically disbanded when review of a particular project is finished.

There is ambiguity of the status of subcommittees under the Shelter in Place orders. In addition, LPC staff have stated they do not have the resources to schedule or staff subcommittee meetings at this time. We ask for clarification from the City Council on whether and when subcommittees can resume operation.

Commission Membership:

During the reporting period the nine member Commission saw two Commission vacancies filled by new appointees. Another long-time Commissioner was removed by their appointer and a replacement was appointed. The Commission currently has no vacancies (as of June, 2020).

The Commission once again encourages Councilmembers undertaking appointment of new Commissioners to give the current appointees the courtesy of informing them of that they are being replaced, well in advance of Commission meetings. In the two

previous reporting years there were two occasions when a long-time Commissioner has arrived at a LPC meeting ready to routinely participate, only to find a replacement appointee already seated. This practice of not informing Commissioners in advance that they have been replaced is discourteous to volunteers who have been serving the City with their time and expertise on commissions, and the responsibility rests with individual Councilmembers.

Landmark Initiations and Designations:

A primary charge of the LPC is to consider and, if appropriate, designate, City of Berkeley landmarks, Structures of Merit and Historic Districts. During the past year the Commission received seven requests to designate new Landmarks.

Landmark consideration begins with “initiation” that can take place in a variety of ways including a letter from a property owner or member of the public, a petition signed by 50 or more Berkeley residents, or a request from an individual Commissioner or the Commission as a whole.

Of the five landmark initiation proposals received in 2019/20:

1. one was initiated by the property owner who also was supported by a public petition, and considered and approved for designation by the Commission;
2. two were initiated by public petition with the support of the property owners, and approved for designation by the Commission;
3. one was initiated by residents of the building and approved by the Commission without support of the property owner;
4. one was initiated by public petition, without the support of the property owner, but the property owner ultimately supported a modified form of the landmark designation;

Of the two pending landmark initiation proposals received in 2019/20:

1. one was initiated by public petition and is pending commission review;
2. one was initiated by the Commission and is pending receipt of landmark application.

As stated in our previous report for 2018-19, it should be noted that the Landmarks Commission has a long standing tradition of Commissioners researching and preparing landmark applications. This is consistent with the Commission mandate in the Landmark Preservation Ordinance that the Commission shall “*establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition*” and also shall “*carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation.*” However, during this review year no Commissioner-authored landmark applications have been submitted. One building has been initiated at the request of a Commission member.

The table below shows the number and pace of landmark designations over the past 12 years.

As we noted in our Annual Reports during the two previous years, the total designations represent only a very small fraction of total properties in Berkeley. There less than 340 designated Landmarks or Structures of Merit in Berkeley, representing only about 1 out of every 140 properties in the city. There is about one landmark, on average, for every three city blocks, although most areas of the City have less density of landmarks.

CALENDER YEAR	NUMBER OF LANDMARKS DESIGNATED
2020	2 to date (in addition to 2 pending applications)
2019	3
2018	5
2017	4
2016	2
2015	2
2014	6
2013	1
2012	3
2011	2
2010	2
2009	5
2008	2
Twelve year total (through June, 2019)	39 total designations, averaging 3.25 per year.

Commission Staffing:

The Planning Department assigns two planners to the LPC; one acts as Commission Secretary. Current staff are Fatema Crane (Commission Secretary) and Alison Lenci. As in the past the Commission appreciates the staff support and, in particular, the ability of the staff to maintain poise in the face of difficult and often stressful circumstances including the COVID-19 crisis, tight deadlines and complex workloads. In addition to their visible services at Commission meetings, the LPC staff do a great deal of work processing materials related to individual landmark properties.

The Commission notes once again to the Council that while the assigned level of staff support is sufficient for the Commission's basic operations, no Planning staff time is assigned to assist the Commission with initiatives beyond those basic operations. During the life of the Ordinance almost all historic research and Landmark applications have been done by Commission or community members on a volunteer basis. This means that the City of Berkeley does not really have a historic preservation *program*; instead, it only has assigned staff resources for the processing of externally generated proposals and permits for specific existing or potential historic resources. This places Berkeley in a position of being largely reactive, not proactive, on historic preservation issues, contrary to our ordinance and State expectations of CLG governments. Berkeley would and should be more engaged with historic resources through the provision of more staff time to support preservation work and initiatives beyond basic permit and application processing and reviews.

As we noted in our previous two reports, the lack of staff time for broader initiatives limits the ability of the Commission to pursue initiatives and programs called for in the Landmarks Preservation Ordinance. For example, the Landmarks Commission is given the following powers and duties by the Landmarks Preservation Ordinance. Powers and duties A, C, D, and F in particular are difficult to pursue with only the volunteer time / labor of individual Commissioners.

3.24.070 Powers and duties generally. In connection with the foregoing power and authority, the commission may:

- A. Establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition, as more fully set forth in Section 3.24.330 below;
- B. Carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;
- C. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;
- D. Inspect structures, sites and areas which it has reason to believe worthy of preservation with the permission of the owner or the owner's agent;
- E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally in the protection, enhancement, perpetuation and use of landmarks, property in historic districts and other officially recognized

property of historical or architectural interests;

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

G. Establish such policies, rules and regulations as it deems necessary to administer and enforce this chapter, subject to the approval of the City Council. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 2(i), 1974)

Summary of details of Commission Actions during Reporting Period

The Commission took these specific actions during the reporting year.

Landmark Nominations Approved:

- 1399 Queens Road (mid-century Modern hillside cottage)
- 2043 Lincoln Street (1880s Victorian house, residence of two notable early Berkeley families)
- 1440 Hawthorne Terrace (Marsh House) (designed by notable architect and part of “family compound” with 1450 Hawthorne Terrace.)
- 1450 Hawthorne Terrace (Sperry-McLaughlin House) (designed by notable architect, residence of two families important in national environmental / conservation history)
- 1619 Walnut (Las Casitas Apartment Building) (unusual 1920s apartment building with many period architectural details.)

Landmark Nominations Received and in process of review:

- 2328 Channing (Luttrell House). (19th century Victorian, rare survivor in College Homestead Tract.)
- 2300 Ellsworth (1920s commercial building designed by notable local firm and almost entirely intact on exterior).

Mills Act Contracts for Landmark properties Reviewed / Recommended to Council:

- 1730 Spruce Street (The Lording House)
- 2524 Dwight Way (The Stuart House)
- 2526 Hawthorne Terrace (Blood Residences)

Demolition referrals of buildings over 40 years old:

Considered and took no action to initiate these buildings for any further landmark consideration:

- 3000-3006 San Pablo / Ashby
- 2590 Bancroft
- 2650 Telegraph
- 2000 Dwight (six buildings)
- 2099 M.L. King, Jr. Way
- 999 Anthony Street
- 910 Ashby

- 1035 Heinz Avenue

Signage or other exterior alteration reviews on Landmark structures:

2133 University Avenue (signage for Acheson Commons complex).
2018-30 University Avenue (UC Theater. Alterations to storefronts).
1911 Fourth Street (Spenger's Fish Grotto. Alterations).
1120 Second Street (wireless / telecommunications installation)
2234 Haste (alterations to rear residence of two-building landmark property)
1581 Le Roy Avenue (Hillside School)
2200 Piedmont Avenue (access alterations to front approaches to International House across public right of way)
Final Design Review: 2211 Harold War (item was continued, then application was later withdrawn so no final commission action.)

Courtesy reviews of projects at historic resources exempt from LPC oversight:

- none.

Other reviews and actions:

- Had Measure T-1 update from City Staff.
- Approved annual Certified Local Government (CLG) report prepared by Commission staff.
- Added to Potential Initiations list, 1631-33 Walnut Street.
- Reviewed Adeline Corridor Specific Plan.
- Commented on Section 106 review: 1601 Oxford Street and 2012 Berkeley Way.
- Reviewed programmatic agreement with the State Historic Resources Commission on Health, Housing and Community Service referral.
- Appointed Commission member to participate in Shattuck Avenue Naming Advisory Committee.