INFORMATION CALENDAR
September 10, 2019

To: Honorable Mayor and Members of the City Council
From: Landmarks Preservation Commission (LPC)
Submitted by: LPC Secretary on behalf of the LPC
Subject: LPC Annual Report to City Council for the period May 2018 to May 2019

INTRODUCTION
The LPC has prepared a report on its activities during the period May 2018 through May 2019; 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, 2019, the Commission voted to adopt the attached report and forward it to City Council [Vote: 7-0-0-1 (one vacancy); Yes: Abranches Da Silva, Adams, Allen, Crandall, Finacom, O’Malley, Schwartz; No: none; Abstain: none; Absent: Chignon].

The Commissioners’ Manual (2018) requires that the Commission Secretary present the Commission’s communications to City Council within three weeks of receiving the final document; however, due to an internal oversight, this transmittal was delayed.

BACKGROUND
On June 6, 2019, Chairperson Finacom prepared and presented a draft of the report to the LPC; some Commissioners then responded with feedback and suggestions for further refinement of the information therein. On July 2, 2019, 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 two properties as City Landmarks or Structures of Merit
- Granted eight requests for Structural Alteration of existing properties on the City’s register
- Studied and then recommended City Council approval of a Mills Act contract for repair and rehabilitation of a recently designated City Landmark property

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 annual report to the California State Historic Preservation Officer, will be forwarded for Council’s information per the City’s standard practice.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
There are no financial impacts associated with reporting this information to City Council.

CONTACT PERSON
Fatema Crane, Commission Secretary, Department of Planning and Development, (510) 981-7410

Attachment:
1: Landmarks Preservation Commission Report to City Council on Commission Activities, adopted July 2, 2019
Landmarks Preservation Commission Annual Report to the City Council for the period May 2018 to May 2019

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.

Executive Summary: During the reporting period the Commission:

1. held eleven regular Commission meetings and several subcommittee meetings.
2. approved two Landmark designations (both submitted by property owners).
3. had under consideration three other Landmark nominations (one of these was designated a Structure of Merit in June, 2019, after the reporting period ended).
4. reviewed for historic significance seven demolition referrals of buildings over 40 years old. Considered, and took no action to initiate these properties.
5. approved one Mills Act contract and sent it forward to the Council.
6. reviewed eight Structural Alteration Permits for existing Landmark properties. Six were approved generally as proposed, with appropriate conditions; one was denied; one is still under consideration.
7. placed three properties on the Commission’s “Potential Initiations” list for possible Landmark consideration in the future.
8. undertook three “courtesy reviews” of projects for or adjacent to Landmark properties owned by entities exempt from City regulation.

These actions and activities are summarized in more detail later in 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 two pages summarize these items. Most of these are items previously raised by the Commission with the Council. The Commission believes it would be helpful for the Council to have a work session with the Commission to discuss some of these items.

Religious Exemptions: The Commission 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.

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.

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.

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.

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 has been unable to apply for this grant because a source of local matching funds has not been confirmed early enough in the application process. The Commission
hopes to recommend an application for the 2020/21 fiscal year. Staff and Council support will be needed for preparation and submission of an application early in 2020. To facilitate this, we recommend the Council set aside in the next biannual budget 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.

**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. The next year will be 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).

**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.

**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 only come to the Commission once in the past year and subsequent University presentations have been delayed, despite the fact that pending University projects impact several City of Berkeley landmarks.

**Inclusion in Landmark Designation:** Earlier this year 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. Action on this is planned, pending staff support for the logistics of a listening session process.

**Processing of Landmark Appeals:** Last year 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. 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, with the exception of a January 2018 recess. There were 11 meetings held in the 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.
Commission Membership:
During the reporting period the nine member Commission saw one Commissioner resign for health reasons. Another long-time Commissioner was not reappointed by a new Councilmember. Two new Commissioners were appointed. The Commission currently has one vacancy (as of May, 2019).

The Commission 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 each of the past two years 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 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 six requests to designate new Landmarks, and action was also completed by the City on two pending Landmark designations from the previous year. 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 2018/19:
1. two were initiated by the property owners, and considered and approved for designation by the Commission;
2. one was initiated by public petition, with the support of the property owner;
3. one was initiated by public petition, without the support of the property owner;
4. one was initiated by public petition organized by residents of the initiated property, without the support of the property owner.

As stated in our previous report for 2017-18, 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 were submitted.

Of the properties designated in 2018/19 for Landmark or Structure of Merit status, none have applied for Mills Act contracts.
The table below shows the number and pace of landmark designations over the past 11 years.

As we noted in our Annual Report last year, the total designations represent only a very small fraction of total properties in Berkeley. There are about 332 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.

<table>
<thead>
<tr>
<th>CALENDAR YEAR</th>
<th>NUMBER OF LANDMARKS DESIGNATED</th>
<th>Calendar Year</th>
<th>Number of New Mills Act Contracts</th>
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<tbody>
<tr>
<td>2019</td>
<td>None during reporting period (one to date after reporting period, which will appear in 2019/20 Annual report).</td>
<td>2019</td>
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<td>Eleven year total (through May 2019)</td>
<td>34 total designations, averaging about 3 per year.</td>
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**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 (Commission Clerk). As in the past the Commission appreciates the professionalism of the staff support and, in particular, the ability of the staff to maintain poise and professionalism in the face of occasionally difficult and often stressful circumstances, tight deadlines and complex
workloads. In addition to their visible services at Commission meetings, the LPC staff do a great deal of work processing and preparing 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 report, 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:**
- 2415 Blake Street (one parcel, two structures, and grounds). 1880s Victorian cottage, with freestanding mid-century Modern cottage and garden designed and added by previous architect / owner in the 1980s.
- 1 and 5 Canyon Road (one parcel, two structures and grounds). Arts and Crafts era home, grounds, and garage / cottage at the base of Panoramic Hill.

**Landmark Nominations Received and in process of review:**
- 1440 Hawthorne Terrace (single family home).
- 1450 Hawthorne Terrace (single family home).
- 1619 Walnut Street (small apartment complex. This property was then designated a Structure of Merit in June, 2019, after the reporting period for this report ended. The appeal period has not yet concluded).

**Mills Act Contracts for Landmark properties Reviewed / Recommended to Council:**
- 2901 Benvenue (single family home).

**Demolition referrals of buildings over 40 years old:**
Considered and took no action to initiate these buildings for any further landmark consideration:
- 1000-1010 Carleton 1014-1016 Carleton 1020 Carleton
- 2710 Tenth Street
- 2198 San Pablo Avenue 1835 San Pablo Avenue. 2352 Shattuck Avenue.
- DRAFT Page 8 of 9
- Buildings placed on Potential Initiations List:
  - 1013 Pardee
  - 1940 Hearst Avenue 2222 Fifth Street
Signage or other exterior alteration reviews on Landmark structures:
- Cambridge Apartments commercial signage for new business (approved) 1414 Walnut Street, security fencing (approved)
- 2140 Shattuck Avenue (Wells Fargo Building), exterior lighting (approved) 2300 Shattuck Avenue (Corder Building), window replacement and alleyway gates and security additions. (approved)
- 2018 University Avenue (UC Theater) storefront improvements. (Pending, application incomplete.)
- 1915 Fourth Street (Spenger’s Fish Grotto) (pending. Commission has appointed a subcommittee to review plans.)
- 2580 Bancroft. Demolition of a mid-century commercial building (Bancroft Center), renovation of a Julia Morgan designed commercial building (Fred Turner Building), construction of an 8 story commercial and apartment infill building. (Approved).
- 8 Greenwood Common. Proposed second floor addition. (Denied, with opportunity left open for applications to resubmit with modified plans.)

Courtesy reviews of projects at historic resources exempt from LPC oversight:
- Berkeley Community Theater (discussed and sent letter to Council)
- 2626 Bancroft Way / 2625 Durant Avenue (UC’s Woo Hon Fai Hall, the former University Art Museum) (established subcommittee, sent comments)
- Upper Hearst Development (Sent comment letter to UC)

Other reviews and actions:
- Had Measure T-1 update from City Staff
- Approved motion to encourage State Historic Resources Commission to hold one 2019 meeting in Berkeley.
- Approved annual Certified Local Government (CLG) report prepared by Commission staff.
- Approved motion to hold one or more community listening sessions about landmark issues.