



**PLANNING COMMISSION SUBCOMMITTEE ON LANDMARKS
PRESERVATION ORDINANCE AND ZONING ORDINANCE AMENDMENTS**

**Thursday, March 10, 2005
Second Floor Conference Room
Permit Service Center
2120 Milvia Street**

1:00 PM – 3:00 PM

AGENDA

1. Public Comment Period - Opportunity for the public to speak, per the Ralph M. Brown Open Meetings Act
2. Continued discussion of Landmarks and Zoning Ordinance Amendments for recommendation to the Planning Commission

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Please refrain from wearing scented products to public meetings.

Accommodations Provided Upon Request. To request meeting materials in large print, Braille, or on cassette, or to request a sign language interpreter, assistive-listening device, real-time captioning or other accommodation for the meeting, call 705-8116 (voice) or 981-6903 (TDD). Providing at least five working days' notice will help to ensure availability at the meeting.

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 That Berkeley Municipal Code Chapter 3.24 is repealed and reenacted to read as follows: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 Reserved.**
- 3.24.090 Annual report required.**

Article II Initiation and Designation

- 3.24.100 Landmarks, historic districts and structures of merit--Designation--Procedures required-- Controls and standards.**
- 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.**
- 3.24.120 Landmarks, historic districts and structures of merit--Initiation.**
- 3.24.125 Request for Pre-Completion Review by LPC.**
- 3.24.130 Designation proposal--Public hearing required--Timing--Record keeping.**
- 3.24.140 Designation proposal--Public hearing notice requirements.**
- 3.24.150 Designation proposal--Time limit for determination--Materials for decision meeting.**
- 3.24.160 Designation proposal--Notice of decision required.**
- 3.24.170 Designation proposal--Disapproved--Waiting period for resubmission.**
- 3.24.180 Landmarks, historic districts and structures of merit--Designation--Recording required.**
- 3.24.190 Reserved.**

Article III Regulatory Authority and Environmental Review

- 3.24.200 Construction, alteration or demolition--Approval required.**
- 3.24.205 Determination of level of environmental review.**
- 3.24.206 Determination of adequacy of environmental review and action on projects--Timelines.**
- 3.24.210 Review of permit applications.**
- 3.24.211 Notifying applicant of need for review.**
- 3.24.220 Permit application--Data and public hearing required--Exceptions.**
- 3.24.230 Permit application--Public hearing notice requirements.**
- 3.24.240 Permit application--Decision--Time limitations--Review standards and criteria.**
- 3.24.245 Review of applications for demolition.**
- 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 3.24.090, 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 9 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. The members of the Commission shall have a demonstrated interest or competence in, or knowledge of, historic preservation.

2. At least 4 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 6 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 6 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 Reserved.

3.24.090 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.

The Commission may, upon receipt of any significant new information, reconsider after two (2) 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.

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

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

1. Architectural merit:

a. Property that is the first, last, only or most significant architectural property of its type in the region;

b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works or the best surviving work in a region of an architect, designer or master builder;

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

~~d. Properties that have retained, from their period of significance, sufficient integrity as described in National Register Bulletin #15 to convey their particular architectural significance;~~

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

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

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

5. 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.

6. 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, or is listed on the State Historic Resources Inventory.

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

1. General criteria shall be architectural merit and/or cultural, educational, historic or archaeological 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.

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

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

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

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

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

C. In order to designate a landmark or historic district, the Commission must find that the proposed landmark or district has significant architectural, cultural, educational or historic value and has integrity as defined in Title 14 of the California Code of Regulations, Section 4852(c) and as described in National Register Bulletin #15.

D. As used in this Chapter, "State Historic Resources Inventory" or "SHRI" means the survey of approximately 700 buildings 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.

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

A. Designation of a landmark or structure of merit may be initiated by:

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. Designation of an historic district 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 or subdivision B of this Section 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. City staff shall review the petition for completeness, and within 10 days shall notify the applicant in writing as to whether the petition is complete. Staff review for completeness shall be limited to ensuring that the form required by the Commission is completely filled out, and has sufficient signatures, and that all information required by the Commission is supplied.

D. Once a structure, site or area has been initiated by petition under paragraph A.5 or A.6 or subdivision B of this Section, an application for designation 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. Upon submission of an application for designation, City staff shall review the application for completeness, and within 10 days shall notify the applicant in writing as to whether the application is

complete. Staff review for completeness shall be limited to ensuring that the form required by the Commission is completely filled out, and that all required information is supplied.

3.24.125 Request for Pre-Completion Review by LPC.

A. 1. Upon submission of a Statement pursuant to the requirements of Section 23B.24.030.C the Commission shall determine whether or not a property merits designation as set forth in this Section.

2. In addition, a property owner or authorized agent thereof may obtain a Commission determination of whether or not a property merits designation by submitting to the City a statement requesting a determination by the Commission as to whether a structure qualifies for designation under this Chapter, and containing the information required by the Commission (“Statement”). In such cases, the applicant shall also provide proof that he or she has posted a conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the Statement refers to has its major frontage, prior to the date the Statement is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer. The Statement shall not be presented to the Commission unless it includes proof that such posting occurred at least 20 days prior to the Commission meeting at which the Statement is considered.

B. Upon submission of a Statement in compliance with subdivision A of this section, the Secretary shall set the matter for consideration at the first regular Commission meeting occurring no sooner than 21 days after the Statement is submitted, in substantially the following form: “Initiation of [address] as landmark or structure of merit.” Notice of the Commission’s consideration of the potential initiation shall be given as set forth in Section 3.24.140. The Commission shall either initiate or determine not to initiate designation at that meeting. Notwithstanding anything to the contrary in Section 3.24.120, when a request for determination has been made under this Section, a petition for designation under Section 3.24.120.A.6 that involves the same property may not be made more than 10 working days after the date of the meeting required by this subdivision.

C. Thereafter, any proceedings shall be governed by the relevant provisions set forth elsewhere in this Chapter, including:

1. Timing of any public hearing(s) shall be as prescribed in Section 3.24.130.
2. The time limit for decision shall be as specified in Section 3.24.150.B.
3. Timing for submission of certain materials shall be subject to Section 3.24.150.D.

D. In proceedings pursuant to this Section, if the Commission determines not to initiate designation, a petition for designation is not submitted to the City consistent with subdivision B of this Section 3.24.125, the Commission, or on appeal the Council, determines not to designate a structure or site after it is initiated, or the Commission does not act within the timeframe set forth in this Section, Article III of this Chapter, except for Sections 3.24.205 and 3.24.206, shall be inapplicable to the subject property unless and until any pending application for a development project on the subject property is denied, or a permit for a development project expires, is cancelled or revoked, or for any other reason ceases to have effect.

3.24.130 Designation proposal--Public hearing required--Timing--Record keeping.

A. The Commission shall hold a public hearing on a proposed designation or determination, and shall set a time and place for such hearing.

B. Hearings on proposed designations initiated pursuant to Section 3.24.120 shall be opened within 70 days of the filing of the petition or passage of the resolution.

C. Hearings on requests for determination pursuant to Section 3.24.125 shall be held and completed early enough to enable the Commission to act on the request for determination by the deadline prescribed by Section 3.24.150.

D. A record of pertinent information presented at the hearing shall be made and maintained as a permanent record.

3.24.140 Designation proposal--Public hearing notice requirements.

A. Notice of a public hearing required 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.

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. Designation as a "structure of merit" shall not be considered a listing on a "local register of historical resources" under Public Resources Code Section 5020.1(k).

3.24.150 Designation proposal--Time limit for determination--Materials for decision meeting.

A. The Commission shall approve, disapprove or modify a proposed designation initiated under Section 3.24.120 within 180 days after the opening of the public hearing.

B. The Commission shall act on a request for determination under Section 3.24.125, including any initiation that may result from that request, no later than the third regular monthly Commission meeting after the Statement is submitted.

C. Failure to act within the applicable time frame prescribed by this Section shall constitute disapproval.

D. Any application for designation, and any primary evidence upon which the 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.

3.24.160 Designation proposal--Notice of decision required.

The commission shall promptly notify in writing the applicant, owner and residents of the property of action taken. The commission shall also mail a notice of its decision to persons requesting such notification. A copy of the notice of decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.

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

If a designation proposal initiated by petition has been disapproved by the Commission or by the City Council on appeal as more fully set forth in Section 3.24.300 below, no subsequent petition for the same proposal may be submitted or reconsidered for at least 2 years from the effective date of final action by the Commission or by the City Council on the original proposal unless significant new information is presented.

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 Reserved.

**Article III
Regulatory Authority and Environmental Review**

3.24.200 Construction, alteration or demolition--Approval required.

A. No person shall carry out any construction ~~or~~ 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 pursuant to this Article, except as set forth in subdivision B of this Section or in Section 3.24.280, 3.24.300 or 3.24.350.

B. Approval under subdivision 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. Demolition of initiated or designated landmark structures or structures of merit, or in an initiated or designated historic district shall be subject to Section 3.24.245.

3.24.205 Determination of level of environmental review.

A. Notwithstanding anything to the contrary in Resolution No. 55,422-N.S., information about all applications described in BMC section 23B.24.030.B shall be placed on the agenda of the Commission no later than 30 days after said application is complete under the Permit Streamlining Act. Such information shall include any proposal subject to discretionary review to demolish or alter an existing structure. the Commission shall determine within 30 days of the date a project application is complete the level of environmental review of any application for a development project for demolition or exterior alteration of, or construction on a structure or site or in a district that is designated under this Chapter, or 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, or is listed on the State Historic Resources Inventory.

~~B. Determinations under this Section are limited to the appropriate level of environmental review of potential impacts to resources subject to protection under this Chapter. A determination by the Commission that an environmental impact report will be required must specify the values protected by this Chapter that may be affected and the potential significant adverse impacts on them.~~

~~C. A determination by the Commission that an environmental impact report will be required shall be subject to appeal in the same manner and to the same extent as a similar determination by the Zoning Adjustments Board or Zoning Officer.~~

~~D. For all applications for development projects not described in subdivision A of this Section, the Commission may within 30 days after the 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 promptly accept the Commission's recommendation or make provide ~~to the Commission~~ written findings explaining why it will not do so. Nothing in this subsection requires such findings a written response 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.~~

C. 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 development project, the Commission shall have the exclusive authority to determine the level of environmental review for the project.

3.24.206 Determination of adequacy of environmental review and action on projects--Timelines.

A. 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.

B. In cases where no City agency or officer other than the Commission has discretionary regulatory authority over an application for a development project, the following provisions apply:

1. 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.

2. The Commission shall determine whether to adopt or certify the environmental document no later than the second regular monthly meeting after it is submitted to the Commission for adoption or certification.

C. In all cases other than those described in subdivision B 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.

3.24.210 Review of permit applications.

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 3.24.100, 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.

3.24.211 Notifying applicant of need for review.

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.

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

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

1. When the application is for a permit to do ordinary maintenance and repairs, unless, in the opinion of the Commission, approval of the said application would seriously conflict with the purposes and

standards of this Chapter or the provisions of the designation. For the purpose of this Chapter, “ordinary maintenance and repairs” means any work the sole purpose and effect of which is to correct deterioration, decay or damage.

B. Any such permit application referred to the Commission shall include plans and specifications showing the proposed appearance, color and texture of materials, and the proposed architectural design of the structure. If the application, together with its supporting plans and specifications, does not provide a sufficient basis for review by the Commission, the Commission shall inform the applicant of the additional data required, and the applicant shall supply said data.

C. Except in the case of permits issued pursuant to subsection A.1. of this Section, the Commission shall hold a public hearing on the permit application. Such public hearing shall be held early enough to enable the Commission to make its decision on the application in compliance with subdivision B of Section 3.24.240.

3.24.230 Permit application--Public hearing notice requirements.

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than 10 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 10 days prior to the date of such hearing to the 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 application; 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 property referred to in the application.

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.

3.24.240 Permit application--Decision--Time limitations--Review standards and criteria.

A. Decision by Commission. 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. General factors. 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. General standard. In order to approve or conditionally approve the application, the Commission must find that the proposed work will be as appropriate for and as consistent with the purposes of this Chapter and preservation or enhancement of the property’s special characteristics, and the features specified by the Commission in the designation, if any, as is possible within the particular circumstances.

E. Criteria for landmarks ~~and structures of merit~~. In order to approve or conditionally approve an application for construction ~~or~~, alteration ~~or demolition~~ on an initiated or designated landmark or landmark site or structure of merit site, the Commission must find that the proposed work will not adversely affect:

1. the exterior architectural features of the landmark ~~or structure of merit~~ and, where specified in the designation for a publicly owned landmark ~~or structure of merit~~, its major interior architectural features; or

2. the special character or special historical, architectural, archaeological or aesthetic interest or value of the landmark ~~or structure of merit~~ and its site, as viewed both in themselves and in their setting.

F. Criteria for districts. In order to approve or conditionally approve an application for construction ~~or~~, 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.

G. Criteria for structures of merit.

1. In order to approve or conditionally approve an application for construction or exterior alteration on a structure of merit or structure of merit site, the Zoning Officer, or on appeal, the Commission, must find that the proposed work does not significantly impair the structure's or site's value as part of a neighborhood, block or street frontage, or as part of a group of buildings which includes landmarks.

2. Decisions by the Zoning Officer under this subdivision are subject to *de novo* review by the Commission pursuant to the same procedures and timelines as govern the review of Administrative Use Permits by the Zoning Adjustments Board, except to the extent that section 3.24.220 requires greater notice of Commission hearings.

G.H. Alternative Bases for Approval. Notwithstanding anything in this Section to the contrary, the Commission may approve or conditionally approve construction ~~or~~, alteration ~~or demolition~~ on an initiated or designated landmark ~~or landmark~~ site, ~~or~~ structure of merit ~~or structure of merit~~ site or in an initiated or designated historic district if it finds:

1. based on clear and convincing evidence, that 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; or

2. that 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 and 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 in relation to General Plan policies.

H.I. Additional basis for denial. The Commission may deny any application for 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 therefor. However, the Commission may deny an application under this subdivision 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.

3.24.245 Review of applications for demolition.

A. All applications for discretionary permits to demolish initiated or designated landmarks or structures of merit, or structures in an initiated or designated historic district, shall be subject to the review by the Commission upon adoption of a negative declaration or certification of an environmental impact report.

B. Review of such applications under this section shall be conducted at a public hearing that is noticed and held consistent with section 3.24.140.

C. At the conclusion of the public hearing, the Commission may recommend to the Zoning Adjustments Board or other any other person or entity with authority to permit demolition of the structure in question whether or not to do so.

D. Prior to making a decision with respect to demolition, the entity or officer to whom the Commission's recommendation is directed shall either accept and implement the Commission's recommendation or make written findings explaining its reasons for declining to do so.

Alternative 1:

E. If the Commission disagrees with written findings made under the foregoing subdivision it may certify the decision to the City Council, which shall set the matter for hearing.

Alternative 2:

E. If the Commission disagrees with written findings made under the foregoing subdivision it may place the matter on the next available Council agenda as an information item. The Council may take any action permitted by section 3.24.300.F, but may not hold it over to another meeting.

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 subdivision 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 or a structure of merit” includes the landscape features and amenities of the designated landmark, district or structure of merit when 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 subdivision (I) of this Section.

B. In addition, except as set forth in subdivision (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 pre-completion 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.

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 subdivision.

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 therefor.

B. All officers, boards, commissions, and departments of the City shall cooperate with the Commission in carrying out the spirit and intent of this Chapter.

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 or a structure of merit 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 or structure of merit, 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 Sections 3.24.205 and 3.24.206, 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. 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.

AMENDING SECTIONS 23B.24.030 , 23B.32.050 AND 23C.08.050 OF BERKELEY MUNICIPAL CODE TITLE 23 (ZONING ORDINANCE)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23B.24.030 is hereby amended to read as follows:

23B.24.030 Application Forms and Supporting Materials--Additional Information for Certain Projects

- A. Applications for Permits shall be made in writing on those forms provided by the Zoning Officer. The Zoning Officer may require supporting materials as part of the application, including, but not limited to, studies, reports, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project. All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection. The applicant shall be responsible for the accuracy and completeness of all application information submitted to the City.
- B. The following categories of applications shall include the information set forth in subdivision C of this Section:
 - 1. AUPs, Use Permits and Variances involving demolition or alteration of the exterior of structures over 50 years old, except accessory structures containing less than 300 square feet of floor area;
 - 2. any application for discretionary review involving demolition or alteration of the exterior of structures or sites that have been initiated pursuant to Chapter 3.24, are listed on or have 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, are listed on the State Historic Resources Inventory, or that are on the list of structures and sites established and maintained by the Landmarks Preservation Commission under Chapter 3.24;
 - 3. any application for discretionary review involving demolition or alteration of the exterior of structures or sites that the Secretary of the Landmarks Preservation Commission, in consultation with the Chair thereof, determines might reasonably satisfy the criteria for designation in Section 3.24.110.
 - 4. As used in this subdivision, “alter the exterior of” means to alter any portion of the exterior of a structure that is visible from a public right of way.
 - 5. As used in this subdivision, “State Historic Resources Inventory” or “SHRI” means the survey of approximately 700 buildings 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.
- C. Applications specified in subdivision B of this Section, except to the extent that the proposed work is exempt from the Landmarks Preservation Ordinance pursuant to Section 3.24.280, shall include a statement requesting a determination by the Landmarks Preservation Commission (LPC) as to whether the structure that is the subject of the application qualifies for designation under Chapter 3.24, which contains the information required by the LPC (“Statement”).

- D. 1. ~~Unless the proposed work is exempt under Section 3.24.280, no application described in subdivision B of this Section shall be complete under the California Environmental Quality Act or the Permit Streamlining Act until the potential initiation of said structure or site has been placed on the agenda of a meeting of the Landmarks Preservation Commission, and that meeting has occurred. In reviewing potential initiations under this section, the Landmarks Preservation Commission is limited to considering, and rendering guidance on, whether and to what extent the structure is eligible for designation under BMC Chapter 3.24, and may not consider other matters such as the merits of the proposed demolition or alteration, or whether the application for the Permit is complete.~~
2. In order to facilitate compliance with this requirement:
- a. The Secretary of the Landmarks Preservation Commission shall place all ~~such~~ applications for demolition on the agenda of the next Landmarks Preservation Commission meeting occurring no less than 21 days after the date the Statement is submitted.
 - b. The Secretary of the Landmarks Preservation Commission shall place all applications for alteration of the exterior of a structure on the agenda of the next Landmarks Preservation Commission meeting occurring no less than 21 days after the date the Statement is submitted if he or she determines that the structure might reasonably satisfy the criteria for designation in Section 3.24.110.
 - c. The applicant shall post a conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the application involves has its major frontage prior to the date the application is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer. The application shall not be complete unless it includes proof of such posting.

Section 2. That Berkeley Municipal Code Section 23B.32.050 is hereby amended to read as follows:

23B.32.050 Notice of Decision and Appeal

- A. After the Board takes an action to either approve, modify or deny an application for a Use Permit, and before the Board's next regular meeting, the Zoning Officer shall issue a Notice of Decision describing the Board's action, with its findings and applicable conditions.
- B. The Zoning Officer shall mail the notice to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action, and shall also file a copy of the notice with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.
- C. Any person or entity aggrieved by a decision of the Board may appeal the decision to the Council by filing one copy of a written appeal with the City Clerk within 14 days after the mailing of the Notice of Decision.
 1. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by resolution of the Council, shall be paid by the appellant.
 2. If a ground of the appeal is that the Board'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 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 Board's decision or any condition imposed by the Board denied the applicant any reasonable economic 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.

- D. If a timely appeal is made by the applicant, the City Clerk shall forward a copy of the written appeal to the Zoning Officer. If the appeal is made by someone other than the applicant, the Clerk shall forward a copy of the written appeal to the applicant and a copy to the Zoning Officer.
- E. The filing of a timely appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal. Whenever a decision of the Board is inconsistent with a decision of the Landmarks Preservation Commission under sections 3.24.200 through 3.24.240 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 Board's action or the Landmarks Preservation Commission's action. No fee may be charged for appeals under this subdivision.

Section 3. That Berkeley Municipal Code Section 23C.08.050 is hereby amended to read as follows:

23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses

- A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.
- B. A demolition of an accessory building containing less than three hundred (300) square feet of floor area is permitted as of right; an accessory building containing three hundred (300) square feet or more of floor area may be demolished subject to an AUP.
- C. If the Landmarks Preservation Commission (LPC) forwards to the Board comments on the application, the Board shall consider the recommendations of the LPC in determining its action on the application. ~~Any application for a Use Permit or AUP to demolish a non-residential building or structure which is forty (40) or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure of merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.~~
- D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:
 - 1. Is required to allow a proposed new building or other proposed new Use;
 - 2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;
 - 3. Will remove a structure which represents an unabatable attractive nuisance to the public; or

4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adherence to such a requirement would threaten the viability of the plan or project.

Section 4. 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.