

Land Use Planning  
Received  
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DANIELLA THOMPSON  
2663 LE CONTE AVENUE · BERKELEY, CA · 94709

28 June 2017

Landmarks Preservation Commission  
Fatema Crane, Secretary  
Land Use Planning Division  
2120 Milvia Street  
Berkeley, CA 94704

Re: Proposed amendments to the Landmarks Preservation Ordinance

Dear Commissioners:

Submitted for your attention is a proposal for amending several sections of the Landmarks Preservation Ordinance. If adopted, these amendments would make the LPO a great deal friendlier to the preservation cause.

The City Attorney has reviewed the proposed amendments language and found it acceptable from a legal standpoint.

Sincerely,



Daniella Thompson

**Proposed Amendments  
to the  
Berkeley Landmarks Preservation Ordinance (LPO)**

Daniella Thompson, 20 June 2017

**Summary:**

1. Change language in 3.24.110.A.1.a, Criteria for Consideration, to clarify the scope of geographical areas under review.
2. Correct typographical error in 3.24.110.A.1.b, Criteria for Consideration.
3. Add archaeological value to 3.24.110.A.4, Criteria for Consideration.
4. Conform initiation procedures for Historic Districts to those currently in place for City of Berkeley Landmarks and Structures of Merit by removing the requirement for subscription by a majority of property owners or residents of the proposed district.
5. Give the Landmarks Preservation Commission (LPC) the power to deny demolition of City of Berkeley Landmarks, Structures of Merit, contributing structures in Historic Districts, and initiated structures. The LPC already has the power to deny alterations in designated and initiated structures.

**1. Section 3.24.110.A.1.a Landmarks, historic districts and structures of merit—  
Designation—Criteria for consideration**

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324110.html>

**Current language:**

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

**Proposed language:**

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

**Rationale:**

In the context of criteria for designating a local landmark, the term “region” used in subsections 1.a. and 1.b. under Architectural Merit does not apply to areas outside the City of Berkeley. Nevertheless, on numerous occasions, confusion has arisen as to the term’s meaning. Replacing “region” with terms such as “neighborhood,” “tract,” and “Berkeley” will provide the required clarity.

**2. Section 3.24.110.A.1.b Landmarks, historic districts and structures of merit—  
Designation—Criteria for consideration**

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324110.html>

**Current language:**

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

**Proposed language:**

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 Berkeley, a neighborhood, or a tract of an architect, designer, or master builder;

**Rationale:**

See rationale for No. 1 above. In addition, it appears that the “of” in “more notable works of the best surviving work” is a typographical error. The word “or” makes more sense in that sentence.

**3. Section 3.24.110.A.4. Landmarks, historic districts and structures of merit—  
Designation—Criteria for consideration**

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324110.html>

**Current language:**

4. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley / Alameda County / California / United States.

**Proposed language:**

4. Historic or archaeological value: Preservation and enhancement of structures, sites and areas that embody and express the history or prehistory of Berkeley / Alameda County / California / United States.

**Rationale:**

This would clarify that prehistoric remains and /or sites may be worthy of designation.

#### 4. Section 3.24.120 Landmarks, historic districts and structures of merit-- Designation--Initiation procedures.

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324120.html>

##### **Current language:**

Initiation of designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least fifty residents of the City. Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. ~~Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district.~~ (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 4, 1974)

##### **Proposed language:**

Initiation of designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least fifty residents of the City. Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 4, 1974)

**Rationale:** While a landmark initiation does not require a property owner's consent, a historic district initiation requires the application to be subscribed by a majority of property owners or residents of the proposed district. This requirement erects an almost insurmountable barrier to designating historic districts in Berkeley. As a result, there have been very few designations, despite the presence of numerous potential historic districts.

Particularly affected by the requirement are Berkeley's unique commercial districts, several of which are historically and architecturally worthy of designation as historic districts. Owing to their commercial nature, these districts are highly unlikely ever to receive subscription from the majority of property owners or residents and are therefore vulnerable to adverse development pressures.

Owing to the inconsistency in BMC Chapter 3.24.120, there is no barrier to initiating the individual properties within a proposed historic district without owner consent, in which case, a *de facto* historic district is created. An example of such a *de facto* historic district can be seen at Regent Street and Dwight Way, where eleven individually designated buildings are clustered together without benefit of a formal Historic District designation (see Fig. 1).

Progressive cities such as San Francisco, Los Angeles, and New York (as well as many others) require no property owner's consent for any designation. As a result, these cities have been able to designate numerous historic districts.



Figure 1. Landmarks at Regent St. & Dwight Way

**5. Section 3.24.240.B.2 Permit application--Decision--Procedure and time limitations--Notification required.**

<http://www.codepublishing.com/CA/Berkeley/html/Berkeley03/Berkeley0324/Berkeley0324240.html>

**Current language:**

B. For such permit applications reviewed by the commission:

1. If the application is for a permit to make exterior alterations or to carry out new construction, the commission shall approve, modify or disapprove the application in whole or in part, or suspend action on it for a period not to exceed one hundred eighty days for a landmark or in an historic district, and for a period not to exceed ninety days for a structure of merit.
2. If the application is for a permit to demolish, the commission shall approve or modify the application in whole or in part, or suspend action on it for a period not to exceed one year for a landmark or a designated structure in an historic district, and for a period not to exceed one hundred eighty days for a structure of merit; however, no demolition permit approved for a City of Berkeley Landmark, designated structure in

an historic district, or structure of merit shall be activated following the appropriate period of suspension stated above until the building permit for the replacement structure is presented to the Codes and Inspections Division of the Department of Planning and Community Development. (Ord. 6403-NS § 4, 1998: Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 6.1(c), 1974) (Ord. 6403-NS repealed pursuant to modifications made by the California Court of Appeal on 1/7/98)

**Proposed language:**

B. For such permit applications reviewed by the commission:

1. If the application is for a permit to make exterior alterations or to carry out new construction, the commission shall approve, modify, or disapprove the application in whole or in part, or suspend action on it for a period not to exceed one hundred eighty days for a landmark or in an historic district, and for a period not to exceed ninety days for a structure of merit.
2. If the application is for a permit to demolish, the commission shall approve or modify the application in whole or in part, or deny such permit. No demolition permit approved for a City of Berkeley landmark, designated structure in an historic district or structure of merit shall be activated until the building permit for the replacement structure is presented to the Codes and Inspections Division of the Department of Planning and Community Development. (Ord. 6403-NS § 4, 1998: Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 6.1(c), 1974) (Ord. 6403-NS repealed pursuant to modifications made by the California Court of Appeal on 1/7/98)

**Rationale:** The current language allows the Landmarks Preservation Commission to suspend demolition of designated or initiated structures for a limited period but not to deny it outright. This very limited authority to protect designated and initiated structures from demolition is inconsistent with BMC Chapter 3.24.010, which states that the purpose of the Landmarks Preservation Ordinance is the protection, enhancement, perpetuation, and use of such structures, sites, and areas, and that prevention of needless destruction and impairment of these structures, sites, and areas is essential to the health, safety, and general welfare of the citizens of the City.

In 2013, the National Alliance of Preservation Commissions published the paper “Demolition Delay: A Tool, Not a Solution” ([http://www.ohp.parks.ca.gov/pages/1072/files/11\\_demo\\_delay.pdf](http://www.ohp.parks.ca.gov/pages/1072/files/11_demo_delay.pdf)).

The author of the paper, a Certified Local Government Coordinator for the State of Oregon, reports that “A few communities in Oregon that have recently suffered losses of significant historic properties have moved beyond demolition delay and added demolition denial as an action. In all cases, since the demolition denial has been in effect, the properties denied demolition are still standing — some in improved condition. Also, the denial tends to limit the number of applications requesting demolition.”

**Note:** Adoption of item No. 5 would require corresponding adjustments to be made in other, related sections of the BMC.

**City Attorney’s comment on item No. 5:**

I don’t see a legal problem with this. I would note, though, that if we establish a system where two independent hands of the City (LPC and ZAB) can render binding decisions on the same project that are contrary to each other, there needs to be a way to reconcile

them. Generally, this means some sort of automatic appeal of both to the Council. This in turn raises issues of timing, i.e., the decisions need to be made close enough together that both can be appealed before either becomes final, so it affects the LPC and ZAB processes as well. There are a number of other potential solutions to this issue. As an example, one approach is for an LPC decision on demolition to be advisory to or appealable to the ZAB. I assume this is not what you had in mind, but I mention it just to illustrate the breadth of potential solutions to the “right hand/left hand” problem.