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Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR
November 10, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmember Mark Humbert (Co-Sponsor)

SUBJECT: Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

RECOMMENDATION

Refer to the City Manager and City Attorney to amend two related Berkeley Municipal Code (BMC) sections: 3.24.120, “Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures,” and its related BMC section 3.24.300, “Appeals-Procedures Required-City Council Authority.”

This referral recommends refinements to the procedure for designating landmarks, historic districts, and structures of merit to discourage frivolous designations, often of sites that are planned to be redeveloped to address our City’s housing shortage.

Proposed amendments include the following two changes to the BMC:

- 1) Raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200; and
- 2) For properties located in residential zoning districts,¹ require 51 percent of the residents within a 300-foot radius of the subject building/structure to be among the applicants signing on to initiate the landmark / structure of merit designation, similar to the threshold used for other City procedures by the Planning and Public Works departments.² We note that this second requirement may necessitate the collection of more than 200 signatures.

¹ As defined in Berkeley Municipal Code section 23.202 - <https://berkeley.municipal.codes/BMC/23.202>

² These numbers were chosen to be congruent with other criteria used within the city regarding community outreach and involvement. Our Planning Department, for instance, requires that Projects of Community or Neighborhood Interest meet with owners, residents and community groups within

Specifically, the proposed amendments to the Berkeley Municipal Code (BMC) 3.24.120, “Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures” would read as follows:

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 200 residents of the City and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property. 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)³

Similarly, BMC 3.24.300(A)(1) is proposed to read as follows:

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 200 residents and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300-foot radius of the subject property of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.⁴

CURRENT SITUATION AND ITS EFFECTS

A Low Threshold for Residents to Seek a Landmark / Structure of Merit Designation Leads to Frivolous Applications That Create Delay and Uncertainty.

. . . Currently, individuals at liberty to initiate and appeal the process of designating a home, building, structure or district as an historic landmark or structure of merit are City Council members; appointed commissioners of the Landmarks Preservation Commission, Planning Commission, or Civic Arts Commission; property owner(s) of the subject property; and any random group of at least 50 residents living

300 feet of the project (<https://berkeleyca.gov/sites/default/files/2022-02/Instructions-Regarding-Community-Outreach.pdf>) and our Transportation Division requires that 51 percent of residents on a given block sign the petition to adopt the Residential Preferential Parking (RPP) program (see RPP opt-in guide, page 3): <https://berkeleyca.gov/sites/default/files/documents/RPP%20Opt-In%20How-To%20Guide.pdf>

³ Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

⁴ Berkeley Municipal Code section 3.24.300(A)(1): <https://berkeley.municipal.codes/BMC/3.24.300>

anywhere in the City. The relatively low bar for residents to initiate designation of a landmark / structure of merit for property that they do not own—by simply collecting the signatures of 50 people—has led to disputes between neighbors and homeowners, and—for larger proposed developments—uncertainty and delay as well as a significant amount of work for City staff.⁵ In the background section below, we describe two notable cases in which at least 50 residents submitted a petition to initiate a landmark / structure of merit designation after the subject property was proposed for development or demolition. In both cases, the landmark designation was found to be inappropriate.

. . . And Can Be In Tension with the Spirit of State Housing Law. In two other cases presented as background below, the Landmarks Preservation Commission approved landmark designations after proposed development projects had already vested—meaning a developer had submitted a preliminary housing application deemed complete, which locks in the zoning, design, and preservation standards that were in place at the time of the application’s submission—under state law Chapter 654, Statutes of 2019 (SB 330, Skinner).⁶ Known as the Housing Crisis Act of 2019, SB 330 is intended to safeguard housing projects from shifting local rules. Local governments are limited from imposing new regulations retroactively if those rules would reduce housing capacity or introduce additional discretionary barriers.⁷ In essence, state law SB 330 renders the landmark designation unenforceable, but the process still causes months of delay and creates uncertainty related to financing.

BACKGROUND

In the following four case studies, we show how the current procedure for initiating a landmark or structure of merit has been weaponized by opponents of neighborhood change.

Case Study #1: Neighbors’ Attempt to Landmark Unremarkable House to Block High-Density Development at 1915 Berryman Street. In May 2020, a development application to construct a ten-unit residential project at 1915 Berryman Street in North Berkeley was submitted to Berkeley’s Planning Department. The property, known as the Payson House, was originally built in 1889 for First Unitarian Church co-founder William Payson. The proposed project would expand the property by constructing six townhouses containing ten units. Close to two weeks after the construction application was submitted, a neighbor submitted an application to designate the

⁵ We note that a property owner who believes their property is worthy of landmark / structure of merit status will continue to have the option of contacting the Landmarks Preservation Commission to request that the body initiate the landmark / structure of merit designation proceedings.

⁶ SB 330, Skinner. Housing Crisis Act of 2019 -

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330

⁷ California Government Code § 65589.5(o)(1) “...a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.”

structure a city landmark or structure of merit in accordance with Berkeley Municipal Code Section 3.24.120. The neighbor was joined by 65 other residents, and the group was represented by the Berkeley Architectural Heritage Association. In August 2020, the Landmarks Preservation Commission conducted a public hearing on the designation request; the staff report concluded that there was not enough evidence showing the property to have historical value nor was it representative of exemplary design or the notable accomplishments of persons important to history.⁸ Nearby neighbors who supported the landmark designation wanted to preserve the “aesthetic of their street,” and felt that the Payson House was historically significant to the neighborhood while those in support of staff’s finding saw the landmark designation process as an attempt to preempt a larger development proposed to replace the current house. In the end, the Landmarks Preservation Commission voted 7-2 in support of the staff report opposing the designation of landmark status.⁹ Two months later, the commission’s decision was appealed to the City Council, and the City Council upheld the Landmark Preservation Commission’s decision.¹⁰ In October 2021, the Zoning Adjustments Board approved the redesigned 11-unit project under the state’s density bonus law, which included three low-income units to meet affordability requirements. The failed effort to halt redevelopment of the Payson House took approximately 18 months, and significant staff time was devoted to this attempt at maintaining the “aesthetic of the street” and the low density neighborhood.

Case Study #2: Neighbors Attempt to Landmark Property to Maintain

Neighborhood Feel at 910 Indian Rock Avenue. The single-family home at 910 Indian Rock Avenue, known as the Marrenner House, was built in 1916. It became the subject of a landmark designation effort after its owners, the Emersons, submitted plans to demolish it to build a larger home to accommodate Mrs. Emerson's aging and disabled mother. Concerned neighbors submitted a landmark structure of merit application,¹¹ which included a petition and a group letter signed by 57 residents. The group suggested preserving the existing character of the house by constructing a suitable addition at the rear of the property, rather than the demolition that the property owner sought, as a way to maintain the neighborhood character.

⁸ Public Hearing during January 21, 2021 Special City Council Meeting: “Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street”

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQpIixFY%3D/>

⁹ Minutes from the August 6, 2020 Landmarks Preservation Commission Meeting:

https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06_LPC_Minutes_FINAL.pdf

¹⁰ Public Hearing during January 21, 2021 Special City Council Meeting: “Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street”

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQpIixFY%3D/>

¹¹ 910 Indian Rock Avenue Landmark Support Letters sent to the Landmarks Preservation Commission, May 4, 2023 https://berkeleyca.gov/sites/default/files/documents/2023-05-04_Item%207_910%20Indian%20Rock%20.pdf

The Landmarks Preservation Commission reviewed the matter over several meetings in May, July, and November 2023.¹² During the November 2023 meeting, the commission voted not to approve the designation application. The Emersons had argued all along that their house did not satisfy the requirements to designate it as a landmark or structure of merit, contrary to the neighbors' assertions. However, well into the petition process, and following an offer from Kit Ratcliff, grandson of the home's original architect, the Emersons agreed to renovate the property, maintain the street facing facade and partner with Kit Ratcliff who would oversee a remodel and rear addition to the home. The Emersons themselves wrote a letter to the Landmarks Preservation Commission requesting they take no action on designating their house as a landmark or structure of merit, emphasizing that the original petitioners also no longer supported the designation as demolition was no longer an issue and the front facade of the house would remain intact.¹³ In the end, all stakeholders were satisfied as the Emersons could renovate their home to accommodate the growing needs of their family, Kit Ratcliff could honor the architectural work of his grandfather, and the surrounding neighbors would not have to see the newly constructed addition. This reveals yet again how the subject property's merit as a historical landmark was secondary to preserving a neighborhood context as perceived through the eyes of some of the neighbors.

Case Study #3: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2425 Durant Avenue. The landmark dispute over 2425 Durant Avenue emerged not from long-standing recognition of historic value but from a petition filed only after a housing project was already in motion. The property, part of Berkeley's early College Homestead and Beaver Tracts, had no prior designation on state or national registers and had not been the subject of preservation campaigns before. In November 2024, the developer filed a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019), which the City deemed complete on November 21, vesting the project under the rules then in effect. Weeks later, in December 2024, the Berkeley Architectural Heritage Association filed to landmark 2421 Durant Avenue, initiating a process that culminated in the Landmarks Preservation Commission's March 6, 2025 vote to designate the property as a landmark.¹⁴ This sequence created an immediate legal and procedural conflict. Under SB 330, once a housing project vests, local governments cannot impose new standards, including

¹² Landmarks Preservation Commission Meeting Agenda, Thursday May 4, 2023, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-04_LPC_Agenda_linked.pdf; July 6 Landmark Preservation Commission meeting, item #7: https://berkeleyca.gov/sites/default/files/documents/2023-07-06_LPC_Item%207_910%20Indian%20Rock_Packet.pdf; Agenda packet for November 2, 2023 Landmarks Preservation Commission meeting:

https://berkeleyca.gov/sites/default/files/documents/2023-11-02_LPC_Item%207_910%20Indian%20Rock_Staff%20Report%20and%20Attachments.pdf

¹³ November 2, 2023 LPC agenda packet (see above), page 41 of 43.

¹⁴ <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%2001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

landmark protections, on the housing project. The developer argued that the late-filed petition and subsequent Landmarks Preservation Commission designation had no legal effect, but nonetheless imposed significant practical burdens. In their appeal, filed in April 2025, the developer emphasized that the designation had already caused four months of delay, introduced uncertainty for lenders and insurers, and jeopardized the project's financing¹⁵—exactly the types of obstacles state law sought to eliminate.

In the public hearing of the appeal on July 23, 2025,¹⁶ Planning staff recommended reversing the Landmarks Preservation Commission decision, noting that while the designation technically existed, it could not be applied to the vested housing project. Staff also noted that this would be purely a symbolic landmark. Preservation advocates, including BAHA, urged the City Council to uphold the designation, citing the property's role in illustrating the layered history of the Southside neighborhood. They argued that even symbolic landmarking could have educational value and underscored the City's failure to complete a comprehensive historic survey. But Councilmembers highlighted broader concerns, including the applicability of SB 330. Keeping the designation in place risked exposing the City to legal liability and would further chill housing development at a time when Berkeley already faces a housing shortage. Ultimately, staff concluded that state housing law precluded applying the designation to the housing project, and the matter presented a broader conflict between housing production mandates and preservation priorities. The Council ultimately voted unanimously to uphold the appeal and reverse the Landmarks Preservation Commission designation.¹⁷

Case Study #4: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2138 Kittredge Street. The dispute over 2138 Kittredge Street followed a familiar pattern in Berkeley's ongoing tension between housing production and historic preservation. The property, associated with the Fitzpatrick House and later the Pepper Tree Tea Room, had long been noted in neighborhood surveys but was never designated at the state, federal, or local level as a landmark. In April 2024, the developer submitted a Preliminary Use Permit application under SB 330, which was deemed complete that same month, vesting the project under existing planning and zoning standards. Several months later, in February 2025, the Berkeley Architectural Heritage Association filed an application to landmark the property.¹⁸ Similar to the

¹⁵ As per comments by the appellant as part of the City Council meeting, held on July 23, 2025 https://berkeley.granicus.com/player/clip/5488?publish_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true

¹⁶ <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%2001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

¹⁷ Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

¹⁸ https://berkeleyca.gov/sites/default/files/documents/2025-02-06_LPC_Item%207_2138%20Kittredge_Staff%20Report%20and%20Attachments.pdf

case of Durant Avenue, the Landmarks Preservation Commission voted to approve the designation, citing architectural features and the property being present in the downtown area surrounded by other historic structures.

City planning staff recommended overturning the Landmarks Preservation Commission's designation due to the same application of state housing law—under SB 330, once a housing application is deemed complete, new regulations, including landmark designations cannot be imposed retroactively on the housing project. The City Council grappled with the same tension that had defined the Durant Avenue case. They acknowledged the symbolic intent of the petition but underscored that the designation carried no enforceable weight and introduced costly delays and economic uncertainty. The Council voted unanimously to uphold the appeal and overturn the Landmarks Preservation Commission designation,¹⁹ and reinforced the same conclusion reached in the Durant case.

FISCAL IMPACTS

Staff time on a one-time basis to amend and incorporate the re-worded code sections into the BMC, and ongoing savings to staff time due to anticipated fewer landmark attempts that turn out to be frivolous.

ALTERNATIVE ACTIONS CONSIDERED

The city could reconsider funding a historic context statement. A historic context statement is a document that includes a comprehensive understanding and structure for grouping information about the City's history, historic properties and the built environment. An historic context statement would provide transparency by providing a planning document with guidance on identifying and evaluating historic buildings and resources. It would include an evaluative framework and guidance for staff and Landmarks Preservation Commission decisions regarding historic resources thus decreasing staff time involved in researching each property initiated for landmark designation and ad hoc decisions about properties based on commissioners' and residents' comfort with growth. The requested funding for an historic context statement was projected to be between \$250,000 to \$275,000 and was not approved in FY 2024-25 or in FY 2025-26. Given this relatively high one-time cost, it is unclear whether Council would have the funding available to pursue a historic context statement in the near future.

Despite the relatively high one-time cost, there is broad recognition that the benefits of an historic context statement could outweigh the expense. It would not only generate a vetted list of potential landmarks and structures of merit but would also

¹⁹ Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

provide greater predictability for developers, staff, and residents alike. Other cities, such as San Francisco²⁰ and Los Angeles²¹ have already commissioned historic context statements that serve as standard references for preservation planning and environmental review. While a citywide context study in Berkeley may take considerable time to complete, the recommendations in this ordinance can provide a practical framework in the interim - tiding the City over until a formal survey is adopted.

RATIONALE FOR RECOMMENDATION

This referral is submitted in the spirit of eliminating one particular way people have used our municipal code to delay the construction of much-needed homes. It would also help address conflicts among neighbors that pit “maintaining the feel of a neighborhood” against property owners’ interests in renovating their own homes. Berkeley has successfully adopted a Housing Element and has received the state’s Prohousing Designation; the referred BMC amendment would be an additional step furthering our commitment to this designation and our efforts to provide more housing.

CONTACT PERSON

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²⁰ <https://sfplanning.org/project/citywide-historic-context-statement>

²¹ <https://planning.lacity.gov/preservation-design/historic-resources/historic-themes>