

TO: City of Berkeley City Manager, Paul Buddenhagen  
City of Berkeley Planning Director, Jordan Klein

FROM: Landmarks Preservation Commission (LPC)

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

DATE: March LPC meeting, March 5, 2026

### **EXECUTIVE SUMMARY**

#### General comments:

- The LPC recommends that any changes or amendments to the ordinance include a public comment process. This ensures the LPO remains compliant with SHPO, retaining its CLG status and preserving eligibility for grant funding and other benefits.

#### Specific comments to the Supplemental Packets 1 and 2 received:

- Landmark Initiations and Appeals: For initiations by the public, we recommend increasing the required number of signatures from 50 to 100.
- Owner-Initiated Path: This process should remain unchanged and does not require public signatures.
- State Housing Law Compliance: To address new and future state laws, we suggest stating the relevant policies on the application and the City website rather than altering the ordinance itself.

### **BACKGROUND**

The Council is proposing to make changes to the Landmarks Preservation Ordinance (LPO). We draw the Council's attention to the fact that Berkeley is currently a Certified Local Government (CLG) for the purposes of identification, evaluation, registration, and preservation of historic properties within Berkeley. CLG status is the "gold standard" to municipal historic preservation programs in California. Currently, only about 70 of California's nearly 500 incorporated cities and towns (including Berkeley) have earned CLG status and programs are monitored annually by the State for conformance.

Being a CLG opens the door to State and Federal funding for preservation efforts. Most recently, Berkeley was able to obtain a CLG grant that made it possible to conduct the last historic survey in the city, the Downtown Survey for the 2012 Downtown Plan.

Under the CLG program, local preservation ordinances must conform to certain standards, and changes to an ordinance should be reviewed by the State Office of Historic Preservation (SHPO) to ensure they are in conformity with CLG policies and goals. If an ordinance or city practices do not conform, the city risks loss of its CLG status and loss of access to grant funding and other CLG benefits.

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A SHPO review of Berkeley's proposed changes, and the opportunity for public comment to the SHPO during that review, is an important procedure to build into any process for amending Berkeley's LPO, before final adoption. The Commission raised this issue with the Director of Planning and LPC staff at the February LPC meeting. We have not yet received information on whether the opportunity for public comment has been initiated.

Information on the CLG program can be found here: [https://ohp.parks.ca.gov/?page\\_id=21239](https://ohp.parks.ca.gov/?page_id=21239)

### **RECOMMENDATIONS**

The recommendations below are based on the Supplemental Packets 1 and 2 received at the November 10, 2025, City of Berkeley Council meeting.

#### **1. Signature requirements for Landmark initiation and appeals:**

Supplemental Packet 1 suggests increasing the required signatures for public nominations from 50 to 400 (without owner consent) and 200 (with owner consent). Supplemental Packet 2 proposes a simplified increase from 50 to 200 signatures for both public designations and appeals.

The Landmarks Preservation Commission (LPC) provides the following comments and recommendations:

The LPC acknowledges the Council's concerns regarding staff workload and the potential for the current low threshold to cause project delays and uncertainty. Accordingly, the LPC supports doubling the signature requirement from 50 to 100. However, we believe that raising the requirement to 200 or 400 is onerous and would effectively eliminate the public's ability to participate in the landmarking process. Such a significant increase is contrary to Berkeley's long tradition of active, participatory democracy.

To address the issue of staff time and expenses, we recommend implementing an additional hourly fee for complex applications to supplement the standard flat fee. This would cover actual costs and incentivize parties to resolve disagreements outside of the formal city process, thereby minimizing delays.

#### **2. Property Owner Approval of Designation:**

Supplemental Packet #1 currently requires 200 signatures with property owner approval or 400 signatures without it. Supplemental Packet #2 removes the requirement for owner approval if the 200 signatures have been collected (except for SB330 projects as addressed in item 3 below.)

The Landmarks Preservation Commission (LPC) agrees with the Packet two proposal - with the number of signatures as stated in item 1 above. The simplified alternative presented in Packet #2 is more logical and will be easier to administer. If a landmark initiation proposal is submitted

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and the owner either supports the initiation or remains silent, the process should proceed as it currently does.

**3. SB 330 related amendments:**

Supplemental Packet #2 proposes to restrict an initiation of landmarking designation for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record.

The LPC is concerned that the proposal to simply restrict landmarking designations for five years following a Preliminary Use Permit application lacks the necessary accountability measures as applied to SB 330 projects generally.

Specifically, the current proposal:

- Does not require the submission of a complete use permit or building permit application.
- Does not mandate that construction begin within a specific timeframe.
- Risks inviting bad-faith applications intended solely to block landmark initiations.
- Allows any new preliminary application to restart the five-year clock indefinitely.

Furthermore, we believe that incorporating SB 330 requirements directly into the ordinance unnecessarily complicates the text and could jeopardize the City's eligibility for future grants per SHPO as described above.

As state housing laws evolve, amending the ordinance for each individual law is time-intensive and may lead to inconsistencies or legal challenges.

The LPC recommends that the City of Berkeley follow the City of San Francisco's model. Instead of amending the ordinance, we suggest incorporating language into the Landmark Application and onto the City's website stating that applications may not be submitted for local landmark or structure of merit designation while there is an active project application for development pursuant to the Housing Crisis Act (SB 330).

**CONTEXT**

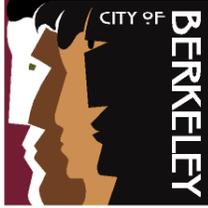
In response to the

1. Case Study #1 & #2:
  - a. LPC did not vote to approve designate landmark or structure of merit either of these properties
  - b. By increasing the number of signatures to 100 AND changing the fee structure to pay for additional staff time beyond that covered by the fee, should serve as adequate deterrence.
2. Case Study #3 & #4

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- a. LPC followed City Planning staff advice and City Attorney (see attachment) recommendations at the time with the understanding that landmarking structures on these two sites would be stayed as long as the SB 330 applications were active. When both applications were appealed to the City Council, City Planning staff changed their position. LPC now follows the current policy as articulated by the City Council.

DRAFT



Office of the City Attorney

## MEMORANDUM

July 8, 2020

To: Jordan Klein, Interim Planning Director

From: Farimah Brown, City Attorney  
Chris Jensen, Assistant City Attorney

Re: **Impact of SB 330 on Landmarks Preservation Commission Review of Housing Development Projects**

The Land Use Planning Division has requested an opinion as to whether SB 330 (2019) limits the authority of Landmarks Preservation Commission (“LPC”) to conduct historic resource evaluations of applications for housing projects.

SB 330 applies to any “housing development project,” which is defined as any residential development, mixed-use development with at least two-thirds of the square footage designated for residential use, or transitional housing or supportive housing development. (Gov. Code § 65589.5(h)(2).)

Where the requirements of SB 330 apply, determinations as to whether the site of the proposed project is historic site must be made “at the time the application for the housing development project is deemed complete.” (Gov. Code § 65913.10(a).) That determination “shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.” (*Ibid.*)

“Deemed complete” is defined in two different ways in SB 330. Government Code section 65905.5(b)(1) provides that “deemed complete” means “the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940<sup>1</sup> that was available at the time when the application was submitted.” (Gov. Code § 65905.5(b)(1).) However, Government Code 65589.5(h)(5) states: “Notwithstanding any other law, until January 1, 2025, ‘deemed complete’ means that the applicant has

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<sup>1</sup> Government Code section 65940 provides that “[e]ach public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project.” (Gov. Code § 65940(a).)

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submitted a preliminary application pursuant to Section 65941.1.” (Gov. Code § 65589.5(h)(5).) Until January 1, 2025, section 65589.5(h)(5) controls, “[n]otwithstanding any other law.”

Government Code section 65941.1 defines the requirements for a “preliminary application,” which include information about “[a]ny historic or cultural resources known to exist on the property.” (Gov. Code § 65941.1(a)(9).) Upon providing this information about known historic or cultural resources, along with the other information listed in section 65941.1, the application must be “deemed complete,” as set forth in Government Code section 65589.5(h)(5). Government Code section 65913.10(a) prohibits the City from imposing additional historic or cultural resources protections after this time.

Taken together, these provisions of SB 330 have the effect of divesting the LPC of jurisdiction to require applicants to comply with any cultural or historic resource preservation requirements after the time that a “preliminary application” for a housing development project is deemed complete. LPC and the City are prohibited by state law from denying or imposing conditions on a housing development project based on any cultural or historic resources protections imposed after the date on which the application was “deemed complete,” and any historic resources information required as part of the preliminary application must be limited to the identification of resources that are “known to exist” at the time of the application. Demolition referrals for commercial buildings that are over 40 years old are still required under the Zoning Ordinance, but cannot lead to the imposition of conditions of approval on the project if the LPC acts after the application is deemed complete.

SB 330 does not impact the LPC’s jurisdiction over purely commercial projects or any other project that does not meet the definition of a housing development project under Government Code section 65589.5(h)(2). In addition, SB 330 does not limit the City’s obligation to assess the impact of a proposed project on cultural resources under CEQA and to impose measures to mitigate any adverse impact on cultural resources. (See Gov. Code § 65913.10(c).)