



Office of the City Manager

ACTION CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Amendments to BMC Title 3.24 (Landmarks Preservation Commission) to Revise Procedures for Designating Landmarks, Historic Districts and Structures of Merit and Incorporate Technical Edits.

RECOMMENDATION

Adopt the first reading of an ordinance amending BMC Title 3.24 (Landmarks Preservation Commission) to revise procedures for designating landmarks, historic districts and structures of merit, and to incorporate technical edits.

SUMMARY

The amendments to the Landmarks Preservation Ordinance (LPO) are proposed in response to the Council referral and subsequent supplemental materials adopted on November 10, 2025 (**Attachment 2**). The proposed amendments to Title 3.24 consist of substantive changes to BMC Section 3.24.120 and 3.24.300 as well as technical edits to other sections (**Attachment 1**). The proposed amendments revise the designation initiation and appeals procedures for landmarks, historic districts and structures of merit by increasing the signature thresholds for initiation. The amendments also propose delaying landmark initiation procedures for five years following the receipt of a Preliminary Development Application under SB 330. The technical edits update noticing, certification, and appeals procedures for consistency with current City practices.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the recommended amendments would reduce staff expenses, with fewer expected applications to landmark structures, and fewer appeals of landmark designations of properties under SB 330 Preliminary Development Applications.

CURRENT SITUATION AND ITS EFFECTS

Currently, under BMC Section 3.24.120, a landmark designation can be initiated by the Landmarks Preservation Commission; City Council; the Planning Commission; the Civic Arts Commission; a verified application from the owners of the property to be

designated or their authorized agents; or a verified application from at least fifty residents of the City.

Similarly, BMC Section 3.24.300(A)(1) allows appeals to be taken to City Council by the City Council on its own motion; a motion of the Planning Commission; a motion of the Civic Arts Commission; a verified application from the owners of the property or their authorized agents; or a verified application from at least fifty residents of the City.

The Council referral states that these provisions provide an unduly low threshold for landmark initiation and appeal. The ease of initiation and appeal can lead to neighborhood disputes and delays, uncertainty for property owners and project applicants, and significant expenditure of resources and staff time to process landmark designation applications that are often unmeritorious. The Council referral notes that several of the landmark designations and appeals initiated by 50 signatures were ultimately denied by LPC or City Council; a higher threshold will better ensure the integrity of the landmark designation process.

The Council referral also notes that some landmark designation attempts conflict with the intent of State housing laws meant to streamline the approval of housing projects. SB 330, known as the Housing Crisis Act of 2019, locks in the zoning, design and preservation standards that are applicable at the time of the receipt of a complete application for a housing development project. Once the application is submitted and deemed complete, future changes to landmark status, zoning and other regulations are not permitted because the developer's rights have "vested" as a matter of state law. This prevents local jurisdictions from imposing new regulations that would reduce the development capacity or density of the project or introduce new discretionary barriers to a proposed housing development project. Since the passing of SB 330 in 2019, nearly one third of Berkeley's landmark initiation applications were in response to an SB 330 application filing.

Administratively, the current LPO poses some implementation challenges. Procedural details relating to public hearing notice requirements, notice of decision issuance, Council certification, permit review, and the filing, noticing and processing of appeals are outdated and out of line with the current practices of other quasi-judicial bodies such as the Zoning Adjustments Board (ZAB). One of the aforementioned amendments for procedural consistency in Section 3.24.190 extends the City Council's certification timeline to from 15 to 90 days. This change aligns the noticing requirements for the LPO with the City's current requirements for publication of City Council agendas which in large part are constrained by the Brown Act, a state law ensuring transparency in government decision-making. This change to the Notice of Decision publication timeline allows the City Council and the public full public notice of the action while meeting the City's agenda preparation guidelines.

The proposed amendments would also update language related to fees, which currently include a dollar amount set in the LPO which has been unchanged since at least 1985. The proposed amendment would implement fees through the Council-adopted Fee Schedule, the same as all other fees administered by the Land Use Planning Division. This would bring LPO-related fees in line with the current practice for most other City fees.

This practice is also consistent with that of other jurisdictions. Many other California cities utilize a cost recovery model for fees related to historic landmark designation. The City of Oakland, for example, assesses a fee for rezoning associated with landmark designation. The City and County of San Francisco, the City of Alameda, and the City of Santa Monica all assess fees for individual landmark and historic district designation.

## Discussion

The proposed amendments to Title 3.24 reflect the changes put forth in the Council referral adopted on November 10, 2025, as well as additional technical edits identified by staff. The referrals pose two options for revising the signature threshold for landmark initiation, and both options are presented below.

Supplemental Referral 1 (Kesarwani – **Attachment 2**) includes two different signature thresholds, depending upon the consent of the property owner. With owner consent, landmark initiation by the public would require the signatures of 200 Berkeley residents. Without owner consent, 400 signatures would be needed. Staff defined owner consent as a written Letter of Authorization from the property owner to the landmark initiation. Under BMC Section 3.24.120, an owner is also permitted to initiate a designation on their own through a verified application.

Supplemental Referral 2 (Tregub – **Attachment 2**) proposes an increased signature threshold to 200 signatures, regardless of owner consent. It also proposes a provision to include a five year stay of landmark initiation for development proposals vested under SB 330. At the November 10, 2025 regular meeting, Councilmember Kesarwani made a friendly amendment to support the inclusion of the SB 330 provision.

At its November 10, 2025 meeting, the City Council referred both options to staff to consider. Accordingly, staff have proposed two versions of BMC Sections 3.24.120 and 3.24.300 to reflect the two policy options for signature thresholds put forward in the Council's action. Both versions of Section 3.24.120 include the provisions for the five year stay of landmark initiation for SB 330 projects.

Staff excluded the SB 330 provisions from the proposed amendments to 3.24.300 (Appeals) to avoid redundancy. Because the proposed amendments to 3.24.120 preclude projects vested under SB 330 from landmark designation, separate provisions for a delay of appeals are unnecessary, as a vested property under SB 330 cannot be landmarked in the first place.

The amendments to BMC Sections 3.24.120 and 3.24.300 as well as the technical amendments are summarized in the table below. As the table explains, these changes are technical and/or procedural in nature and do not alter the criteria for the designation or potential alteration of landmarks:

**Title 3.24 (Landmarks Preservation Commission) Proposed Amendments**

| <b>Ord. Sec.</b> | <b>BMC Code Section</b>   | <b>Proposed Change Rationale</b>   |
|------------------|---|--|
| 1                | 3.24.030 (B) Membership-Appointments-Organization and officers.   | Error correction.  |
|                  | 3.24.030 (C) Membership-Appointments-Organization and officers.   | Deletion of provisions covered in the City's Commissioners' & Board Members' Manual.                         |
| 2                | 3.24.050 List of structures and sites--To be established and maintained--Contents.  | Typo correction.   |
| 3                | 3.24.060 List of structures and sites--Landmarks, historic districts and structures of merit designated--Permit application review. | Deletion of initial list establishment language, as this task has been completed.                            |
|                  | 3.24.060 (B)  | Language clarification.  |
|                  | 3.24.060 (A)(1)   | Language clarification.  |
| 4                | 3.24.080 Permit application--Suspension authorized when.  | Error correction.  |
| 5                | 3.24.100 Landmarks, historic districts and structures of merit--Designation--Procedures required--Control and standards.            | Organizational change for consistency and language edits only for clarity                                    |
| 6                | 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.                            | Organizational change only.  |
| 7                | 3.24.120 Landmarks, historic districts and structures of merit--Designation--   | Increased signature threshold from 50 to 200 with owner consent through a Letter of Authorization. Increased |

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|----|---|--|
|    | Initiation procedures. (Supplemental Referral 1)  | signature threshold from 50 to 400 without owner consent. Exemption for SB 330 projects for 5 years, and organization change for clarity.                              |
|    | 3.24.120 Landmarks, historic districts and structures of merit--Designation--Initiation procedures. (Supplemental Referral 2) | Increased signature threshold from 50 to 200. Exemption for SB 330 projects for 5 years, and organization change for clarity.  |
| 8  | 3.24.140 Designation proposal--Public hearing notice requirements.  | Public hearing notice posting updated for consistency with 23.404.040(B)(3) and ZAB procedures.  |
| 9  | 3.24.150 Designation proposal--Time limit for determination.  | Technical edit, numerical value added for clarity.   |
| 10 | 3.24.160 Designation proposal--Notice of decision required.   | Language mirrored after 23.404.050 (L) <i>Notice of ZAB Decision</i> for consistency and process improvements.   |
| 11 | 3.24.180 Landmarks, historic districts and structures of merit--Designation--Recording required--Termination of designation.  | Typo corrections.  |
| 12 | 3.24.190 Council certification required   | Codification of existing practice.   |
| 13 | 3.24.210 Review of permit applications.   | Error correction, codification of existing practice.   |
| 14 | 3.24.220-270 Alteration Permit application--Data and public hearing required--Exceptions.                                     | Title update to clarify requirements for Structural Alteration Permits (SAPs).   |
| 15 | 3.24.280 Landmarks, historic districts or structures of merit--Unsafe or dangerous conditions--Effect.                        | Error correction. Fees are to be set and updated through the Council-adopted Fee Schedule.   |
| 16 | 3.24.300(A) Appeals--Procedures required--City Council authority. (Supplemental 1)  | Increased signature threshold from 50 to 200 with owner consent through a Letter of Authorization. Increased signature threshold from 50 to 400 without owner consent. |
|    | 3.24.300(A) Appeals--Procedures required--City Council authority (Supplemental 2)   | Increased signature threshold from 50 to 200.  |
| 17 | 3.24.300(B-E) Appeals--Procedures required--City Council authority.   | Alignment with ZAB procedures for appeals found in 23.410.030.   |

|    |   |  |
|----|---|--|
| 18 | 3.24.340 Landmarks, historic districts or structures of merit--Filing fees required when. | Fees are to be set and updated through the Council-adopted Fee Schedule. |
|----|---|--|

Two alternatives for sections 3.24.120 and 3.24.300 are included in the proposed Ordinance for consideration. The primary differences between Alternative 1 and Alternative 2 are written owner consent for landmark initiation, and a total of 400 signatures if the owner does not provide written consent. In both proposed alternatives the five year stay of landmark initiation is included for projects vested under SB 330.

**BACKGROUND**

BMC Section 3.24 (Landmarks Preservation Commission), known as the Landmarks Preservation Ordinance (LPO), was adopted in 1974. The purpose of the LPO is to recognize and protect sites and areas of special character or special historical, architectural, or aesthetic interests. The LPO establishes the Landmarks Preservation Commission (LPC) and outlines procedures for nomination, designation, alteration, and appeals. The LPO has seen few updates since its adoption in the mid-1970s and retains factual and procedural inconsistencies that make implementation challenging.

As discussed above, the Council referral states that the current procedures for initiating landmark designation have been used to obstruct neighborhood change and delay housing developments. In several case studies mentioned, the landmark attempts have imposed processes that conflict with state housing law and result in significant delays for housing development projects.

On February 5, 2026, staff brought the Council referrals to the LPC for its consideration. At that meeting an Ad-Hoc Committee was formed. At its March 5 meeting, the Ad-Hoc Committee shared its recommendations, and the Commission took the following action:

Action: M/S/C (Crandall/Montilla) to adopt the supplemental communication to be forwarded to City staff (Ayes – Montilla, Crandall, Finacom, Schwartz, Orbuch, Hall Montgomery; Noes – None; Abstain – None; Absent – Greene).

The Ad-Hoc Committee’s approved recommendations are included in **Attachment 3**.

*California Office of Historic Preservation and its Certified Local Government Program*  
The California Office of Historic Preservation (SHPO) offers guidance on the development of landmarks ordinances. Staff have not identified any conflicts in the proposed amendments with SHPO’s guidelines. The LPO does not require review or approval by SHPO.

The City of Berkeley is a Certified Local Government (CLG) under SHPO's Certified Local Government Program. Jurisdictions that are CLGs can receive special technical assistance and are eligible for preservation-related funding from the State. Among other requirements, CLG's must enforce state and local regulations for the designation and protection of historic properties, establish an historic preservation commission, maintain a system for the survey and inventory of historic properties, and provide for adequate public participation in the local historic preservation program. The proposed amendments do not include the amendment or removal of any of these qualifying criteria.

#### RATIONALE FOR RECOMMENDATION

The proposed amendments to BMC Title 3.24 fulfill the City Council's November 10, 2025 referral to revise procedures for designating landmarks, historic districts and structures of merit, and include necessary technical edits to align LPC procedures with existing practices. By increasing thresholds for landmark initiation and exempting SB 330 projects from landmark eligibility for five years, the proposed amendments could reduce the number of landmark designation initiations. The proposed amendments retain pathways for the identification, designation and protection of historic landmarks.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed Zoning Ordinance amendments do not change any development standards or provide for additional development capacity or any other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Because the proposed amendments relate only to the procedures governing the landmark designation and appeals process but not to any physical development characteristics, they do not constitute a "project" under CEQA. (CEQA Guidelines Section 15378(b)(2) ("Continuing administrative or maintenance activities such as... general policy or procedure making..." do not constitute a project for the purposes of CEQA.) Further, because there is no possibility that adoption of the proposed amendments may have a significant effect on the environment, they are exempt from CEQA. (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

The proposed amendments aim to remove barriers to housing development while maintaining pathways for the protection of Berkeley's historic places. Such housing development is associated with fewer transportation-related emissions and greater overall energy efficiency, helping the City meet the goals of its Climate Action Plan. The proposed pathways for landmark designation retain protections for places of historic value which can lead to fewer demolitions and waste as well as adaptive reuse of historic structures.

CONTACT PERSON

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Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Landmarks Preservation Ad-Hoc Committee Recommendation

ORDINANCE NO. -N.S.  
AMENDMENTS TO BMC TITLE 3.24 (LANDMARKS PRESERVATION COMMISSION)  
TO IMPROVE PROCEDURES FOR DESIGNATING LANDMARKS, HISTORIC  
DISTRICTS AND STRUCTURES OF MERIT AND INCORPORATE TECHNICAL  
EDITS.

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

Section 1. That section 3.24.030 be amended to read as follows:

A. The commission shall consist of nine members. Appointments to the commission shall be made by councilmembers and vacancies on the commission shall be filled by councilmembers 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.

B. The ~~Assistant City Manager for~~Director of Planning and ~~Community~~ Development, or their representative, shall serve as secretary of the commission, without vote. The ~~Department of Planning and Community Development~~Planning and Development Department shall provide staff assistance to the commission.

C. The commission shall elect annually ~~in July~~ a chairperson from among its members, and shall establish rules and regulations for its own organization and procedure. ~~Three successive unexcused absences from regular meetings by a member shall constitute automatic termination of membership.~~

Section 2. That section 3.24.050(A) be amended to read as follows:

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, human-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.

Section 3. That section 3.24.060 be amended to read as follows:

~~From and after six 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 six 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, human-made or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural, or aesthetic interest or value, as:

1. A landmark, ~~and shall designate a landmark~~ site for each ~~landmarksite, area, structure, element, work of art,~~ or;
2. An historic district constituting a specific designated section of the City;

B. ~~Identify For the purposes of this chapter, a~~ structure of merit including ~~ing~~ 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 or aesthetic interest or value;

C. 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 Sections 3.24.220 through 3.24.250 and 3.24.350A below;

D. Take steps to encourage or bring about preservation of structures, sites and areas where the commission has decided to suspend action on a permit application, as more fully set forth in Sections 3.24.220 through 3.24.250 below.

Section 4. That section 3.24.080 be amended to read as follows:

The ~~Assistant City Manager for~~ Director of Planning and ~~Community~~ Development, prior to completion of the initial list of structures, sites and areas, shall have the authority to recommend to the City Council suspension of permit application for a maximum of one

hundred eighty days, if in the judgment of the ~~Director of Assistant City Manager for Planning and Community Development~~, an emergency is deemed to exist and a structure, site or area appropriate for landmark status is threatened with imminent destruction or substantial alteration.

Section 5. That section 3.24.100 be amended to read as follows:

A. Each designation of a landmark, historic districts or structure of merit by the commission shall include:

1. Aa description of the characteristics which justify its designation;
2. and Aa description of the particular features that should be preserved;
3. and shall include T 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 upon designation be subject to the controls and standards set forth in this chapter. ~~In addition, the said property shall be subject to and~~ 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 years any structure of merit and designate it as a landmark, subject to all the procedures set forth in this section for an original landmark designation.

Section 6. BMC Section 3.24.110(A) be amended to read as follows:

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 of the best surviving work in a region of an architect, designer or master builder; or

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

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;~~

~~History may be social, cultural, economic, political, religious or military;~~

5. Any property which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

**Section 7. BMC Chapter 3.24.120 be amended to read as follows:**

**Alternative 1 (Kesarwani):**

**A. Initiation of designation shall be made by the following:**

1. The Landmarks Preservation Commission; ~~by the commission,~~

2. ~~or by Aa~~ resolution of intention of the City Council;

3. ~~or by T~~the Planning Commission;

~~4. or by T~~the Civic Arts Commission;

~~5. or by T~~the verified application of the owners of the property to be designated or their authorized agents;

~~6. , or by t~~The verified application of at least ~~200~~~~ifty~~ residents of the City ~~and the consent of the property owner~~, expressed through a Letter of Authorization;- or

~~7. or, by T~~the verified ~~d~~ application of at least 400 residents if the property owner has not consented to the designation ~~provided~~through a Letter of Authorization. ~~consent of the designation process.~~

**B.** Any such application shall be filed with the commission upon forms prescribed by the ~~commission~~-City and shall be accompanied by all data required by the commission.

**C.** ~~Further, a Exception.~~ Any such designation shall not be processed for five (5) years following the receipt of a Preliminary Development application under SB330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless ~~initiated by the property owner-of record.~~

**D. Historic Districts.** 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.

### **Alternative 2 (Tregub):**

**A.** Initiation of designation shall be made by the following:

1. The Landmarks Preservation Commission;

2. by the commission, or by Aa resolution of intention of the City Council;

3. or by Tthe Planning Commission;

4. or by Tthe Civic Arts Commission;

5. or by Tthe verified application of the owners of the property to be designated or their authorized agents;

6. Tthe verified application of at least 200 residents of the City.

**B.** Any such application shall be filed with the commission upon forms prescribed by the

~~commission~~ City and shall be accompanied by all data required by the commission.

C. Further, a Exception. Any such designation shall not be processed for five (5) years following the receipt of a Preliminary Development application under SB330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner-of record.

D. Historic Districts. 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.

Section 8. That BMC Section 3.24.140(A) be amended to read as follows:

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than 14 ~~ten~~ days prior to the date of the hearing.

Section 9. That BMC Section 3.24.150 be amended to read as follows:

The commission shall approve, disapprove or modify the proposal within one hundred eighty (180) days after the conclusion of the public hearing; failure to act within said time shall constitute disapproval.

Section 10. That BMC Section 3.24.160 be amended to read as follows:

A. A Notice of Decision shall be issued afterwhen the LPC:

(a) 1. Approves, modifies, or denies a Landmark Designation; or

(b) 2. Takes action on an appealed decision.

B. The Notice of Decision shall be issued before the LPC's next regular meeting and shall describe the LPC's action.

C.- The Notice of Decision shall be posted in the lobby of the Permit Service Center and shall be mailed to:

1. The applicant;

2. The appellant, if applicable;

3. Any person who has filed a written request for notice; and

4. The City of Berkeley Central Library.

D. The Notice of Decision shall be filed with the City Clerk and provided to the LPC. The City Clerk shall make the notice available to interested members of the City Council and the public.

~~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.~~

Section 11. That section 3.24.180 be amended to read as follows:

A. 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.

B. When a building or structure that has been designated a landmark or structure of merit has been legally demolished as permitted by this Code, its designation shall automatically be terminated if:

1. The designation was based on the characteristics of that building or structure, and not on any findings related to the site or parcel where the building or structure was located; and
2. All features to be preserved as specified pursuant to Section 3.24.100 have been eliminated as a result of the demolition.

In such cases, the City shall promptly record a notice in the Office of the County Recorder that the designation has been terminated.

Section 12. That BMC Section 3.24.190 be amended to read as follows:

**3.24.190** City Council certification ~~authorized when--Effect~~required.

Notwithstanding any of the provisions of this chapter, the ~~council~~City Council may certify ~~to the council~~ any action of the commission in granting or denying an application for designation as a landmark or an historic district, ~~but such action of the council shall be taken~~ within ~~fifteen (15)~~ninety (90) days from the mailing of the ~~notice~~Notice of the ~~decision~~Decision of the commission. Such certification ~~by~~ the City Council shall stay all proceedings in the same manner as the filing of a notice of appeal.

Section 13. That BMC Section 3.24.210 be amended to read as follows:

**3.24.210** **Review of permit applications.**

A. The commission shall maintain with the Department of Planning and Community Development and the department's zoning and codes and inspection division 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, alteration or demolition on a landmark site, in an historic district or on a structure of merit site, or on an initiated landmark site, in an initiated historic district or on an initiated structure of merit site, the Department of Planning and Community Development shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 3.24.280 of this chapter, promptly forward such permit application to the commission for review.

B. The City Council shall set by resolution the fees for Landmarks Preservation Commission review of any application for a permit to carry out any construction, alteration or demolition on an initiated or designated ~~nonresidential~~ landmark site, ~~(or nonresidential portion thereof), in an initiated or designated historic nonresidential district (or nonresidential portion thereof), or on an initiated or designated nonresidential structure of merit, or historic district. (or nonresidential portion thereof.)~~

~~Landmarks Preservation Commission review of applications for permits to carry out any construction, alteration, or demolition on residential initiated or designated landmarks, residential initiated or designated historic districts and residential initiated or designated residential structures of merit, located in any zoning district and nonresidential initiated or designated landmarks, nonresidential initiated or designated historic districts and~~

~~nonresidential initiated or designated structures of merit located in residential zoning districts, are not subject to the landmarks review fees.~~

Applicants who are qualified non-profits and other applicants with projects valued at less than three hundred fifty thousand dollars 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.

Section 14. That the titles of BMC Sections 3.24.220, 3.24.230, 3.24.240, 3.24.250, 3.24.260 and 3.24.270 be amended to read as follows:

- 3.24.220**     Alteration Permit application--Data and public hearing required--  
Exceptions.
- 3.24.230**     Alteration Permit application--Public hearing notice requirements.
- 3.24.240**     Alteration Permit application--Decision--Procedure and time  
limitations--Notification required.
- 3.24.250**     Alteration Permit application--Effect of suspended action.
- 3.24.260**     Alteration Permit application--Review standards and criteria.
- 3.24.270**     Alteration Permit application--Finding of hardship authorized when--  
Effect.

Section 15. That BMC Section 3.24.280 be amended to read as follows:

None of the provisions of this chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature, or part thereof, which such condition has been declared unsafe or dangerous by the Planning and Community Development Department or the Fire Department, and where the proposed measures have been declared necessary, by such department or departments, to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. 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.

Section 16. That BMC Section 3.24.300 (A) be amended to read as follows:

**Alternative 1 (Kesarwani):**

A. 1. An appeal may be taken to the City Council by the following:

1. the City Council on a motion of the City Council's own motion;

2. A by motion of the Planning Commission;

3. A by motion of the Civic Art Commission;

4. T by the verified application of the owners of the property or their authorized agents;

5. or by T the verified application of at least 200 fifty residents of the City and the consent of the property owner, expressed through a Letter of Authorization;

6. T; or, if the property owner has not provided consent, by the verified application of at least 400 residents of the City aggrieved, if the property owner has not provided consent through a Letter of Authorization; or

7. or affected by A any determination of the commission made under the provisions of this chapter.

**Alternative 2 (Tregub):**

A. 1. An appeal may be taken to the City Council by the following:

1. the City Council on a motion of the City Council's own motion;

2. A by motion of the Planning Commission;

3. A by motion of the Civic Art Commission;

4. T by the verified application of the owners of the property or their authorized

agents;

5. ~~or by~~ the verified application of at least ~~200~~<sup>fifty</sup> residents of the City aggrieved;

or

6. ~~affected by a~~Any determination of the commission made under the provisions of this chapter.

~~2.— Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen 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. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.~~

~~3.— The City Clerk shall provide the Council with the written appeal or appeals, set the matter for a public hearing before the Council in consultation with the Secretary of the Commission, and give notice of the time and place of said hearing in the same manner and to the same recipients as for the Commission hearing.~~

Section 17. That BMC Section 3.24.300 (B)-(H) be amended to read as follows:

B. General. Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.

1. Timing of Appeal: An appeal must be filed within fourteen (14) days of mailing

the Notice of Decision.

C. Appeal Fees.

1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in Paragraph (2) below.

2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240.

DB. The filing of a notice of appeal within the time and in the manner specified in subdivision A above shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal, as provided herein.

EG. Before the hearing, ~~the Secretary of the Commission shall forward the documents constituting the record on the matter to the Council. These shall include: copies of the Notice of Decision, indicating the Commission's vote, and the findings and conditions approved by the Commission; the Public Hearing notice; any and all reports made by the Secretary to the Commission; correspondence and letters received both by the Commission or the Council submitted during the appeal process; and the application to the Commission and attachments.~~ department staff shall prepare a staff report describing the appeal with relevant supporting materials.

~~The Secretary shall also make a report to the Council on the Commission's action, including the issues raised at the Commission's public hearing.~~

FD. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures.

GE. After opening the public hearing on the appeal, the Council may take one of the following actions:

1. Continue the public hearing;
2. Based on the record of the Council's consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Commission's original action; or

3. Remand the matter to the Commission to reconsider the application, or any revisions thereto submitted after the Commission's action, in which case the Council shall specify which issues the Commission is directed to reconsider.

HF. Except in the case of a remand to the Commission, when reviewing any decision of the Commission on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Commission with respect to the matter on appeal. The Council may adopt the Commission's decision and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council's decision.

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.

IG. 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.

JH. Payment of fees for an appeal from the decision of the Landmarks Preservation Commission shall be set by resolution of the City Council. (Ord. 7461-NS § 1, 2016: Ord. 6243-NS § 1, 1994: Ord. 5620-NS § 1, 1984: Ord. 4694-NS § 9, 1974)

Section 18. That BMC Section 3.24.340 be amended to read as follows:

Before accepting for filing any application hereinafter mentioned, the commission shall charge and collect the fees herein specified:

A. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council. ~~For each application for designation of a landmark or a structure of merit, the fee shall be fifty dollars;~~

~~B. For each application for designation of an historic district, the fee shall be one hundred dollars;~~

BG. There shall be no fee for each application for designation of a landmark, an historic district or a structure of merit, if such application is initiated by the commission, ~~or by~~ resolution of intention of the City Council, ~~or by~~ the Planning Commission, or by the Civic Arts Commission. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 13, 1974)

Section 19. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.



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,<sup>1</sup> 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.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.

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

<sup>2</sup> 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)<sup>3</sup>

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.<sup>4</sup>

## **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

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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>

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

<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup> 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

<sup>5</sup> 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.

<sup>6</sup> SB 330, Skinner. Housing Crisis Act of 2019 -

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20190200SB330](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20190200SB330)

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Two months later, the commission’s decision was appealed to the City Council, and the City Council upheld the Landmark Preservation Commission’s decision.<sup>10</sup> 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,<sup>11</sup> 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.

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<sup>8</sup> 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%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>9</sup> 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](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06_LPC_Minutes_FINAL.pdf)

<sup>10</sup> 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%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>11</sup> 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](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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> This sequence created an immediate legal and procedural conflict. Under SB 330, once a housing project vests, local governments cannot impose new standards, including

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<sup>12</sup> 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](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](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](https://berkeleyca.gov/sites/default/files/documents/2023-11-02_LPC_Item%207_910%20Indian%20Rock_Staff%20Report%20and%20Attachments.pdf)

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

<sup>14</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%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 financing<sup>15</sup>—exactly the types of obstacles state law sought to eliminate.

In the public hearing of the appeal on July 23, 2025,<sup>16</sup> 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.<sup>17</sup>

**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.<sup>18</sup> Similar to the

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<sup>15</sup> 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](https://berkeley.granicus.com/player/clip/5488?publish_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true)

<sup>16</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

<sup>17</sup> 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>

<sup>18</sup> [https://berkeleyca.gov/sites/default/files/documents/2025-02-06\\_LPC\\_Item%207\\_2138%20Kittredge\\_Staff%20Report%20and%20Attachments.pdf](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,<sup>19</sup> 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

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<sup>19</sup> 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 Francisco<sup>20</sup> and Los Angeles<sup>21</sup> 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**

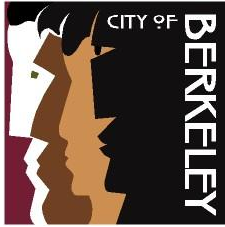
Councilmember Rashi Kesarwani, District 1

(510) 981-7110

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

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



Rashi Kesarwani  
Councilmember District 1

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** November 10, 2025

**Item Number:** 12

**Item Description:** 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

**Submitted by:** Councilmember Rashi Kesarwani

The revised material amends the second recommendation and adds Councilmembers Blackaby and Lunaparra as co-sponsors.

The second recommendation now suggests raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200 if the resource property owner has consented to the Landmark/Structure of Merit designation; or raising the threshold for the number of residents needed to sign the verified application of initiation to 400 if the resource property owner has not consented to the process. The second recommendation was amended out of concern for the increased administrative burden to staff in determining 51 percent of residential units within a 300 foot radius of the subject property and concern over unintended consequences that would treat distinct areas of the city differently.



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 Brent Blackaby (Co-Sponsor), Councilmember Mark Humbert (Co-Sponsor), and Councilmember Cecilia Lunaparra (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<sup>4</sup>; and requiring the property owner’s approval of the designation; or
- 2) ~~For properties located in residential zoning districts,<sup>4</sup> 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~~

<sup>4</sup> As defined in Berkeley Municipal Code section 23.202 – <https://berkeley.municipal.codes/BMC/23.202>

- ~~Planning and Public Works departments.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.~~
- 2) For those properties that do not have the owner's approval to designate as a landmark, historic district, or structure of merit, raising the threshold for the number of residents needed to sign the verified application of initiation of designation to 400.

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 the consent of the property owner; and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property;~~ or, by the verified application of at least 400 residents if the property owner has not provided consent of the designation process.<sup>3</sup> 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)<sup>4</sup>

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 the consent of the property owner; or, if the property owner has not provided consent, by the verified application of at least 400 residents, for properties located in residential zoning districts, requiring 51 percent of the~~

<sup>2</sup> ~~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 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>~~

<sup>3</sup> ~~This provision is congruent with the California Register of Historical Resources requiring the resource owner's consent prior to being listed on the California Register: [https://ohp.parks.ca.gov/?page\\_id=21238](https://ohp.parks.ca.gov/?page_id=21238)~~

<sup>4</sup> Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

~~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.<sup>5</sup>

## **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 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.<sup>6</sup> 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).<sup>7</sup> 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.<sup>8</sup> 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.

<sup>5</sup> Berkeley Municipal Code section 3.24.300(A)(1): <https://berkeley.municipal.codes/BMC/3.24.300>

<sup>6</sup> 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.

<sup>7</sup> SB 330, Skinner. Housing Crisis Act of 2019 -

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB330](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330)

<sup>8</sup> 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.”

## **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 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.<sup>9</sup> 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.<sup>10</sup> Two months later, the commission's decision was appealed to the City Council, and the City Council upheld the Landmark Preservation Commission's decision.<sup>11</sup> 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

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<sup>9</sup> 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%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>10</sup> 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](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06_LPC_Minutes_FINAL.pdf)

<sup>11</sup> 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%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

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,<sup>12</sup> 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. The Landmarks Preservation Commission reviewed the matter over several meetings in May, July, and November 2023.<sup>13</sup> 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 now no longer supported the designation as demolition was no longer an issue and the front facade of the house would remain intact.<sup>14</sup> 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.

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<sup>12</sup> 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](https://berkeleyca.gov/sites/default/files/documents/2023-05-04_Item%207_910%20Indian%20Rock%20.pdf)

<sup>13</sup> 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](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](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](https://berkeleyca.gov/sites/default/files/documents/2023-11-02_LPC_Item%207_910%20Indian%20Rock_Staff%20Report%20and%20Attachments.pdf)

<sup>14</sup> November 2, 2023 LPC agenda packet (see above), page 41 of 43.

**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.<sup>15</sup> This sequence created an immediate legal and procedural conflict. Under SB 330, once a housing project vests, local governments cannot impose new standards, including 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 financing<sup>16</sup>—exactly the types of obstacles state law sought to eliminate.

In the public hearing of the appeal on July 23, 2025,<sup>17</sup> 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

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<sup>15</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

<sup>16</sup> 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](https://berkeley.granicus.com/player/clip/5488?publish_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true)

<sup>17</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

ultimately voted unanimously to uphold the appeal and reverse the Landmarks Preservation Commission designation.<sup>18</sup>

**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.<sup>19</sup> Similar to the 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,<sup>20</sup> 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

<sup>18</sup> 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>

<sup>19</sup> [https://berkeleyca.gov/sites/default/files/documents/2025-02-06\\_LPC\\_Item%207\\_2138%20Kittredge\\_Staff%20Report%20and%20Attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2025-02-06_LPC_Item%207_2138%20Kittredge_Staff%20Report%20and%20Attachments.pdf)

<sup>20</sup> 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>

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 provide greater predictability for developers, staff, and residents alike. Other cities, such as San Francisco<sup>21</sup> and Los Angeles<sup>22</sup> 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**

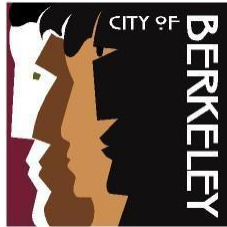
Councilmember Rashi Kesarwani, District 1

(510) 981-7110

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<sup>21</sup> <https://sfplanning.org/project/citywide-historic-context-statement>

<sup>22</sup> <https://planning.lacity.gov/preservation-design/historic-resources/historic-themes>



Igor Tregub  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 10, 2025

**Item Number:** 12

**Item Description:** 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

**Submitted by:** Councilmember Igor Tregub

The revised material amends the item as revised in Supplemental 1 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Specifically, it raises the threshold for the number of residents needed to sign the verified application to initiate a landmarking designation to 200 in all cases and restricts 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.



Igor Tregub  
Councilmember District 4

CONSENT CALENDAR  
November 10, 2025

TO: Honorable Mayor and Members of the City Council  
FROM: Councilmember Igor Tregub  
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**

This supplemental provides refinements to Item 10 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Track changes associated with the supplemental are below.

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 requiring the property owner's approval of the designation; or
- 2) ~~For properties located in residential zoning districts,<sup>†</sup> 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~~

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

~~Planning and Public Works departments.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.~~

- 2) ~~For those properties that do not have the owner's approval to designate as a landmark, historic district, or structure of merit, raising the threshold for the number of residents needed to sign the verified application of initiation of designation to 400. Restricting an initiation of 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.~~

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 the consent of the property owner; and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property.; or, by the verified application of at least 400 residents if the property owner has not provided consent of the designation process.~~<sup>3</sup> 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. Further, any such designation shall not be processed 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. 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).<sup>1 4</sup>

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. Further, any such designation shall not be processed 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. ~~and the consent of the property owner; or, if the property owner has not provided consent, by the verified application of at least 400 residents, 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.<sup>5</sup>

<sup>1 4</sup> Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

**FISCAL IMPACTS**

Staff time on a one-time basis to amend and incorporate the re-worded code sections into the BMC, and minor ongoing savings to staff time over the proposal in Supplemental 1.

**RATIONALE FOR RECOMMENDATION**

This supplemental provides refinements to Item 10 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Specifically, by simplifying the number of signatures needed to initiate a landmark application to a single number (200), it addresses the stated intent of the original proposal to prevent applications deemed to be frivolous while avoiding the need for city staff to process applications with two different signature requirements and determining a process for how support of a property owner to a landmarking designation would be determined. The second part of the supplemental, which restricts landmarking applications for five years following the receipt of an initial SB 330 designation by the city, other than by the property owner, proximately addresses the specific concerns described in the original item.

**CONTACT PERSON**

Councilmember Igor Tregub, District 4

(510) 981-7140

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**

In response to the Berkeley City Commission referral at the November 10, 2025, regular meeting regarding amendments to Berkeley Municipal Codes 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," (see [Supplemental 1](#) and [Supplemental 2](#)) the Landmarks Preservation Commission (LPC) submits the following comments:

#### General comments:

- The LPC recommends that any changes or amendments to the ordinance include a public comment process. This ensures the Landmarks Preservation Ordinance (LPO) remains compliant with the California Office of Historic Preservation (OHP) standards when reviewed by a State Historic Preservation Officer (SHPO) to retain its Certified Local Government (CLG) status to preserve eligibility for state and federal grant funding and other benefits.

#### Specific comments regarding the Supplemental Packets 1 and 2:

- Landmark Initiations and Appeals: For initiations by the public, we endorse 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 recommend stating the relevant policies on the application and the City website rather than altering the ordinance itself.

### **LEGISLATIVE CONTEXT**

The Berkeley City 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 (OHP) by a State Historic Preservation Officer (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 federal and state grant funding and other CLG benefits.

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

The 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, Council might consider an additional hourly fee for complex applications to supplement the standard flat fee. This would 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 LPC agrees with the Packet #2 proposal - but with the 100 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 and the owner either supports the initiation or remains silent, the process should proceed.

**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 this 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 by affecting its CLG status as described above.

As state housing laws evolve, amending the ordinance for each individual law is time-intensive, costly in staff time to the City, 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 policy 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 (1915 Berryman Street) & #2 (910 Indian Rock Avenue):
  - a. LPC did not vote to 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 (2425 Durant Avenue) & #4 (2138 Kittredge Street)
  - a. LPC followed City Planning staff advice at the time based on City Attorney analysis (see attachment) 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.



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).)

