



April 3, 2026

City of Berkeley City Council

Dear Mayor and Councilmembers,

Council will consider a set of proposed amendments to the Landmarks Preservation Ordinance (LPO) on 4/14. The Berkeley Architectural Heritage Association (BAHA) has prepared the following analysis of the proposals. We are also providing an appended slide deck that expands upon our findings.

Apart from technical edits, the proposals would do two things:

1. Dramatically increase the number of signatures required for landmark designation initiations by petition of residents: at baseline a four-fold increase from the currently required 50 signatures (to 200 signatures), possibly an eight-fold increase (to 400 signatures) without property owner consent.
2. Exempt parcels from landmark designation, unless initiated by property owner, for five years, if the City receives an SB 330 "Preliminary development application" for the parcel.

We have previously indicated our view that the four-fold or eight-fold increases to the signature threshold risk discouraging valuable grassroots landmark designations, such as the recent KPFA Building designation. This application, although widely supported and later unanimously approved by the LPC, required 2.5 months to gather 50 signatures.

And yet we find the proposed SB 330 exemption is far more dangerous, and in ways that seem completely unintentional. As currently written, the provision creates a perverse incentive for property owners to use SB 330 applications to thwart pending landmark designations, regardless of whether they have any intention of developing housing on their parcel. This would not only generate unnecessary and counterproductive use of staff time reviewing potentially frivolous applications, but it would undermine any effort by the City, including this Council, to comprehensively survey and protect historic resources.

It is our belief that, just as this Council rationalizes these LPO amendments as an attempt to limit staff time spent on obstructionist landmarking efforts, this Council must also desire to limit staff time spent on frivolous SB 330 applications that never result in construction of housing development projects.

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There are other ways to accomplish the goal of protecting SB 330 development projects from landmark applications without creating a de facto property owner veto over landmark designations. We largely concur with the findings of the Landmarks Preservation Commission appended to the staff report:

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).

This administrative approach assures that the accountability measures built into SB 330 apply to the landmark exemption. The language is also easily adjusted if State law changes.

If the LPO must be amended, the language of the SB 330 exemption needs to be carefully considered. We would suggest an amendment to BMC 3.24.120 that resembles the following:

C. Exception. No designation shall be initiated for any structure, site, or area on a parcel that is the site of a housing development project protected from the application of new ordinances, policies, and standards by the Housing Crisis Act of 2019 (Senate Bill 330).

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Lastly, we must express our disappointment that the staff report for the proposed LPO amendments does not contain a significant analysis of the policy impacts of the proposals, nor does it provide an assessment of the possible impact on City administration. Although the Council, on 11/10, provided clear indication that it desired advice on, for example, the appropriate number of signatures for landmark initiations, staff merely codified the proposed Supplementals and identified additional technical edits. If this is due to the narrow scope of the staff referral, we hope that the City Council will provide referrals in the future that give staff greater latitude to make use of their expertise and experience.

We look forward to supporting any future efforts to develop a Citywide Historic Context Statement and/or Citywide Historic Resources Survey. But, in the meantime, please do not render those efforts irrelevant by giving away the City's preservation planning authority.

Respectfully,

Isaac Warshauer,
on behalf of the BAHA Board of Directors

Accountability Measures are built into SB 330

- **SB 330 protects a housing project from new land use controls (including landmark designation) if it meets certain criteria:**
 - The number of units or building area changes does not change by 20% or more from the preliminary application. (Government Code 65941.1(d))
 - A complete development application must be submitted within 180 days. (Government Code 65941.1(e)(1))
 - Construction needs to begin within 2.5 years of final approval (3.5 years for 100% affordable projects). (Government Code 65589.5(o)(2)(D))

Current Proposed LPO Amendments: Lack the Accountability Measures of SB 330

- **Restrict all forms of landmark initiation (except by the property owner) for five years after submission of an SB 330 Preliminary Use Permit Application.**
 - No requirement for submission of a complete Development Application or Building Permit Application.
 - No requirement for construction to begin within a certain timeframe.
 - Opens the door to bad faith SB 330 Preliminary Development Applications that are simply submitted to prevent landmark initiation.
 - Any new Preliminary Development Application submitted within five years would restart the 5-year clock without any hiatus.

Why is this effectively a Property Owner Veto?

- **SB 330 Preliminary Use Permit Applications require little investment.**
 - Base fee of \$1,000
 - Submission of a brief application form and project data.
 - “Site plan showing the location on the property.” (Government Code 65941.1(a)(3))
 - “Elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.” (Government Code 65941.1(a)(3))
- **The minimal drawings required could be completed in a few hours for a sham proposal. They could be largely derived from boilerplate material copied and pasted onto the project parcel.**
- **If this process is repeated once every five years, a property owner could indefinitely exempt a parcel from landmark designation without building a housing project.**

Current Proposal: Requires Revision for Greater Accountability

- **LPO amendments should not create loopholes that allow property owners to circumvent the City's planning authority or the public interest.**
- **Any exemption from landmark designation should only apply to parcels that are the site of valid and active housing development projects.**
- **SB 330 already contains accountability measures, and any LPO amendment should provide at least the same degree of accountability.**

Suggested Option Moving Forward

BAHA concurs with the LPC that an administrative approach would be the best solution to this issue. It would be more flexible than a very specific LPO Amendment. See below excerpt from the March 6, 2026 LPC Memo to City staff:

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).

Proposed Option for Revised LPO Amendment

- **The staff report proposes adding the following language to Berkeley Municipal Code 3.24.120:**

C. 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.

- **This addition should be revised to the following:**

C. Exception. No designation shall be initiated for any structure, site, or area on a parcel that is the site of a housing development project protected from the application of new ordinances, policies, and standards by the Housing Crisis Act of 2019 (Senate Bill 330), unless initiated by the property owner.