

AMENDING SECTIONS 23B.24.030-~~AND~~; 23B.32.050 ~~AND 23C.08.050~~ OF BERKELEY MUNICIPAL CODE TITLE 23 (ZONING ORDINANCE)

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

Section 1. That Berkeley Municipal Code Section 23B.24.030 is hereby amended to read as follows:

23B.24.030 Application Forms and Supporting Materials--Additional Information for Certain Projects

A. Applications for Permits shall be made in writing on those forms provided by the Zoning Officer. The Zoning Officer may require supporting materials as part of the application, including, but not limited to, studies, reports, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project. All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection. The applicant shall be responsible for the accuracy and completeness of all application information submitted to the City.

B. A list of all pending applications for Permits shall be provided to the Landmarks Preservation Commission at every regular meeting thereof. Each property that is the subject of an application included in that list shall be placed on the agenda for potential initiation. In order to facilitate public notice, applicants shall post a conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the application involves has its major frontage prior to the date the application is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer.

The following categories of applications shall include the information set forth in subsection C of this section:

1. AUPs, Use Permits and Variances involving demolition or alteration of the exterior of structures over 50 years old, except accessory structures containing less than 300 square feet of floor area;
2. Any application for discretionary review involving demolition or alteration of the exterior of structures or sites that are listed on or have been determined by the appropriate governmental official or body charged by state or federal law with making the determination to be eligible for the National Register of Historic Places or the California Register of Historical Resources, are listed on the State Historic Resources Inventory, or that are on the list of structures and sites established and maintained by the Landmarks Preservation Commission under Chapter 3.24;
3. Any application for discretionary review involving demolition or alteration of the exterior of structures or sites that the Secretary of the Landmarks Preservation Commission, in consultation with the Chair thereof, determines might reasonably satisfy the criteria for designation in Section 3.24.110;
4. As used in this subsection, "alter the exterior of" means to alter any portion of the exterior of a structure that is visible from a public right of way;
5. As used in this subsection, "State Historic Resources Inventory" or "SHRI" means the survey of approximately 650 structures and sites in the City of Berkeley that was conducted by the Berkeley Architectural Heritage Association in 1977-79, and is on file at the City of Berkeley Planning and Development Department;

~~C. Applications specified in subsection B of this section, except to the extent that the proposed work is exempt from the Landmarks Preservation Ordinance pursuant to Section 3.24.280, shall include a statement requesting an assessment of historical significance (“AHS”) by the Landmarks Preservation Commission (LPC) as to whether the structure or site that is the subject of the application merits designation under Chapter 3.24, which contains the information required by the LPC.~~

~~D. 1. In reviewing AHSs under this section, the Landmarks Preservation Commission may only consider whether and to what extent the structure or site merits initiation or designation under BMC Chapter 3.24, and may not consider other matters such as the merits of the proposed demolition, alteration or replacement project, or whether the application for the Permit is complete. However, the Commission may require additional information regarding the structure or site that is the subject of the AHS.~~

~~2. In order to facilitate compliance with the requirements of this section:~~

~~a. The Secretary of the Landmarks Preservation Commission shall place all AHSs on the agenda of the next Landmarks Preservation Commission meeting occurring no less than 21 days after the date they are submitted.~~

~~b. The applicant shall post a conspicuous notice on the property in a location that is readily visible from the street on which the structure or site that the application involves has its major frontage prior to the date the application is first submitted to the City. Such notice shall be in a form specified by the Zoning Officer. The application shall not be complete unless it includes proof of such posting.~~

Section 2. That Berkeley Municipal Code Section 23B.32.050 is hereby amended to read as follows:

23B.32.050 Notice of Decision and Appeal

- A. After the Board takes an action to either approve, modify or deny an application for a Use Permit, and before the Board’s next regular meeting, the Zoning Officer shall issue a Notice of Decision describing the Board's action, with its findings and applicable conditions.
- B. The Zoning Officer shall mail the notice to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action, and shall also file a copy of the notice with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.
- C. Any person or entity aggrieved by a decision of the Board may appeal the decision to the Council by filing one copy of a written appeal with the City Clerk within 14 days after the mailing of the Notice of Decision.
 - 1. The appeal shall clearly and concisely set forth the grounds upon which it is based. Fees for the appeal, as set by Resolution of the Council, shall be paid by the appellant.
 - 2. If a ground of the appeal is that the Board’s action constituted a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall

apply to appeals on the ground that the Board's decision or any condition imposed by the Board denied the applicant any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constituted a taking of property for public use without just compensation.

- D. If a timely appeal is made by the applicant, the City Clerk shall forward a copy of the written appeal to the Zoning Officer. If the appeal is made by someone other than the applicant, the Clerk shall forward a copy of the written appeal to the applicant and a copy to the Zoning Officer.
- E. ~~The filing of a timely appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal.~~ Whenever a decision of the Board is inconsistent with a decision of the Landmarks Preservation Commission under Sections 3.24.200 through 3.24.240 with respect to the same project, the inconsistent decisions shall operate as a denial of that project. In such cases, if the applicant files an appeal as set forth in this section, the Council shall set the matter for hearing at the earliest feasible date after the later of the Board's action or the Landmarks Preservation Commission's action. No fee may be charged for appeals under this subsection.

Section 3. ~~That Berkeley Municipal Code Section 23C.08.050 is hereby amended to read as follows:~~

~~**23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses**~~

- ~~A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.~~
- ~~B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing three hundred 300 square feet or more of floor area may be demolished subject to an AUP.~~
- ~~C. If the Landmarks Preservation Commission (LPC) forwards to the Board comments on the application, the Board shall consider the recommendations of the LPC in determining its action on the application. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is forty (40) or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure of merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.~~
- ~~D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:
 - ~~1. Is required to allow a proposed new building or other proposed new Use;~~
 - ~~2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;~~
 - ~~3. Will remove a structure which represents an unabatable attractive nuisance to the public; or~~~~

~~4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.~~

~~Section 4.~~ Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.