

# BRANDT-HAWLEY LAW GROUP

## Environment/Preservation

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April 27, 2005

Chair Harry Pollack and  
Members of the Planning Commission  
City of Berkeley  
2118 Milvia Street  
Berkeley, CA 94704  
by mail and fax 510-981-7490

Re: Public Hearing, Agenda Item 9, April 27, 2005  
CEQA Review of Proposed Amendments to City Ordinances

Dear Chair Pollack and Members of the Commission:

On behalf of the Berkeley Architectural Heritage Association, I have reviewed the proposed amendments to the Zoning Ordinance and Landmarks Preservation Ordinance (LPO) which are before you tonight for review and consideration. BAHA supports the City's efforts to bring its ordinances into compliance with state law and to maximize the benefits and efficacy of its historic preservation program to honor and protect the City's unique cultural heritage.

However, the proposed changes to the City's current ordinances *reduce* a number of the City's current protections to historic resources and may thus result in significant environmental impacts. The amendments are not exempt from review under California Environmental Quality Act Guideline §§ 15061(b)(3) and 15308. Section 15061(b)(3) applies only "where it can be seen with certainty that there is no" possible significant effect on the environment from implementation of the new ordinances. Section 15308 applies only if the proposed changes to the ordinances solely effect environmental protection. Neither of the exemptions is appropriate since the revised ordinances are not entirely protective. And CEQA categorical exemptions may not be applied when an action may cause a substantial change in the significance of an historic resource. (Guideline § 15300.2(f).)

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Here, some of the proposed reductions in protections for historic resources could facilitate demolition. Even the general concurrence of the State Office of Historic Preservation (OHP) cannot equate to a determination that the proposed revisions would not reduce some current protections, even if acceptable within the broad parameters of the Certified Local Government Program. The City may ultimately decide that some reductions in protection to its historic and cultural resources are appropriate in light of its overall scheme, but it must first have the benefit of CEQA review of potentially significant environmental impacts, benefits, and feasible alternatives.

Proposed changes to the current LPO (and I note that some confusion has been created by the fact that your file documents compare the proposed ordinance changes with the draft LPO prepared by the Landmarks Preservation Commission rather than with the current LPO) that may arguably reduce protections to historic and cultural resources include:

1. Resources faced with demolition are currently subject to Landmark Preservation Commission (LPC) review at 40 years of age; the new ordinances expand the scope of resources subject to review, but trigger review at 50 years.

2. The modified LPO would strip the LPC of its independent authority to suspend demolition of a landmark, structure of merit, or structure in an historic district. As the historic resource expertise of the members of the LPC greatly exceeds that of every other City commission and board and council, the removal of LPC oversight effectively reduces protections to historic resources and may result in increased demolitions and related significant environmental impacts.

3. The LPC is proposed to be demoted to an advisory role relating to proposed demolitions, subordinate to the Zoning Adjustments Board. ZAB members are not required to have any interest in or expertise in preservation, and the proposed amendments do not provide adequate preservation-oriented criteria to guide ZAB's consideration of proposed demolition projects.

4. Consultation and review of demolition projects by the LPC are proposed to be deferred until after CEQA review is complete. ZAB, not the LPC, would be given the discretion to determine the level of required CEQA review despite its members lack of expertise in historic resource issues.

5. Berkeley currently recognizes a category of "structures of merit," which often provide context to more highly qualified historic resources and may warrant protection under CEQA. The new LPO eliminates structures of merit as potentially eligible for listing on a "local register of historic resources." In BAHA's experience working for recognition and preservation of Berkeley's historic

resources for 30 years, structures of merit are important to the City's historic fabric and context and are under extreme development pressure that will likely result in significant losses if CEQA protections are removed as here proposed.

6. The new LPO proposes to substantially reduce the time period within which concerned citizens may submit a petition to initiate landmarking of a threatened property, which in turn protects the resource and qualifies it for CEQA review. In BAHA's view, based on its experience, the proposed shortened time period is insufficient for citizens to pay attention, organize, arrive at consensus, and initiate a timely petition. This weakens the public's ability to participate in the LPO processes and forebodes increased numbers of demolitions of worthy but currently unlisted historic and cultural resources.

Other ordinance modifications being considered could further reduce environmental protections, including the scope of application of "integrity" criteria and other standards for approving and denying applications to alter or demolish various categories of historic structures.

BAHA points out that protection of the historic resources of the "built environment" have been encompassed by CEQA for 35 years now. Such protections have been increased in recent years with the codification of Public Resources Code section 21804.1 and CEQA Guideline § 15064.5, as well as the adoption of the California Register of Historic Resources. Case law also recognizes the importance of CEQA's application to historic resources, including *Friends of Sierra Madre v. City of Sierra Madre*, *Architectural Heritage Association v. County of Monterey*, and *League for Protection v. City of Oakland*.

The City's proposed revisions of the LPO will greatly benefit from a CEQA process that allows objective review and full public participation in consideration of alternate versions of the ordinances based on potential long term impacts. BAHA understands that other California cities subject such ordinances to a CEQA process, and Berkeley's historical and architectural heritage surely deserves no less. BAHA looks forward to continuing to partner with the City and its consultants to craft efficient and practical historic resource ordinances.

Thank you for your consideration. Please contact me with any questions.

Sincerely

Susan Brandt-Hawley

cc: Janet Homrighausen, Senior Planner  
Zach Cowan, Deputy City Attorney  
State Office of Historic Preservation

