

**To:** Landmarks Preservation Commission

**From:** Sharon Hudson (with concurrence by Alan Tobey, John English, and John McBride)

**Date:** June 26, 2006

**Re:** Proposed changes to the **Landmarks Preservation Ordinance**

Dear Members of the LPC:

The four of us have followed this LPO revision process very closely. A year ago, we proposed a version of the Assessment of Historical Significance (AHS), at that time called the Request for Determination (RFD). We were unable to present our proposal to the LPC in time for serious consideration before the proposed LPO revisions went before the council. In addition, at that time the LPC was not inclined to participate in formulating any version of an AHS because of the preservationist belief that it is incompatible with the goal of historical preservation. For that reason our proposal didn't receive attention at that time.

While three of us (excluding Alan Tobey) strongly share the general preservationist dismay over the AHS, which is problematic both in principle and in practice, we felt in 2005, and it seems more obvious now, that the LPC is morally obligated to create a version of the AHS that is minimally destructive to preservation.

After reviewing the latest LPO draft, in which the AHS procedure is incoherent and (to the extent that it can be deciphered) still unacceptable, we have taken another look at our 2005 RFD proposal. We still believe that our proposal protects historical preservation better than the mayor's draft. And—an important consideration at this late date—the language is already finished, clear, and coherent.

It also appears that the LPC may now realize that the AHS cannot be “folded into” common language along with the other initiation procedures because of its different motivation. The AHS is a unique situation in which the public is relatively unaware of its role, is not motivated to participate fully, and yet will lose its rights and likely part of its cherished environment if it fails to act effectively.

In comparison to the mayor's AHS procedure, therefore, our proposal:

- requires comprehensive and effective noticing at the earliest opportunity, by mail in addition to a sign;
- requires substantial information and analysis by the applicant, and a documented good-faith effort to ascertain whether a property is historic;
- gives more time for the public to respond with substantial information to the applicant's AHS research;
- gives more time and opportunity for citizens to initiate and advocate landmarking if the LPC fails to do so;
- takes about the same total amount of time as the mayor's proposal, but allocates more time to the part of the process that involves public awareness and participation, and less to the LPC's decision-making;
- is a single process regardless of whether or not a project may be proposed in the near future.

As far as we can tell, our proposal differs from the mayor's version in the following respects, listed below with their reasons. However, because ours is a “freestanding” AHS procedure,

independent of the language of the normal initiation process, the language for these differences would be easy to change to suit the LPC or the council.

1. Section A: Our proposal calls for a limit of two AHS applications in a six-month period. This had been in earlier LPO revision drafts, but seems to have disappeared. An AHS forces the community to participate with considerable labor, without compensation, to benefit a property owner; therefore, frivolous AHSs must be discouraged.

2. Section B: Our proposal requires that considerable information accompany the request; the amount of information is left up to the Commission in the mayor's draft.

2. Section C: Our proposal specifies information that must be on public notices, and the LPC, not the planning staff determines the manner of noticing (size, language, etc.). This is vital. Accurate and complete information is the bedrock of democratic public process, and it is a common complaint that notices designed by the planning staff are inadequate. In addition, adequate AHS noticing, which must provide both very clear information and as much motivation as possible, is more critical than project noticing, because with an AHS, there will be little community awareness and the process will occur very quickly. Projects are different: they engender considerable public attention, discussion, and organization, and usually take many months, during which people have many opportunities to understand both the planning process and the substance of the project.

3. Section D: To protect the public from a "rush to judgment" under an unfriendly LPC, we provide that any single commissioner can continue an application hearing to the next meeting (but not later than the third meeting), in case it appears that the community has not had time to respond to the AHS.

4. Section F: Our proposal provides for Commission monitoring of landmarking advocacy, which is necessary because the public's sense of urgency and motivation to landmark will be low compared to the usual initiation scenarios, and because lack of designation will likely result in demolition. Under any AHS procedure, it is likely that the public will initiate a second landmarking process alongside the applicant's AHS (parallel landmarking applications occasionally occur in Berkeley, and they will be likely if the public has little time to become aware of and weigh in on the AHS). Our proposal provides for monitoring the progress of any parallel application, or any application submitted in response to the LPC's failure to initiate, so that the Commission will be sure to receive a fully researched advocacy application to counter any "incomplete" applicant's application.

5. Section G: Our proposal provides for three LPC meetings to initiate; the mayor's version provides for two. Since there is no project pending, and no PSA or CEQA deadlines, there is no reason to rush, and it is better to give the public more time to collect evidence of historical value. Remember, the public did not choose the time of this application, it was forced upon them and their volunteer labor must be worked into their personal schedules.

6. Sections H, J, and K & elsewhere: Our proposal has an initiation exemption of one year (or more if a project is submitted); the length of time of the exemption from landmarking is still a problem in the mayor's draft and is yet to be resolved.

7. Section I: Our proposal gives the public 21 days to initiate after the Commission decides whether or not to initiate; the mayor's draft gives the public 30 days after the opening of the

public hearing. However, it is unlikely that the LPC will vote on initiation in the first meeting of the public hearing (except perhaps affirmatively), and it makes more sense to wait for the decision of the LPC before forcing the public to decide whether to initiate. (However, since there is no hurry here, extending our proposed deadline to 30 days after the LPC's decision would be even better.)

Because of the dangers inherent in the AHS procedure, we must give the public (and our historical resources) the greatest possible protections. Therefore I personally (speaking for myself, not necessarily the four of us) think that for the AHS, a Notice of Decision should automatically be mailed out to the same people who received the initial notice of the public hearing, informing the public that they now have a period of time to initiate a landmarking or to respond to an applicant's application. The clock should start when the NOD is mailed, not when the LPC decision is made. This will likely be a rather small number of mailings.

8. The AHS will involve substantial additional costs to City government, which the City should recoup. In addition, the AHS process will result in considerable uncompensated community effort for the benefit of a private property owner, and therefore frivolous or unnecessary AHSs should be discouraged. Consequently, there must be a significant fee for an AHS. (Remember, it wouldn't cost the applicant anything to go to BAHA and research his own property, but instead he is asking both the City and public to do this work for him, and also to potentially provide him with a financial benefit.) We tentatively suggest a base fee of \$1,000 (perhaps excluding single-family home assessments), plus some add-on amount per square foot of lot area (the add-on at least for commercial properties). Personal note: the money should go to the cause of historical preservation, such as surveying, LPC-initiated research, etc.

Attached is suggested ordinance wording for our alternate AHS proposal. Related changes would need to be made to other sections.

We hope that the LPC will review our AHS language in time to consider it at the Thursday meeting, June 29.

Sincerely,

Sharon Hudson

on behalf of Sharon Hudson, Alan Tobey, John English, and John McBride

## **“Assessment of Historical Significance” Alternative Version**

from Alan Tobey, Sharon Hudson, John English, John McBride

June 2006 (revised from July 2005)

### **Section 3.24.130**

#### **3.24.XXX Assessment of Historical Significance.**

A. A property owner or authorized agent thereof may at any time submit a request for Assessment of Historical Significance (“AHS”) to the Commission to determine whether or not a property merits designation under this Chapter. No property owner or agent thereof may submit more than two AHSs within any six-month period.

B. The request for AHS shall be submitted on a form prescribed by the Commission, and shall contain or be accompanied by information and analysis specified by the Commission generally similar to that required for a landmark application. The request for AHS shall demonstrate a documented significant good faith effort to obtain historical data and to ascertain whether the property would merit designation under this Chapter. The request for AHS shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the property the AHS refers to, in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Commission.

C. Upon submission of a request for AHS in compliance with this section, the Secretary shall set the matter for public hearing at the first regular monthly Commission meeting occurring no sooner than 21 days after the request is submitted. Notice of the hearing shall be provided in the same manner as notice of public hearings under Section 3.24.140. Such notice shall be in a form specified by the Commission, and shall include at least the following information:

1. a description of the AHS process and its purpose;
2. the purpose of the public hearing;
3. disclosure that failure to initiate would prohibit future initiation for one year;
4. a description of how a decision to initiate could affect future development;
5. a summary description of the scale of buildings and types of uses generally allowed in the applicable zoning district; and
6. contact information for the applicant, Planning and Development Department, and Landmarks Preservation Commission.

D. At the Commission’s first or second meeting at which a request for AHS is considered, the public hearing shall be continued if at least one Commissioner so requests.

E. At any meeting during the period described in subdivision G, after public testimony is taken on the matter, the Commission may initiate designation or determine not to initiate designation.

F. If the property is initiated by a party other than the Commission during the period described in subdivision G or I, staff shall provide the Commission, at each meeting that the public hearing remains open, a brief progress report based on timely communication with the initiating party.

G. The Commission shall initiate designation or determine not to initiate designation no later than the third meeting at which the matter appears on the agenda. Failure to act shall constitute a decision not to initiate. If the Commission decides not to initiate, the notice of decision shall state that this decision does not prejudice any other initiation that may occur.

H. If the property is initiated by the LPC but not designated, then the property may not be

initiated for one year from the date of the final decision on designation, provided furthermore that if an application for a development project is submitted and is determined or deemed to be complete by the end of that year, the property may not subsequently be initiated until final action has been taken on the application for that development project.

I. If the Commission determines not to initiate the property that is the subject of the AHS, the property may be otherwise initiated under Section 3.24.120 at any time until 21 days after the Commission's vote.

J. If the property is initiated under subdivision F or I but not designated, then the property may not be initiated for one year from the date of the final decision on designation, provided furthermore that if an application for a development project is submitted and is determined or deemed to be complete by the end of that year, the property may not subsequently be initiated until final action has been taken on the application for that development project.

K. If the property is not initiated by the end of the 21-day period specified by subdivision I , then the property may not be initiated for one year from the expiration of those 21 days, provided furthermore that if an application for a development project is submitted and is determined or deemed to be complete by the end of that year, the property may not subsequently be initiated until final action has been taken on the application for that development project.

L. After the expiration of the applicable time constraint prescribed by subdivision H, J, or K, the property may be initiated by the Commission or any other person or entity listed in Section 3.24.120.

**The next page (not part of the ordinance language) is sample text showing how a public hearing notice might read using our proposal.**

**Possible language of public hearing notice for Assessment of Historical Significance**  
**(similar language should be placed on a prominent sign)**

The owner or the agent of the owner of this property has submitted a request for Assessment of Historical Significance, which will determine whether this site or any structures on it shall be initiated for designation under Berkeley's Landmarks Preservation Ordinance. This request itself is NOT an initiation or request for landmarking, although the applicant has submitted historical information related to the site, which can be seen at [*location of documents*].

Testimony at the public hearing will determine whether the site shall be initiated to become a landmark. The purpose of the public hearing is to provide input from the public, property owner, or others, in the form of opinion or information on the architectural, historical, cultural, or other significance or value, which will inform the decision whether or not to initiate a landmarking application.

Subsequent to this request, the property owner, members of the public, or the Landmarks Preservation Commission may initiate a landmark application for the site or any structures on it, after which the Landmarks Preservation Commission may or may not designate the property or parts thereof as a landmark or structure of merit.

There is no pending development application for this site. However, if a development is proposed for the site, this site may be substantially altered, and buildings on the site altered or demolished, and new construction permitted, subject to provisions of the Berkeley Zoning Ordinance and Municipal Code.

If this property or any building on this property is initiated and designated as a landmark or structure of merit under Berkeley's Landmarks Preservation Ordinance, it will receive certain protections under Chapter 3.24 of the Berkeley Municipal Code. These protections may influence the type of future development permitted.

In the event that this property is not initiated and designated pursuant to this notice, it will not receive such protections, and the property may not be initiated for landmarking again for a period of at least [*exemption period*], even if a development project is proposed for this site.

[*Final paragraph would change, depending on property location; this example is for R-4.*]

This site is situated in an R-4 zoning district. Development allowed in this district includes single- and multi-family residential buildings, and specified institutional and office buildings and uses. Buildings in R-4 may be up to 65 feet or six stories in height, with up to 50% lot coverage. For more information on development allowed in R-4, see Chapter 23D.40 and related sections of the Berkeley Zoning Ordinance.