



Berkeley City Councilmember
Mark Humbert, District 8
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 mhumbert@cityofberkeley.info
 www.MarkHumbert.com

CONSENT CALENDAR

June 9, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Mark Humbert

Subject: Amendments to Berkeley Municipal Code Section 23.204.070 (D) (Hot tubs)

RECOMMENDATION

Refer to the City Manager and the Planning Commission to amend Berkeley Municipal Code Section 23.304.070(D) to:

1. Allow unenclosed outdoor hot tubs, jacuzzis, and spas ministerially in all zoning districts except ES-R, subject to compliance with applicable building, fire, noise, and setback requirements; and
2. Replace the Use Permit requirement in the ES-R district with an Administrative Use Permit (AUP).

This change aligns the level of review with the actual impacts of these installations, reduces unnecessary delay and cost (both to applicants and the City), and preserves appropriate oversight in environmentally sensitive areas.

CURRENT SITUATION AND ITS EFFECTS

Under the current Berkeley Municipal Code, unenclosed outdoor hot tubs require an Administrative Use Permit (AUP) citywide and a Use Permit in the ES-R district. This framework treats a common residential amenity as a discretionary land use subject to notice, appeal, and a required public hearing in ES-R districts before the Berkeley Zoning Adjustments Board.

This approach creates several problems:

- ***Mismatch between impacts and process:*** The primary concerns associated with hot tubs—noise, drainage, electrical safety, and placement—are technical issues already governed by objective standards in the building and fire codes. Discretionary land use review does not meaningfully improve these outcomes.
- ***Unnecessary delay and cost:*** Even routine installations are subject to multi-month permitting timelines, adding expense and uncertainty for homeowners.

- **Overuse of discretionary review:** The requirement invites appeals and prolonged disputes over minor residential improvements, which also engenders neighbor conflicts.
- **Staff and Council burden:** Projects with limited public impact are escalated into time-intensive processes, diverting attention from higher-priority matters.

BACKGROUND

Berkeley is one of the only local jurisdictions that requires an administrative use permit (AUP) for hot tubs and jacuzzis. The City of Berkeley currently treats backyard hot tubs like a discretionary land-use/development issue, while neighboring cities generally handle the same improvement with objective setbacks, noise controls, screening, and standard building, electrical, or plumbing permits. Those tools already address noise, placement, drainage, and safety without forcing homeowners into a multi-month, costly, and appealable AUP process.

For comparison, it is now easier to build an ADU than to add a hot tub to an ADU.

Recent experience demonstrates how this policy can be misused. One homeowner seeking to install a backyard hot tub was drawn into a [seven-month permitting and appeals process](#), culminating in a February 27, 2024, City Council decision rejecting a neighbor's appeal. While the project ultimately complied with applicable standards, the process required significant staff time, legal resources, and Council attention, while imposing unnecessary costs on the applicant.

This case reflects a broader structural issue: the current framework allows minor residential improvements to become protracted disputes, not because of their impacts, but because of the discretionary process applied to them.

FINANCIAL IMPLICATIONS

This amendment would reduce staff workload associated with processing AUPs and Use Permits, as well as appeals to the Berkeley Zoning Adjustments Board and City Council. By shifting routine projects to ministerial review, the City can reallocate staff time to higher-priority planning efforts and reduce administrative and legal costs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Hot tubs will continue to be regulated through building, fire, and noise standards, including requirements related to drainage and wildfire safety. Streamlining the permitting process does not reduce environmental safeguards and supports efficient use of City resources.

SUGGESTED PROPOSED ORDINANCE AMENDMENTS TO SECTION 23.304.070(D)

D. Hot Tubs, Jacuzzis, and Spas.

1. Permit Requirements.

(a) An unenclosed outdoor hot tub, jacuzzi, or spa ~~located anywhere on a lot requires (a) an AUP~~ shall be permitted ministerially in all districts except for the ES-R district, subject to compliance with all applicable provisions of this Code, including but not limited to setback, noise, building, fire, and electrical requirements, and

(b) ~~A Use Permit~~ In the ES-R district, an unenclosed outdoor hot tub, jacuzzi, or spa shall require an Administrative Use Permit (AUP).

2. Noise Standards.

Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot (Ord. 7981-NS § 7, 2025; Ord. 7787-NS § 2 (Exh. A), 2021)

3. Nothing in this subsection shall exempt a project from compliance with grading limits, drainage requirements, wildfire regulations, or other applicable provisions of this Code.

CONTACT PERSON

Councilmember Mark Humbert
(510) 981-9180

