



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: October 7, 2026

To: Members of the Planning Commission

From: Justin Horner, Principal Planner

Subject: Amendments to BMC Title 23 (Zoning) to update permit requirements for Hot Tubs, Jacuzzis, and Spas.

RECOMMENDATION:

Conduct a public hearing, receive public comment, and upon conclusion, make a recommendation to the City Council to adopt proposed amendments (**Attachment 1**) to BMC Title 23 (Zoning) Section 23.304.070(D) to update permit requirements for Hot Tubs, Jacuzzis, and Spas.

BACKGROUND AND DISCUSSION

On June 9, 2026, the City Council referred amendments to BMC Section 23.304.070(D) to the City Manager and Planning Commission. The referral directs the City to allow unenclosed outdoor hot tubs, jacuzzis, and spas with a Zoning Certificate in all zoning districts except the Environmental Safety-Residential (ES-R) zoning district and to permit them in the ES-R zoning district with an Administrative Use Permit (AUP).

Under current BMC Section 23.304.070(D), an unenclosed outdoor hot tub, jacuzzi, or spa requires an AUP in all zoning districts except the ES-R zoning district and a Use Permit in the ES-R zoning district. Separately, BMC Section 23.304.070(B) requires an AUP when an unenclosed accessory structure is placed on the ground within a required setback.

Table 1 shows the number of hot tub applications submitted, approved, withdrawn and denied in the past 10 years.

TABLE 1 HOT TUB APPLICATIONS

Year	# of Hot Tub Applications Submitted	# of Hot Tub Permits Approved	# of Hot Tub Permits Withdrawn	# of Hot Tub Permits Denied
2016	12	7*	1	0
2017	5	6	1	0
2018	9	6	0	2
2019	16	12	0	0
2020	11	14	0	0
2021	20	15	0	0
2022	11	15	0	0
2023	12	7	1	0
2024	6	11	0	0
2025	5	7	1	0
2026	2	6	0	0
Total	109	106	4	2

**Please note that 2016 granted approvals for 3 applications submitted pre-2016.*

The Council referral identifies several effects of the existing requirements: the level of discretionary review is not proportionate to the impacts of a typical installation; routine projects may experience unnecessary delay and cost; the appeal process can prolong disputes over minor residential improvements; and staff, the Zoning Adjustments Board, and the City Council may be required to devote time and resources to analyzing and presenting projects that have little public impact.

The primary issues associated with hot tubs, including noise, drainage, electrical safety, and placement, are addressed through objective standards and applicable building, fire, and noise requirements. The proposed amendment seeks to align the level of land use review with the anticipated impacts of these installations while retaining additional review for placement within a required setback and within the ES-R zoning district. The proposed amendment below is written to achieve all goals of the referral while eliminating redundancy of existing requirements.

The proposed amendment would replace the citywide AUP requirement with a Zoning Certificate, except that an AUP would be required when a hot tub, jacuzzi, or spa is located in the ES-R district (**Attachment 1**). The existing pump-noise standard in subsection D(2) would remain unchanged. The proposed amendment to BMC Section 23.304.070(D) is as follows:

D. Hot Tubs, Jacuzzis, and Spas.

1. An unenclosed outdoor hot tub, jacuzzi, or spa ~~located anywhere on a lot requires a Zoning Certificate, except that an AUP is required when located within the ES-R district.~~

~~(a) An AUP in all Districts except for the ES-R district; and~~

~~(b) A Use Permit in the ESR district.~~

2. 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.

ENVIRONMENTAL REVIEW

The proposed amendments modify the level of land use review and do not expand permissible development capacity or authorize physical changes to the environment that are not already permitted. Adoption of the proposed amendments would not have a significant effect on the environment and therefore is not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the Common Sense Exemption.

NEXT STEPS

Staff recommends that the Planning Commission conduct a public hearing, receive public comment, discuss the proposed ordinance amendments, and forward a recommendation to the City Council to adopt the amendments, including any modifications identified through Commission discussion and action.

CONTACT PERSON

Justin Horner, Principal Planner, jhorner@berkeleca.gov, (510) 981-7476.

Attachments:

1. Resolution
Exhibit A: Ordinance Amendments
2. Public Hearing Notice

**PLANNING COMMISSION
RESOLUTION NO. 2026-13**

**A RESOLUTION OF THE CITY OF BERKELEY PLANNING COMMISSION
RECOMMENDING THE CITY COUNCIL ADOPT THE PROPOSED ZONING ORDINANCE
AMENDMENTS TO UPDATE PERMIT REQUIREMENTS FOR HOT TUBS, JACUZZIS, AND
SPAS..**

WHEREAS, the City of Berkeley regulates land uses on private land through the Berkeley Municipal Code, including Title 23 (Zoning); and

WHEREAS, Berkeley Municipal Code Section 23.304.070 (Unenclosed Accessory Structures in All Districts) regulates unenclosed accessory structures, including hot tubs, jacuzzis, and spas; and

WHEREAS, on June 9, 2026, the City Council referred amendments to Berkeley Municipal Code Section 23.304.070(D) to the City Manager and Planning Commission to allow unenclosed outdoor hot tubs, jacuzzis, and spas with a Zoning Code in all zoning districts except Environmental Safety-Residential (ES-R) zoning district, and with an AUP in the ES-R zoning district; and

WHEREAS, the Council referral seeks to align the level of land use review with the anticipated impacts of these installations, reduce unnecessary delay and cost, and preserve appropriate oversight; and

WHEREAS, on October 7, 2026, the Planning Commission held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, a public hearing notice was published in the Berkeley Voice and posted in three public places pursuant to California Government Code Section 65090 on ____ (30 days?), 2026 for the public hearing held on ____, 2026; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California; and

WHEREAS, , the proposed amendments modify the level of land use review and do not expand permissible development capacity or authorize physical changes to the environment that are not already permitted. Adoption of the proposed amendments would not have a significant effect on the environment and therefore is not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the Common Sense Exemption.

NOW, THEREFORE, IT BE RESOLVED that the Planning Commission does hereby recommend to the City Council of the City of Berkeley to adopt the amendments to Berkeley Municipal Code (BMC) Chapter 23.304.070(D) contained in Exhibit A, attached hereto and hereby incorporated by reference;

Pursuant to Berkeley Municipal Code Section 23.412.060, the Planning Commission makes the following findings to support its recommendation for the Zoning Ordinance amendments:

- (1) **The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.** The amendment changes the level of zoning review for an existing accessory improvement and does not alter permitted land uses, development capacity, or applicable development standards. No inconsistency with the General Plan or an applicable specific plan or area plan has been identified.
- (2) **The proposed amendment is consistent with state law.** The amendment changes the level of zoning review for an existing accessory improvement and does not alter permitted land uses, development capacity, or applicable development standards. No inconsistency with State law has been identified..
- (3) **The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.** The amendment streamlines review for routine installations while retaining AUP review for installations located within required setbacks and in the ES-R district. The existing pump-noise standard in Section 23.304.070(D)(2) remains unchanged.
- (4) **The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.** The amendment preserves AUP review for hot tubs, jacuzzis, and spas located within required setbacks, consistent with Section 23.304.070(B), and leaves Section 23.304.070(D)(2) unchanged. Compliance requirements with all other sections of the ordinance is inherent, and need not be referenced. This will ease the internal consistency of the ordinance overtime.

I HEREBY CERTIFY the foregoing resolution was passed and adopted by the Planning Commission of the City of Berkeley, at a regular meeting thereof, held on the 7th day of October 2026, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Justin Horner, Principal Planner
SECRETARY TO THE PLANNING COMMISSION

EXHIBIT A
DRAFT

ORDINANCE NO. -N.S.

AMENDMENTS TO SECTION 23.304.070(D) TO UPDATE PERMIT REQUIREMENTS FOR
HOT TUBS, JACUZZIS, AND SPAS .

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

Section 1. That Berkeley Municipal Code Section 23.304.070(D) is amended to read as follows:

D. Hot Tubs, Jacuzzis and Spas.

1. An unenclosed outdoor hot tub, jacuzzi, or spa ~~located anywhere on a lot~~ requires a Zoning Certificate, except that an AUP is required when located within the ES-R district.

~~(a) An AUP in all Districts except for the ES-R district; and~~

~~(b) A Use Permit in the ESR district.~~

2. 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.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.



PLANNING COMMISSION

Notice of Public Hearing

Wednesday, October 7, 2026

Zoning Ordinance Amendments Updating Requirements for Hot Tubs, Jacuzzis and Spas

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, on **Wednesday, October 7, 2026 at 6:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5:00 p.m. on Wednesday, September 30, 2026.

PROJECT DESCRIPTION

In response to a June 9, 2026 City Council referral, the proposed amendments to BMC Section 23.304.070(D) would update permit requirements for unenclosed outdoor hot tubs, jacuzzis, and spas. Currently, an Administrative Use Permit (AUP) is required in all zoning districts except the Environmental Safety-Residential (ES-R) zoning district, where a Use Permit is required. The proposed amendment would replace the AUP requirement with a Zoning Certificate outside the ES-R district and replace the Use Permit requirement in the ES-R district with an AUP.

LOCATION: The proposed Zoning Code amendment would apply citywide to parcels in all zoning districts.

ENVIRONMENTAL REVIEW STATUS

The proposed zoning ordinance amendments do not include any allowances for additional development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Adoption of the proposed amendments would in no way have a significant effect on the environment and therefore is not subject to CEQA (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

PUBLIC COMMENT & FURTHER INFORMATION

All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Joshua Muller
Planning Commission Clerk
Email: PlanningPC@berkeleyca.gov

City of Berkeley, Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

- Correspondence received by **12pm on Wednesday, September 30, 2026**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:
- Correspondence received by **12pm on Monday, October 5, 2026** will be included in a Supplemental Packet, which will be posted to the online agenda as Late Communications #1 by 5pm Tuesday, October 6th.
- Correspondence received by **5pm on Tuesday, October 6, 2026** will be included in a second Supplemental Packet, which will be posted to the online agenda as Late Communications #2 by 5pm on Wednesday, October 7, 2026.
- Correspondence received **after 5pm on Tuesday, October 6, 2026** will be posted to the website the day after the meeting as Late Communications #3.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

FURTHER INFORMATION

Questions should be directed to Justin Horner, at (510) 981-7476 or jhorner@berkeleyca.gov. Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.