



Office of the City Manager

PUBLIC HEARING
July 8, 2025

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code for Consistency with State Law and Technical Edits (SLTE 2025)

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending the following sections of the Berkeley Municipal Code (BMC) to maintain consistency and accuracy:

- 3.24.110 Landmarks, historic districts and structures of merit- Designation – Criteria for consideration
- 23.106.030 Floor Area, Gross
- 23.202.030 Additional Permit Requirements (Residential)
- 23.204.030 Additional Permit Requirements (Commercial Districts)
- 23.206.030 Additional Permit Requirements (Manufacturing Districts)
- 23.302.020 General Use Regulations
- 23.304.070 Unenclosed Accessory Structures in Residential Districts
- 23.326.030 Demolition of Residential Units
- 23.326.050 Demolition of Accessory Buildings
- 23.326.070 Demolition of Non-Residential Buildings

SUMMARY

As part of regular and routine updates, staff has prepared non-substantive ordinance amendments to maintain consistency and accuracy throughout the Zoning Ordinance and related BMC chapters.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance and related BMC Chapters are regularly reviewed for consistency with state laws related to land use and zoning. While some state laws may require more extensive amendments or require changes to the City’s internal permitting procedures to be consistent, the proposed zoning amendments constitute only minor technical amendments to maintain consistency.

The proposed Ordinance amendments are summarized below in Table 1:

Table 1 Policy Summary and Zoning Amendment Proposals

	Section	Section Title	Proposed Zoning Change	Ordinance Sections (Attachment 1)
1.	3.24.110(A)(1)	Landmarks and historic and structures of merit-Designation-Criteria for consideration	<ul style="list-style-type: none"> Replace the term “region,” with “Berkeley or within a neighborhood or area of the city” to codify existing practice. 	1
2.	23.106.030	Gross Floor Area Defined	<ul style="list-style-type: none"> Update the format of the code section. Clarify the method of measurement for gross floor area. 	2
3.	23.202.030(D) 23.204.030(E) 23.206.030(F) 23.304.070	Unenclosed Accessory Structures in Residential Districts	<ul style="list-style-type: none"> Correct a transcription error that limited Unenclosed Accessory Structures to Residential Districts. Update all reference sections in all zoning districts 	3 4 5 7
4.	23.302.020(B)	Allowed Hours of Operation	<ul style="list-style-type: none"> Correct a typo on the title of a Table. 	6
6.	23.326.050	Accessory Structures or Buildings	<ul style="list-style-type: none"> Demolition regulations apply to both Accessory Buildings and Accessory Structures, but only Accessory Buildings 	8 9

	Section	Section Title	Proposed Zoning Change	Ordinance Sections (Attachment 1)
			<p>were mentioned. “Accessory Structures” is added, where appropriate.</p> <ul style="list-style-type: none"> • Corrects grammar of defined terms consistent with Berkeley Zoning Ordinance style guidelines 	

BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., a thorough revision of Title 23 of the Berkeley Municipal Code, to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with state law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

The proposed zoning amendments make corrections and technical edits to ensure consistency throughout the BMC (***Attachment 1***).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed ordinance corrects errors, clarifies language and codifies existing practice. 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).

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments are required to ensure compliance with all applicable state laws and maintains the integrity of the Zoning Ordinance and related BMC Chapters. All recommended changes either reflect ordinances that have previously been specifically authorized by City Council, or that are required by state law.

ALTERNATIVE ACTIONS CONSIDERED

The Council could consider taking no action on the recommendations proposed by staff. In this scenario, Title 3 and Title 23 would remain unchanged, leaving the BMC

inconsistent or outdated. This could lead to uncertainty or potentially lead to challenges in enforcement.

CONTACT PERSON

Robert Rivera, Senior Planner, Land Use and Development Department, (510) 981-7480

Attachments:

- 1: Draft Ordinance
- 2: PC Staff Report 4-16-25
- 3: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO LANDMARKS PRESERVATION COMMISSION CHAPTER (BMC 3.24), THE RULES OF MEASUREMENT CHAPTER (BMC 23.106), RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS CHAPTER (BMC 23.302), GENERAL DEVELOPMENT STANDARDS CHAPTER (BMC 23.304), AND DEMOLITION AND DWELLING UNIT CONTROL CHAPTER (BMC 23.326), TO CORRECT ERRORS, CLARIFY LANGUAGE, AND CODIFY EXISTING PRACTICE

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

Section 1. That BMC Section 3.24.110(A)(1) is amended to read as follows:

1. Architectural merit:

- a. Property that is first, last, only, or most significant architectural property of its type in Berkeley or within a neighborhood or area of the city the region,
- b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work ~~in a region~~ of an architect, designer or master builder in Berkeley or within their neighborhood or area of the city; or
- c. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

Section 2. That BMC Section 23.106.030 is amended to read as follows:

A. **Gross Floor Area Defined.** Gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure, below the roof and within the outer surface of the main walls of a main or accessory building (or the centerlines of party walls separating such buildings or portions of buildings); or areas within lines drawn parallel to and 2 feet within the roof line of any building or portion of a building; including:

~~B. **Basements and Cellars.** Gross floor area includes usable basements and cellars that are either:~~

- ~~1. Usable basements and cellars Below the roof and within the outer surface of the main walls of a main or accessory building (or the centerlines of party walls separating such buildings or portions of buildings); or~~

- ~~2. Within lines drawn parallel to and 2 feet within the roof line of any building or portion of a building without walls. Access features in multi-story buildings. For a multi-story building with a covered or enclosed stairways, stairwells, or elevator shaft, the horizontal area of these features is counted only once at the floor level of their greatest area of horizontal extent~~
- ~~3. Covered pedestrian access features for non-residential uses. For non-residential uses, gross floor area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight~~
- ~~4. Mezzanines~~

~~**G. Access Features in Multi-Story Buildings.** For a multi-story building with a covered or enclosed stairways, stairwells, or elevator shafts, the horizontal area of these features is counted only once at the floor level of their greatest area of horizontal extent.~~

~~**D.B. Excluded Areas.** The following areas are excluded from gross floor area calculation:~~

- ~~1. Covered or uncovered areas used for off-street parking or loading spaces.~~
- ~~2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.~~
- ~~3. Mechanical, electrical, and telephone equipment rooms below finished grade.~~
- ~~4. Areas which qualify as usable open space.~~
- ~~5. Arcades, porticoes, and similar open areas for non-residential uses which are:
(a) Located at or near street level;
(b) Accessible to the general public; and
(c) Are not designed or used as sales, display, storage, service, or production areas.~~
- ~~6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.~~

~~**E. Covered Pedestrian Access Features for Non-Residential Uses.** For non-residential uses, gross floor area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight.~~

~~F. **Mezzanines.** Gross floor area includes the floor area of a mezzanine.~~

Section 3. That BMC Section 23.202.030(D) is amended to read as follows:

D. **Accessory Structures.** For accessory structure permit requirements, see the following:

1. Section 23.304.060– Accessory Buildings and Enclosed Accessory Structures.
2. Section 23.304.070– Unenclosed Accessory Structures in All Residential Districts
3. Section 23.304.080– Fences

Section 4. That BMC Section 23.204.030(E) is amended to read as follows:

E. **Accessory Structures.** For accessory structure permit requirements, see the following:

1. Section 23.304.060– Accessory Buildings and Enclosed Accessory Structures.
2. Section 23.304.070– Unenclosed Accessory Structures in All Residential Districts.
3. Section 23.304.080– Fences.

Section 5. That BMC Section 23.206.030(F) is amended to read as follows:

F. **Accessory Structures.** For accessory structure permit requirements, see the following:

1. Section 23.304.060~~– (Accessory Buildings and Enclosed Accessory Structures).~~
2. Section 23.304.070~~– (Unenclosed Accessory Structures in Residential-All Districts).~~
3. Section 23.304.080~~– (Fences).~~

Section 6. That Table 23.032-1, Allowed Hours of Operation, within BMC Chapter 23.302.020(B)(3), Exceptions, is amended to read as follows:

Table 23.~~032~~302-1: Allowed Hours of Operation

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, C-NS, C-AC, C-W nodes	6:00 a.m. – 12:00 midnight	AUP
C-N, C-E, C-SO, C-SA, C-W outside nodes, MU-R	6:00 a.m. – 12:00 midnight	AUP
C-T, C-DMU	24 hours per day 7 days a week	N/A

Section 7. That BMC Section 23.304.070 is amended to read as follows:

23.304.070 – Unenclosed Accessory Structures in ~~All Residential~~ Districts

A. *Applicability.* This section applies to unenclosed accessory structures as defined in 23.502--Glossary ~~in a Residential District~~, excluding fences which are addressed in 23.304.080--Fences.

B. *Placement on Lot.* Unenclosed accessory structures require an AUP if placed on the ground within a required setback.

C. *Height.*

1. For unenclosed accessory structure within a required setback, allowed height shall be specified in the AUP.
2. No height limitations apply to unenclosed accessory structures outside of required setbacks.
3. The height of an unenclosed accessory structure is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.

D. *Hot Tubs, Jacuzzis, and Spas.*

1. An unenclosed outdoor hot tub, jacuzzi, or spa located anywhere on a lot requires:
 - (a) An AUP in all ~~Residential~~ Districts except for the ES-R district; and
 - (b) A Use Permit in the ES-R 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 8. That BMC Section 23.326.050 is amended to read as follows:

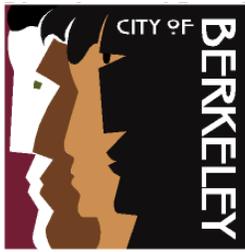
23.326.050 – Demolition of Accessory Structures or Buildings

- A. Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), a accessory structures or accessory b Buildings of any size that are accessory to a residential use, including, but not limited to, garages, carports, and sheds may be demolished by right except where the a Accessory structure or B building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established r Residential u Unit, which serves and is located on the same lot as a lawful residential use. Such accessory structures or a Accessory b Buildings are considered r Residential u Units for the purposes of this Chapter. (Ord. 7924-NS § 1, 2024)

Section 9. That BMC Section 23.326.070(B) is amended to read as follows:

- B. Accessory Structures or Buildings. For any lot located in a non-residential zoning district, a Accessory structures or B buildings may be demolished as follows:
1. Demolishing an accessory structure or building with less than 300 square feet of floor area is permitted as of right.
 2. An accessory structure or building with 300 square feet or more of floor area may be demolished with an AUP. Ground Floor Uses.

Section 10. 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.



Development Department
Division

STAFF REPORT

DATE: April 16, 2025

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law and Technical Edits (SLTE 2025)

RECOMMENDATION

Conduct a public hearing, receive public comment, and upon conclusion make a recommendation to City Council on proposed amendments to Title 23 (**Attachment 1**). The proposed changes apply to the sections of the Berkeley Municipal Code (BMC) listed below:

- 23.106.030 Floor Area, Gross
- 23.202.030 Additional Permit Requirements (Residential)
- 23.204.030 Additional Permit Requirements (Commercial Districts)
- 23.206.030 Additional Permit Requirements (Manufacturing Districts)
- 23.302.020 General Use Regulations
- 23.304.070 Unenclosed Accessory Structures in Residential Districts
- 23.326.030 Demolition of Residential Units
- 23.326.050 Demolition of Accessory Buildings
- 23.326.070 Demolition of Non-Residential Buildings

SUMMARY

As part of regular and routine updates, staff has prepared non-substantive Zoning Ordinance amendments to maintain consistency and accuracy throughout the Zoning Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance is regularly reviewed for consistency with state laws related to land use and zoning. While some state laws may require more extensive amendments

or require changes to the City's internal permitting procedures to be consistent, the proposed zoning amendments constitute only minor technical amendments to maintain consistency.

BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 of the Berkeley Municipal Code and adopted a new Title 23 to make the City's Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with state law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

The proposed zoning amendments are part of the regular and routine maintenance of the Zoning Ordinance and include corrections and technical edits to ensure consistency throughout the Zoning Ordinance. (**Attachment 1**)

DISCUSSION

The proposed zoning amendments are technical, non-substantive changes intended to correct errors, clarify language, and codify existing practices. The following revisions are proposed:

Table 1 Policy Summary and Zoning Amendment Proposals

	Section	Section Title	Proposed Zoning Change	Ordinance Sections (Attachment 1)
1.	23.106.030	Gross Floor Area Defined	<ul style="list-style-type: none"> Update the format of the code section Clarify the method of measurement for gross floor area. 	1
2.	23.202.030(D) 23.204.030(E) 23.206.030(F) 23.304.070	Unenclosed Accessory Structures in Residential Districts	<ul style="list-style-type: none"> Correct a transcription error that limited Unenclosed Accessory Structures to only Residential Districts Update all reference sections in all zoning districts 	2 3 4 6
3.	23.302.020(B)	Allowed Hours of Operation	<ul style="list-style-type: none"> Correct a title typo. 	5
4.	23.326.030(B)(1)(c)	Demolition of Residential Units	<ul style="list-style-type: none"> Correct a typo where "dwelling unit" was used instead of "residential unit." 	7
5.	23.326.050	Accessory Structures or Buildings	<ul style="list-style-type: none"> Demolition regulations apply to both Accessory Buildings 	8 9

	Section	Section Title	Proposed Zoning Change	Ordinance Sections (Attachment 1)
			<p>and Accessory Structures, but only Accessory Buildings were mentioned. "Accessory Structures" is added, where appropriate.</p> <ul style="list-style-type: none"> • Corrects grammar of defined terms consistent with Berkeley Zoning Ordinance style guidelines 	

ENVIRONMENTAL REVIEW

The proposed ordinance corrects errors, clarifies language and codifies existing practice. 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).

NEXT STEPS

Upon a recommendation from the Planning Commission, the City Council will conduct a public hearing on the proposed ordinance.

CONTACT PERSON

Robert Rivera, Senior Planner, Planning and Development Department, 510-981-7480

ATTACHMENTS

1. Draft Planning Commission Resolution
 - Exhibit A. Draft Zoning Ordinance Amendments
2. Public Hearing Notice

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL AMENDMENTS TO BMC TITLE 23 ZONING

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, July 08, 2025 at 6:00 P.M.** a public hearing will be conducted to consider the Planning and Development Department proposal to amend the following sections of the City's Zoning Ordinance (Title 23) in order to maintain consistency and accuracy throughout the Berkeley Municipal Code (BMC). The proposed amendments do not include any substantive policy changes.

- 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.
- 23.106.030 Floor Area, Gross
- 23.202.030 Additional Permit Requirements (Residential)
- 23.204.030 Additional Permit Requirements (Commercial Districts)
- 23.206.030 Additional Permit Requirements (Manufacturing Districts)
- 23.302.020 General Use Regulations
- 23.304.070 Unenclosed Accessory Structures in Residential Districts
- 23.326.050 Demolition of Accessory Buildings
- 23.326.070 Demolition of Non-Residential Buildings

The hearing will be held on, July 8, 2025 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Robert Rivera, Senior Planner at (510) 981-7480

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of June 26, 2025. **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.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become**

part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: June 27, 2025 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 26, 2025.

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Mark Numainville, City Clerk