

ORDINANCE NO. 7,981-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 ,
- 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 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:

1. Usable basements and cellars
2. 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

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.

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 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 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 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 23.302-1: 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 Districts

A. *Applicability.* This section applies to unenclosed accessory structures as defined in 23.502--Glossary, 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 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), accessory structures or accessory 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 accessory structure or building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use. Such accessory structures or accessory buildings are considered residential 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, accessory structures or 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.

At a regular meeting of the Council of the City of Berkeley held on July 8, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

