



Office of the City Manager

PUBLIC HEARING
May 25, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services
 Subject: Rescinding and Adopting the Environmental Health Division Fee Schedule

RECOMMENDATION

Conduct a Public Hearing and, upon conclusion, adopt a Resolution to rescind Resolution 67,495-N.S. which established the current Environmental Health fee schedule and adopt a new fee schedule. The new fee schedule keeps all existing fees at the same level and adds a new permit fee category for Microenterprise Home Kitchen Operations (MEHKOs) with a proposed fee of \$510 annually to cover permit and inspection fees. The new fees will be effective June 1, 2021 until subsequently modified.

FISCAL IMPACTS OF RECOMMENDATION

The attached fee schedule is the same as that adopted in 2015 with the addition of a new category for MEHKOs. The proposed annual fee is \$510, plus a one-time application fee of \$182 in the first year, for a total of \$692. The additional revenue that would be generated from this new fee is currently unknown. Current projections suggest that at least three (3) new MEHKOs could be permitted before the end of the 2021 calendar year. This could result in additional General Fund revenue of \$2,076 in the FY22 and \$1,530 in subsequent years.

For additional reference, a revenue projection based on ten (10) new MEHKOs is included for comparison.

Environmental Health Fees	Revenue Projections based on 3 MEHKOs	Revenue Projections based on 10 MEHKOs
One-time application fee: \$182	\$546	\$1,820
Annual fee: \$510	\$1,530	\$5,100
Total fee revenue – FY22	\$2,076	\$6,920

The fee schedule also adds a fee of \$170 per hour for Confirmed Complaint Investigations and For-Cause Re-inspections of MEHKOs, based on the division's hourly rate for inspections.

CURRENT SITUATION AND ITS EFFECT

MEHKOs are a new type of home-based, retail food business, which became legal in the State of California in 2019, and require that a County (and/or State-recognized city jurisdiction) “opt-in” by ordinance or resolution. Prior to the passage of the enabling legislation, producing and selling these types of foods from a private home would have been considered an illegal activity.

MEHKOs allow operators to produce and sell the same type of “potentially hazardous” foods sold at permitted restaurants and markets. (Note: *potentially hazardous* foods are foods that require strict temperature controls during the food preparation and cooking processes to inhibit the growth of disease-causing organisms). State law limits MEHKOs to selling no more than 30 meals per day and/or 60 meals per week from a residential home kitchen. Furthermore, the state places a cap at \$50,000 on annual gross sales.

Currently, there are only four (4) jurisdictions in California (and in the United States) that have opted-in, including the City of Berkeley, which opted-in by passage of Ordinance 7,739-N.S. on December 1, 2020. The following shows County jurisdictions that have opted-in, (or are currently proposing to opt-in), along with their associated fees:

Jurisdiction	Application Fee	Annual Fee	Total Fee – Year 1
<i>Berkeley – proposed</i>	\$182	\$510	\$692
Lake County*	\$128	\$256	\$384
Riverside County	-	\$651	\$651
Santa Barbara County **	\$255	\$391	\$646
Solano County***	\$162/hour plan check fee	\$447	\$609

* Pilot program limited to 10 MEKHOs 1/1/21 to 6/30/21.

** Proposed for 5/11/21 adoption.

*** Implementation on hold due to COVID19.

The proposed application fee is the same application fee as required for each brick and mortar retail food facility, and the annual permit fee is slightly less than the fee currently assessed for temporary food booth vendors who prepare “potentially hazardous foods” to sell at various events around the City. While MEHKOs are likely to be smaller businesses than brick and mortar retail food facilities, the initial reviews, inspection, and permit set up tasks required from Environmental Health staff are the same, and the fees are based on the level of staffing required to permit the activity.

The current EHD fee schedule, adopted on May 22, 2016 and made effective on July 1, 2016 (FY 2017) pursuant to Resolution No. 67,495-N.S., will remain unchanged with the

exception of the newly added fees to cover the cost of administering the MEHKO program. The fees for permitting and inspecting MEHKOs will recover costs for staff time to review and evaluate a new MEHKO application, (including a review of all proposed menu items to ensure that they meet all applicable food safety standards), provide comments back to the applicant if it does not, respond to questions from applicants, enter data into the Envision database system, and conduct at least one annual mandatory inspection (not including the initial permit inspection required at start-up) over the course of a year.

In addition to the EHD annual permit fee, MEHKOs will also be required to obtain a City-issued business license, whose fee has not yet been determined. However, this fee will likely be similar to a Cottage Food business, which is currently \$55 per year.

BACKGROUND

The Environmental Health Division administers several local, state-mandated public health programs such as the Retail Food Safety Inspection Program, the Public Pool and Spa Inspection Program, the Tattoo and Body Piercing Registration program; all State mandated programs that depend primarily upon fees for their operation. In addition, EHD administers or participates in several local programs required by the Berkeley Municipal Code such as the Vector Control Program, the Community Noise Ordinance, Styrofoam Ban, Abandoned Vehicle Abatement Program, Restaurant Stormwater Protection Inspection Program, Sewer Emergency Response Program, and Tobacco Licensing Program (services funded by grants, assessment district proceeds, or City special revenue funds). The Division also provides other inspection services to protect public health, such as the water quality monitoring program for the Aquatic Park. Adjusted from time to time as needed, the permit and inspection fees are collected from each regulated facility in the City of Berkeley each calendar year and support Environmental Health Division staffing costs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Adopting a fee schedule that includes Microenterprise Home Kitchen Operations will allow the City to begin permitting these home businesses. Approval of the recommended action will keep the Fee Schedule for the Environmental Health Division consistent with anticipated revenues in balance with projected program expenses. The previously approved fee is broadly aligned with the range of fees charged by other Bay Area Environmental Health jurisdictions.

CONTACT PERSON

Ron Torres, Manager of Environmental Health, HHCS (510) 981-5310

Attachments:

1: Resolution

Exhibit A: Fee Schedule for Environmental Health Services

2: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

FEE SCHEDULE FOR ENVIRONMENTAL HEALTH REGULATIONS AND INSPECTIONS EFFECTIVE JUNE 1, 2021 UNTIL SUBSEQUENTLY MODIFIED, AS REQUIRED BY THE BERKELEY MUNICIPAL CODE AND THE CALIFORNIA RETAIL FOOD CODE, HEALTH AND SAFETY CODE §113700 ET SEQ.; AND RESCINDING RESOLUTION NO. 67,495-N.S

WHEREAS, Environmental Health program fees cover cost of permit and inspection services; and

WHEREAS, the present fees for certain specified services, including retail food facilities services, remained unchanged since the adoption of Resolution 67,495-N.S, effective July 1, 2016; and

WHEREAS, California Assembly Bill 626 (AB626) chaptered on September 18, 2018 and amended by Assembly Bill 377 (AB377) chaptered on October 7, 2019 established a new category of food operation called Microenterprise Home Kitchen Operations (MHKO), codified in the California Health & Safety Code §§114367, et seq., which allows for the preparation and sale of certain foods from within a private home; and

WHEREAS, the City of Berkeley adopted the provisions of AB626 and AB377 on December 1, 2020 pursuant to Ordinance No. 7,739-N.S; and

WHEREAS, Health and Safety Code § 114367.2 provides that the City, as enforcement agency, may collect a fee for the issuance of a permit for Microenterprise Home Kitchen Operations chapter in an amount that does not exceed the reasonable administrative costs by the enforcement agency in issuing the permit; and

WHEREAS, regulated facilities should bear the cost of permitting and inspection services.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution 67,495-N.S. from May 26, 2015 is hereby rescinded.

BE IT FURTHER RESOLVED that the Fee Schedule for Environmental Health Services is hereby adopted, until subsequently modified, to cover the costs of regulations and inspections required by the Berkeley Municipal Code and the California Retail Food Code, Health and Safety Code §113700 et seq. (Exhibit A).

BE IT FURTHER RESOLVED that this Resolution shall be in full force and effect on and after June 1, 2021.

**Environmental Health Division Fee Schedule
HEALTH AND SANITATION PERMIT AND FEE SCHEDULE**

ESTABLISHMENT	ANNUAL FEES
Bed and Breakfast	\$432
Boarding House	\$432
Confectionary	\$245
Food Market-Commissary	\$355
In Plant or Employee Food Establishment	\$407
Licensed Health Care	\$704
MFF (Mobile Food Facility) – Full or Limited Food Prep	\$704
MFF – Prepackaged Food (TTCS/PHF)	\$406
MFF – Prepackaged Food (non-TTCS/PHF)	\$131
Restaurants – Commissary	\$704
Schools - Public	\$0
Schools - Private	\$432
Temporary Food Facility (TFF) – Full or Limited Food Prep at Certified Farmer’s or Flea Markets (annual)	\$546
TFF - Prepackaged Food (TTCS/PHF) at Certified Farmer’s or Flea Markets (annual)	\$406
TFF - Prepackaged Food (non-TTCS/PHF) at Certified Farmer’s or Flea Markets (annual)	\$182
Certified Farmer’s Market (CFM) Permit	\$182
Flea Market Event Coordinator for TFF & MFF	\$182
Vending Machines	\$52
Pool – Public Spa	\$182
Pool – Public Swimming Pool	\$704
Retail Tobacco License	\$498
Cottage Food Class A	\$170
Cottage Food Class B	\$425
Body Art – Facility (Tattoo, Body Piercing, & Perm. Cosmetic)	\$366
Body Art – Practitioner (Tattoo, Body Piercing, & Perm. Cosmetic)	\$85
Microenterprise Home Kitchen Operation (MEHKO)	\$510

ESTABLISHMENT ANNUAL FEES	0-1000 sq. ft.	1001-2500 sq. ft.	2501-5000 sq.ft	5001-7500 sq.ft	Over 7500 sq. ft.
Bakery	\$704	\$870	\$1171	\$1461	\$1738
Cocktail Lounge	\$463	\$649	\$914	\$1127	\$1516
Food Market	\$355	\$519	\$813	\$1109	\$1409
Food Processing/Catering	\$519	\$704	\$980	\$1319	\$1571

ESTABLISHMENT ANNUAL FEES	0-1000 sq. ft.	1001-2500 sq. ft.	2501-5000 sq.ft	5001-7500 sq.ft	Over 7500 sq. ft.
Meat Market	\$406	\$594	\$870	\$1171	\$1461
Meat and Food Market	\$519	\$704	\$980	\$1280	\$1571
Restaurants	\$704	\$870	\$1171	\$1461	\$1738

DEMAND SERVICES (HOURLY FEES)	Fees	Multiple Day²
Amplified Sound Permit/Application and Processing ³	\$44	\$75
Amplified Sound Permit Variance Application and Processing ³	\$182	\$182
Enforcing Noise Ordinance Permits	\$182	\$182
Enforcing Noise Ordinance at Open Air/Special Events where Permits Were Issued (Hourly Rate)	\$170	\$170
Sound Survey (Two Hour Minimum)	\$340+	
Accelerated Plan Check of Food Facilities (2-Hour Minimum). Plan review w/in 10 working days at 100% over standard costs. ³	\$340+	
Plan Check, Remodel (hourly rate of \$170 w/2-hour minimum)	\$340+	
Plan Check New Construction (hourly rate with 4-hour minimum)	\$680	
Investigation of Food Facility ⁴ (Work or Operation w/out a Permit)	\$182	
Food Facility Consultation/Pre-permit Inspection	\$182	
New/Change of Ownership	\$182	
Re-issue of an Annual Permit (Copy) ⁴	\$44	
Re-opening of a Food Facility Following Non-Compliance Closure ⁴	\$182	
Hourly Rate	\$170	\$170
Inspection of Food Service at Fundraisers	\$182	\$182
Inspection/Processing of Temporary Special Event Food Booth Operation (TTCS/PHF)	\$182	\$250
Inspection/Processing of Temporary Special Event Food Booth, Pre-packaged Foods (non-TTCS/PHF)	\$44	\$75
Temporary Special Event Coordinator Permit for two or more vendors	\$182	\$250
Sales and Promotional Sampling of non-TTCS/PHF Foods at a Temporary Special Event	\$44	\$75
Sales/Food Demonstration/Promotional Sampling of Pre-Packaged TTCS/PHF Foods and Beverage Sampling at a Temporary Special Event (per event)	\$98	\$150
Investigation of a Food Facility (Hourly)	\$182+	
Food Handler Training (Non-certificate, 2-hour minimum)	\$340+	
Food Handler Training Certificate Program	\$180	

DEMAND SERVICES (HOURLY FEES)	Fees	Multiple Day²
Mechanical Ear Piercing Notification	\$44	
Valid Smoking, Noise, and Styrofoam Complaints	\$182	
Property Inspection Fee	\$182	
Administrative Hearing (2-hour minimum)	\$340+	
Compost Sanitary Requirements	\$182	
Demolition Site Inspection	\$182	
Interdepartmental Service Charges	\$182	
Stormwater Follow-up Inspection	\$182	
Potable Water Sampling	\$182	
Virginia Graeme Baker (VGB) Pool Plan Check (2-Hour minimum)	\$340+	
Greywater or Rain Catch Basin (4-hour minimum)	\$680+	
Cannabis Facilities Plan Check, Complaints, Billable Service, Follow-up Inspections (two-hour minimum)	\$340+	
Cannabis Consumption Lounge Plan Review (2-Hour Minimum)	\$340+	
Confirmed Complaint Investigations and For-Cause Re-inspections of Microenterprise Home Kitchen Operations (Hourly)	\$170	
Cannabis Facility Health Operating Permit Application and Processing Fee	\$182	
Microenterprise Home Kitchen Operation Plan Check and Application Fee	\$182	

¹City-sponsored Special Event

²Non refundable

³Applicable to MHKO

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ENVIRONMENTAL HEALTH PERMIT AND FEE SCHEDULE ADJUSTMENTS

The City of Berkeley Department of Health, Housing and Community Services, Environmental Health Division, is proposing that current fees pursuant to Resolution No. 67,043-N.S will remain unchanged with the exception of adding a new fee category for Microenterprise Home Kitchen Operations, with an associated annual permit fee of \$546 dollars.

These fees will be in effect until subsequently modified. Fees in the Environmental Health Division were last adjusted effective July 2016.

The hearing will be held on, May 25, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor's Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **May 13, 2021**. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.

For further information please see the attached fee schedule for Fiscal Year 2021 or call Ron Torres, Manager of Environmental Health at (510) 981-5310.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info 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@cityofberkeley.info for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

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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 Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 13, 2021.

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Mark Numainville, City Clerk

