



# Land Use Appeals

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**THIS DOCUMENT ANSWERS MOST COMMON QUESTIONS RELATED TO FILING APPEALS, PARTICULARLY WHERE AND WHEN TO FILE, WHAT THE APPEAL SHOULD INCLUDE, AND HOW MUCH IT COSTS (AND WHAT ALTERNATIVES THERE ARE TO PAYING THE FEES).<sup>1</sup>**

## **Appeals to the Berkeley Zoning Adjustments Board:**

To appeal a decision of the Zoning Officer or the Design Review Committee to the Zoning Adjustments Board, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the Zoning Counter, Permit Service Center, located at 1947 Center Street, 3<sup>rd</sup> Floor, Berkeley.
2. Submit the required appeal fee (checks and money orders must be payable to “City of Berkeley”):
  - a. The fee for persons other than the applicant is \$200. This fee may be reduced to \$75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for appeals of Zoning Officer decisions by Applicants is \$2,500; the fee for appeals of Design Review Committee decisions by Applicants is \$1,734.
3. The appeal must be received prior to 4:00 p.m. on the last day of the appeal period shown in the notice of decision (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day). The appeal period is 20 days for Zoning Officer decisions or 14 days for Design Review Committee decisions from the date the notice of decision is mailed.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

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### **<sup>1</sup> Please note:**

- Individuals wishing to appeal a decision of the Zoning Officer should refer to Berkeley Municipal Code (BMC) Section 23B.28.060 for requirements.
- Individuals wishing to appeal a decision of the Design Review Committee should refer to BMC Section 23E.12.050 for requirements.
- Individuals wishing to appeal a decision of the ZAB should refer to BMC Section 23B.32.050 for requirements.
- Individuals wishing to appeal a decision of the LPC should refer to BMC Section 3.24.300 for requirements.
- Required fees are set forth in the Planning and Development Department's Fee Schedule as adopted by the City Council.



# Land Use Appeals

## **Appeals to the Berkeley City Council:**

To appeal a decision of the Zoning Adjustments Board or Landmarks Preservation Commission to the City Council, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley, CA.
2. Submit the required appeal fee (checks and money orders must be payable to "City of Berkeley"):
  - a. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site or at least 25 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects that provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2,500.
3. The appeal must be received prior to 5:00 p.m. on the "Appeal Period Expiration" date shown in the Notice of Decision (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day). The appeal period is 14 days from the date the Notice of Decision is issued for ZAB appeals and 15 days from the date the Notice of Decision is issued for LPC appeals.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**The following information explains the process of obtaining signatures in order to pay a reduced fee for filing appeals of Zoning Adjustment Board (ZAB) and Landmarks Preservation Commission (LPC) decisions to the City Council.**

**1. Where can I obtain a list of addresses that are located within 300 feet of the project site?**

A list of addresses is available from the Planning Department upon request. They are located at 1947 Center Street, 2nd Floor. Hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

**2. As the appellant, how do I know if someone owns or is leasing a parcel or dwelling unit and is therefore qualified to sign for the fee reduction?**

It is the responsibility of the appellant to confirm that an individual is qualified to sign.



## Land Use Appeals

**3. As the appellant, how do I know if I've collected the required signatures to qualify for the fee reduction?**

It is the responsibility of the appellant to collect the required number of signatures.

**4. Can more than one person at an address sign for the fee reduction?**

Yes, so long as they are qualified to sign. Dependent children may not sign.

**5. Do the signatures collected for the fee reduction need to be original signatures?**

Yes, only original signatures will be accepted. Each signature must be accompanied by the address of the signer demonstrating that they are qualified to sign.

**6. How are the signatures submitted for the fee reduction checked?**

It is the appellant's obligation to submit valid and sufficient signatures. Signatures that are submitted in order to qualify for a reduced fee are subject to challenge, in which case documentation may be requested from the appellant to allow for verification of signatures. It is the responsibility of the appellant to demonstrate that each signer is qualified.

**7. What if I paid the reduced fee but later some of my signatures were found to be invalid?**

a. Is my appeal invalid?

If there are insufficient valid signatures remaining when the appeal period expires, the appeal is invalid.

b. Do I then pay the difference in fees or collect additional signatures?

No, the appropriate fee and the required number of valid signatures must be submitted *prior to the close of the appeal period*.

**8. I signed a petition to appeal a Land Use decision - does that make me an appellant?**

Individuals who sign for the sole purpose of reducing the appeal fee will not be treated as appellants.

**9. I signed a petition to allow an appellant to qualify for the reduced fee, but changed my mind. Can I withdraw my signature?**

a. Before the appeal is filed?

A request to withdraw a signature must be submitted by the signer in writing to the same department as the original appeal and must be received prior to the appeal being filed. The request must include the signer's name, address, and the address of the project subject to appeal.

b. After the appeal is filed?

No, a request to withdraw a signature must be received by the City prior to the appeal being filed.



## Land Use Appeals

**10. Do I have to pay the required appeal fee at the time I file my appeal?**

Yes, the fee must be paid at the time the appeal is filed.

**11. If I withdraw my appeal after the close of the appeal period, is my fee refunded?**

No, the appeal fee is nonrefundable.

**12. If I withdraw my appeal prior to the close of the appeal period, is my fee refunded?**

No, the appeal fee is nonrefundable.

**Specific Requirements for Appeals of LPC Decisions:**

**13. Can I count signatures collected per the BMC filing requirement towards the reduced fee?**

Yes, so long as the signer is qualified. The appellant must clearly denote which signatures are to be counted towards qualifying for the reduced fee, i.e. are within the required distance.

**14. Do the signatures collected per the BMC requirement and the signatures collected to qualify for the reduced fee need to be on separate petitions?**

No. See above.