



Office of the City Manager

PUBLIC HEARING  
May 21, 2024

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400  
 Subject: Rescinding and Adopting the Environmental Health Division Fee Schedule

### RECOMMENDATION

Conduct a Public Hearing and, upon conclusion, adopt a Resolution rescinding Resolution 69,891-N.S. which established the current Environmental Health fee schedule and adopting a new fee schedule. The new fee schedule keeps all existing fees at the same level and adds four (4) new fees as follows:

- 1) Compact Mobile Food Operations (CMFO)
- 2) Short-term / Guest Vendor Operations
- 3) Host Facility Operations
- 4) Temporary Food Facility (e.g., food booth) Late Applications

These recommended updates to the Environmental Health fee schedule reflect recent changes in State law, allowing the City to come into regulatory compliance with State law and offer more economic opportunities for smaller independent businesses. The new fees will be effective July 1, 2024 until subsequently modified.

### SUMMARY

The Environmental Health Division (EHD) recommends updating the fee schedule for the Retail Food Safety Inspection Program, which is administered by EHD. The proposed changes allow the City to come into regulatory compliance with changes in the State law over the past several years. EHD proposes to align the City's food permit categories with those types of operations currently allowed by the State law, which include the creation of new categories of food facilities outlined below. These changes must be adopted into EHD's current the fee schedule in order to permit, inspect and charge fees for these new types of facilities. In addition, EHD is also proposing a new fee to help with the influx of "last-minute" permit applications for Temporary Food Facilities by assessing an additional charge for permit applications that are received by EHD within two weeks of a scheduled City-sanctioned, community event.

**FISCAL IMPACTS OF RECOMMENDATION**

The attached fee schedule (included as Exhibit A) is the same as that adopted in 2021 with the addition of the new categories listed above.

The proposed fees are based on related categories within the current fee schedule and/or the existing hourly fee charged for “demand” services, which is currently \$170 per hour. Revenue projections resulting from the proposed new fees are difficult to calculate due to unpredictable retail food industry trends, however, current trends suggest that the fiscal impacts can range anywhere from \$2,000 to \$5,000 per year in additional General Fund revenue in the FY25 and in subsequent years.

The new proposed fee schedule also includes a fee of \$170 as a “late fee” for temporary food booth vendors who submit applications with less than fourteen (14) days prior to the start of a community event. This new fee is intended to serve as an incentive for food vendors to submit their applications well in advance of a scheduled event, and will help to offset additional costs associated with reviewing “last-minute” applications (e.g., overtime costs) street fairs and other community events where temporary food booths are often associated.

The table below summarizes how the proposed fees compare to comparable fees in neighboring jurisdictions.

**Summary of Environmental Health Division Proposed Fees Relative to Neighboring Jurisdictions**

Environmental Health Jurisdiction	<sup>1</sup> CMFO Annual Permit Fee	<sup>1</sup> CMFO Plan Review Fee	Guest Vendor Permit Fee	Guest Vendor Plan Review Fee	Host Facility Annual Permit Fee	Host Facility Plan Review Fee	<sup>2</sup> Late Application Submittal Fee – Temporary Event Booth
City of Berkeley EH (proposed)	\$131 - \$704 (based on existing Mobile Food Facility fees)	\$240 (based on 2 hrs @ \$170/hr)	\$546	\$240 (based on 2 hrs @ \$170/hr)	\$546	\$240 (based on 2 hrs @ \$170/hr)	\$170
Alameda County EH	\$204 - \$500	Hourly @ \$174/hr	\$522	\$174 (hourly fee)	\$408	\$174 (hourly fee)	50% of current permit fee (\$105.50)
Contra Costa EH	\$728 - \$896	\$398 - \$498	No fee category	No fee category	\$1052	\$796	N/A
Santa Clara County EH	\$229 - \$560	\$580 - \$1015	\$169 - \$281	\$435 (application fee)	\$508	\$435 (application fee)	N/A

San Mateo County EH	\$335-892	\$841	\$199 - \$348 (Pop Up)	\$249 (hourly fee)	\$498	\$249 (hourly fee)	N/A
San Francisco EH	\$235 - \$943	\$353 - \$825	\$235 (Pop Up)	\$235 (hourly fee)	\$878 - \$928	\$235	N/A

<sup>1</sup> Fees range from low-risk (pre-packaged, non-potentially hazardous) to high-risk (potentially hazardous foods)

<sup>2</sup> Sacramento County EH imposes a \$150 fee for temporary event applications submitted with less than 2 weeks prior to event date

CURRENT SITUATION AND ITS EFFECT

The City currently lacks the ability to approve certain types of food facility operations because the current fee schedule does not account for these new types of operations. By updating the Environmental Health fee schedule to reflect recent changes in State law, the City is able to offer more options for food service operations to conduct business, and to create more equitable economic opportunities for smaller independent businesses.

Perhaps the most significant new category is the **Compact Mobile Food Operations (CMFO)** category, which lessens the restrictions for “sidewalk food vendors” to sell food legally, and “decriminalizes” these types of food vending operations that were previously prohibited by state law. Senate Bill 972, passed in 2022, eased some of the regulatory restrictions that applied to more conventional mobile food trucks, and prohibited the application of criminal penalties for operating a CMFO, many of whom are operated by low-income immigrants in the local food economy.

An important distinction between a CMFO and a conventional mobile food truck is that a CMFO is restricted to “limited food preparation”, which means that a CMFO may only offer “cook-to-order” foods and food items which have been pre-cooked or prepared in a permitted food facility, such as a Microenterprise Home Kitchen Operation (MEHKO), or Cottage Food Operation. A conventional mobile food truck may conduct business similar to that of a fixed, brick-and-mortar facility, (which allows for full food preparation).

The Environmental Health Division (EHD) proposes to align the City’s food permit categories with those types of operations currently allowed by the State law. EHD will use existing protocols in evaluating and permitting CMFOs similar to that of the conventional mobile food trucks operations. Adoption of this new category will help ensure regulatory compliance and enforcement of food safety standards by regulating the growing number of sidewalk food vendors under a more formal permit process and will make it easier for CMFOs to comply.

**Short-term / Guest Vendor and Host Facility Operations** (also known referred to as “pop ups”), have become a popular trend in the food industry, and as of January 1,

2019, Assembly Bill 2584 allows a catering operation (e.g., “guest vendor”) to operate at a “host” facility, provided that both the guest vendor and host facility meet minimum requirements for permitting. It is important to note that food facility permits are not issued to individuals, but instead, they are issued to a specific owner/operator at a specified location, and **are not** transferable. By creating a specific permit category for these situations, EHD can issue short-term permits for “pop up” operations, and provide proper regulatory oversight which is consistent with other food facilities that serve the public. Moreover, EHD will be able recoup costs by charging fees to support the additional review time and inspectional activities associated with the regulation of these types of operations.

EHD also proposes to implement a new fee for any **Late Submittal** of a temporary food facility permit application. This “late fee” applies to applications that are received less than 2 weeks prior to City-sanctioned special events, like street fairs, and weekend festivals. Applications for these events, many of which focus on food have increased substantially since the height of the pandemic. EHD tends to receive a relatively large number of temporary food booth vendors applications for these events, and are often inundated with last-minute vendor applications. Review of these temporary food booth applications is a very involved, coordinated process, depending on the type of foods being offered.

EHD’s protocol requires a minimum of thirty (30) day lead time in order to properly review applications and issue permits. Because food vendors play such a critical role in attracting large crowds to these types of events, EHD staff are often under a great deal of pressure to review and approve food vendor applications. Often times, food vendor applications are submitted only a few days before an event, putting additional pressure on EHD staff, and often result in the use of overtime to adequately review and permit these last-minute submittals. The intent of this fee is to provide an incentive for food vendors to submit their applications well in advance, and serves to help offset the overtime costs involved in reviewing and approving these last-minute application submittals.

### 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, and the Tattoo and Body Piercing Registration program, all of which 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's staffing costs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Adopting a fee schedule that includes these additional fee categories will allow the City to permit these new types of food facilities. Furthermore, these new fee categories align with recent changes to State law. Approval of the recommended action will maintain 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.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not consider other alternative actions, however, if Council chooses not to adopt the proposed fee changes, it would place the City in a difficult position of having to deny an application that is allowed by the State, and businesses may choose other locations to conduct business outside of Berkeley. With regard to the proposed Late Submittal Fee, should Council decide not to approve this fee, staff will continue to work diligently to try to approve Temporary Permit Applications as best they can, but may have to deny applications due to time constraints.

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 REGULATION AND  
INSPECTIONS EFFECTIVE JULY 1, 2024

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 69,891-N.S. effective July 1, 2021; and

WHEREAS, California Senate Bill 972 (SB972), chaptered on September 23, 2022, established a new category of food operation called Compact Mobile Food Operation, codified in the California Health & Safety Code §§113818, et seq., which is intended to promote economic inclusion while modernizing the California Retail Food Code so that sidewalk food vendors can obtain a permit and join the regulated vending economy; and

WHEREAS, California Assembly Bill No. 2524, signed into state law in 2018, became effective on January 1, 2019, establishing a “catering operation” and “host facility” as a food facilities; and

WHEREAS, “Pop up” food operations have become a popular trend in the food industry, and can now be formally permitted under the host facility and guest vendor categories; and

WHEREAS, City-sanctioned special events like street fairs and weekend festivals often draw large crowds and feature a variety of different food vendors; and

WHEREAS, Environmental Health staff experience a large influx of “last-minute” food vendor applications just days before a special event, and are often pressured into approving food vendor applications; and

WHEREAS, a “late application fee” could provide more incentive for applicants to submit their applications in a more timely manner; 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 69,891-N.S.from May 25, 2021 is hereby rescinded.

BE IT FURTHER RESOLVED that the Proposed Annual Fees in the Fee Schedule for Environmental Health Services, attached to this Resolution as Exhibit A, are 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.

BE IT FURTHER RESOLVED that this Resolution shall be in full force and effect on and after July 1, 2024.

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

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

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

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

DEMAND SERVICES (HOURLY FEES)	Current Fees		Proposed Fees	
	Fees	Multiple Day <sup>2</sup>	Fees	Multiple Day <sup>2</sup>
Sales and Promotional Sampling of non-TTCS/PHF Foods at a Temporary Special Event	\$44	\$75	\$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	\$98	\$150
Investigation of a Food Facility (Hourly)	\$182+		\$182+	
Food Handler Training (Non-certificate, 2-hour minimum)	\$340+		\$340+	
Food Handler Training Certificate Program	\$180		\$180	
Mechanical Ear Piercing Notification	\$44		\$44	
Valid Smoking, Noise, and Styrofoam Complaints	\$182		\$182	
Property Inspection Fee	\$182		\$182	
Administrative Hearing (2-hour minimum)	\$340+		\$340+	
Compost Sanitary Requirements	\$182		\$182	
Demolition Site Inspection	\$182		\$182	
Interdepartmental Service Charges	\$182		\$182	
Stormwater Follow-up Inspection	\$182		\$182	
Potable Water Sampling	\$182		\$182	
Virginia Graeme Baker (VGB) Pool Plan Check (2-Hour minimum)	\$340+		\$340+	
Greywater or Rain Catch Basin (4-hour minimum)	\$680+		\$680+	
Cannabis Facilities Plan Check, Complaints, Billable Service, Follow-up Inspections (two-hour minimum)	\$340+		\$340+	
Cannabis Consumption Lounge Plan Review (2-Hour Minimum)	\$340+		\$340+	
Confirmed Complaint Investigations and For-Cause Re-inspections of Microenterprise Home Kitchen Operations (Hourly)	\$170		\$170	
Cannabis Facility Health Operating Permit Application and Processing Fee	\$182		\$182	

	Current Fees		Proposed Fees	
	Fees	Multiple Day <sup>2</sup>	Fees	Multiple Day <sup>2</sup>
<b>DEMAND SERVICES (HOURLY FEES)</b>				
Microenterprise Home Kitchen Operation Plan Check and Application Fee	\$182		\$182	
<sup>New</sup> Temporary Food Facility Late Application Submittal Fee (Less than 14 days prior to the scheduled event)	N/A		\$170	

<sup>1</sup>City-sponsored Special Event

<sup>2</sup>Non refundable

<sup>3</sup>Applicable to MHKO

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
ENVIRONMENTAL HEALTH PERMIT AND FEE SCHEDULE  
ADJUSTMENTS**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Health, Housing and Community Services, Environmental Health Division, is proposing that current fees pursuant to Resolution No. 69,891-N.S. will remain unchanged with the exception of adding new fee categories for

<b>Type of Permit</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
Compact Mobile Food Operation (CMFO)	N/A	\$131 - \$704
Short-Term / Guest Vendor Operation	N/A	\$546
Host Facility Operation	N/A	\$546
Late Application Submittal Fee	N/A	\$170

The hearing will be held on, May 21, 2024 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City’s website at <https://berkeleyca.gov/> as of May 9, 2024. **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.**

For further information please contact Ron Torres, Manager of Environmental Health at (510) 981-5310.

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](mailto: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](mailto:clerk@berkeleyca.gov) 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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 9, 2024.

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Mark Numainville, City Clerk

