



Office of the City Manager

PUBLIC HEARING
July 27, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Updated Fees for the Home Occupations Ordinance

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution amending Resolution No. 67,985-N.S., the Planning Department Fee Schedule, to establish fees for new Home Occupation permit categories.

SUMMARY

Home Occupations (HOs) are small-scale businesses conducted on residential properties as incidental land uses. They are regulated by Berkeley Municipal Code (BMC) Chapter 23C.16 [Home Occupations], which was amended on February 23, 2021, in response to a City Council referral. Those updates to the HO Ordinance require revisions to portions of the Planning Department Fee Schedule.

FISCAL IMPACTS OF RECOMMENDATION

Adopting the Resolution will allow HO applicants to be charged fees for land use permits consistent with similar uses. Fees will cover the cost of staff time to process these permits. All fees are deposited into the Permit Service Center Fund.

CURRENT SITUATION AND ITS EFFECTS

Amendments to the HO Ordinance replaced Low-Impact, Teaching-Related, and Moderate-Impact HO categories with Class I, Class II and Class III HO categories. The current Fee Schedule reflects the previous nomenclature and regulations; the new categories require that the fee schedule be updated. **Table 1** summarizes the current Fee Schedule.

Table 1: Current Fees

Category	Permit ¹	Current Fee
Low-Impact	ZC	\$60
Teaching-Related	AUP	\$200
Moderate Impact	UP(PH)	\$4,800

Table 2 shows the new HO categories – Class I, Class II and Class III – with permits required and proposed fees. Revisions to the ordinance reflect a desire for increased flexibility for customer visits, on-site employees, and shipping, which increase with each step in the series and is reflected in levels of discretion, permit cost and associated permit processing time.

Table 2: Proposed Fees

Category	Permit	Proposed Fee
Class I	ZC	\$200
Class II	AUP (Tier 3)	\$800
Class III	UP(PH) (Tier 1)	\$4,800

This report recommends the following amendments to the Fee Schedule:

1. Apply the Zoning Certificate Fee to Class I HOs.

Previously named Low-Impact and Teaching-Related Home Occupations are analogous to the new Class I HO, which is permitted with a Zoning Certificate (ZC). Proposed amendments to the Fee Schedule establish an application fee of \$200 for Class I HOs, based on the general fee schedule for a ZC. This differs from the previous \$60 fee for a Low-Impact HO ZC and \$200 fee for a Teaching-Related HO Administrative Use Permit (AUP), but more appropriately reflects staff time required to process a Class I HO permit.

2. Apply the Administrative Use Permit (Tier 3) Fee to Class II HOs.

Class II HOs are a new category of home-based businesses. They allow for ten customer visits per day (Class I allows four) and require an AUP, which involves public notice of the application, consideration of context-specific concerns, and a notice of decision (NOD), which could lead to an appeal to the Zoning Adjustments

¹ ZC – Zoning Certificate | AUP – Administrative Use Permit | UP(PH) – Use Permit (Public Hearing)

Board. Proposed amendments to the Fee Schedule establish an application fee of \$800 for Class II HOs, utilizing the general fee structure for a Tier 3 AUP.

3. Apply the Use Permit Fee (Tier 1) to Class III HOs.

Class III HOs are a new category of home-based businesses offering the most flexibility in the HO series. Class III HOs are only permitted in Commercial zoning districts, and require a Use Permit, which involves community engagement, preparation of a staff report, written findings and conditions of approval, and a public hearing by the Zoning Adjustments Board, which can lead to an appeal to the City Council. Proposed amendments to the Fee Schedule establish an application fee of \$4,800 for Class III HOs, based on the general fee structure for a Tier 1 Use Permit with a Public Hearing (UP(PH)).

As with all AUP and UP(PH) applications, such projects are also subject to the required \$50 records management fee, and a Community Planning fee equal to 15% of the base permit fee. This will make the total fee for Class II HOs \$970, and Class III HOs \$5,215.

BACKGROUND

Recent Zoning Ordinance amendments related to Home Occupations created three new categories that do not readily align with previous categories and the associated permit application fee structure. The following discussion explains how the previous categories will be adjusted to the new classifications and fees.

Moderate-Impact HO Fee History

The previous HO Ordinance permitted Moderate-Impact HOs with a Tier 1 UP(PH) and a total fee of \$5,215. Moderate-Impact HOs are no longer a category and so no fee is proposed.

Teaching-Related HO Fee History

In 2006, City Council amended the Zoning Ordinance to require an AUP for Teaching-Related HOs and reduced the application fee for this permit to \$100. The reduced AUP fee was intended to reduce financial barriers for teachers whose businesses required visitors. The fee was subsequently increased to \$200 to align with other administrative permits that involve about one hour of staff time. With the new regulations, teachers can operate under the Class I HO category, which requires a ZC and has a fee of \$200.

Low-Impact HO Fee History

In 2012, City Council amended the Fee Schedule to introduce a reduced fee of \$50 for ZCs issued for Low-Impact HOs (HO-ZC). This was subsequently increased to \$60. The HO-ZC fee was set to reduce the cost for HOs that relocated to a new address, but then was broadly applied to all HO-ZCs. Low-Impact HOs are no longer a HO Category, but are analogous to the new Class I category which requires a ZC and has an application fee of \$200.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

HOs enable individuals to establish legal businesses, work from home, and serve customers within their neighborhoods. Working from home can reduce commute time, contributes to quality of life, and may allow for more sustainable transportation choices (e.g., walking, biking) when obtaining neighborhood-based products and services. On average the City of Berkeley processes two hundred Home Occupation applications per year and most require a HO-ZC.

RATIONALE FOR RECOMMENDATION

Recent Zoning Ordinance amendments reclassified Home Occupations such that the existing fee structure does not directly apply. The proposed application fees would better align with the modified regulations and fees for comparable projects.

ALTERNATIVE ACTIONS CONSIDERED

The revised Class I and Class II requirements offer applicants expanded flexibility for customer visits and on-site employees, potentially resulting in increased revenues and requiring increased staff time to evaluate the proposals. The City could impose reduced fees, but this would require the processing cost to be covered by the General Fund

CONTACT PERSON

Paola Boylan, Assistant Planner, Land Use Planning Division, (510) 981-7418
Alene Pearson, Principal Planner, Land Use Planning Division, (510) 981-7489

Attachments:

1: Resolution

Exhibit A: Excerpt of existing Planning Fee Schedule with changes noted

2: Public Hearing Notice

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

HOME OCCUPATION LAND USE PERMIT APPLICATION FEES; AMENDING
RESOLUTION NO. 67,985-N.S.

WHEREAS, in order to better meet the needs of home-based businesses, City Council adopted comprehensive amendments to the Home Occupation (HO) Ordinance on February 23, 2021; and

WHEREAS, in order to recoup the direct costs of administering the HO permit process, land use permit application fees shall be set to accurately reflect the approximate average level of effort to process those permits; and

WHEREAS, the current HO categories listed in the Land Use section of the Planning Department Fee Schedule are not directly comparable with new HO categories provided in the Zoning Ordinance.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby amends Resolution No. 67,985-N.S. to adopt an updated fee schedule that includes fees for HOs as set forth below and in Exhibit A.

HO Category	Permit	Proposed Fee
Class I	ZC	\$200
Class II	AUP (Tier 3)	\$800
Class III	UP(PH) (Tier 1)	\$4,800

Exhibits

A: Land Use section of the Planning Department Fee Schedule

EXHIBIT A,
excerpt of Planning Fee Schedule

CHAPTER B- LAND USE PLANNING		
FEE TYPE / DESCRIPTION	FEE	REMARKS
I. Administrative Use Permits		
1. Tier 1 - Most complex projects, in or adjacent to a Residential district.	\$ 2,800.00	
2. Tier 2 - Intermediately complex projects in or adjacent to a Residential District	\$ 1,800.00	
3. Tier 3 - Least complex projects in or adjacent to a Residential district, including Class II Home Occupation permits	\$ 800.00	
4. Tier 4 - Other activities (residential or commercial) NOT in or adjacent to a Residential District.	\$ 1,600.00	
5. Teaching-related Home Occupation (Moderate-Impact)	\$ 200.00	
II. Use Permits (UP) with public hearing		
1. Level 1 - Use Permit (all other projects)	\$ 3,600.00	
2. Level 2 - Include the following:	\$ 4,800.00	Base fee (24 hours), plus
a. Non-residential projects in a Residential district	\$ 200.00	per hour for staff time in
b. Mixed-use buildings creating more than 20,000 gross sq. feet		excess of that covered by the
c. New construction or "major" renovation of a Landmarked building or site or Structure of Merit		base fee
d. Any new main building		
e. Master Use Permit or Development Permit required by a Specific Plan		
f. Class III Home Occupation Permits		
III. Variances		
1. Tier 1 - Yard or Height, Useable Open Space, Lot Coverage, Parking	\$ 1,000.00	
2. Tier 2 - Inadvertent Demolition of Residential Structure	\$ 4,000.00	
3. Tier 3 - All others not in Tier 1 or 2	\$ 7,241.00	
D. Each Additional AUP, UP or Variance in addition to primary	\$ 400.00	
E. ZAB Public Hearing (per project in addition to permit fees)	\$ 1,025.00	
IV. Zoning Certificates (ministerial permits)		
A. All projects except as noted below	\$ 200.00	
1. Home Occupation (Low-Impact)	\$ 60.00	
1. 2. Business License review - continuation of lawful existing use	\$ 60.00	
2. 3. Additional staff time (work performed beyond the time covered by the fees above)	\$ 200.00	per hour of staff time
B. Building Permit review		
1. Projects with Administrative Use Permits	\$ 200.00	
2. Projects with Use Permit and/or Variance	\$ 400.00	
3. In-kind repair/replacement work (e.g. window replacement, dry rot repair, etc.)	\$ 60.00	
4. Fourth and subsequent plan check submittal	\$ 200.00	per hour of staff time
V. Modifications and Transfers		
1. Administrative Use Permit Modification	\$ 400.00	
2. Use Permit Modification (ZAB Review - No Public Hearing)	\$ 1,200.00	
3. Use Permit Modification (ZAB Review - Public Hearing Required)	\$ 3,600.00	
4. Transfer of existing Use Permit	\$ 200.00	
VI. Environmental Review		
A. California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA)		
1. Initial Study resulting in a Negative Declaration or Mitigated Negative Declaration	\$ 2,897.00	
OR , at the discretion of the City, the cost of a CEQA/NEPA consultant contract, plus staff time at the current hourly rate for project and contract management services.		
2. Environmental Impact Report (EIR)	\$ 5,068.00	
OR , at the discretion of the City, the cost of a CEQA consultant contract, plus staff time at the current hourly rate for project and contract management		

EXHIBIT A,
excerpt of Planning Fee Schedule

FEE TYPE / DESCRIPTION		FEE	REMARKS
B	Mitigation Monitoring	\$ 200.00	Per hour of staff time

EXHIBIT A,
excerpt of Planning Fee Schedule

FEE TYPE / DESCRIPTION		FEE	REMARKS
VII.	Design Review		
	A. Administratively Approved		
	1. Project valued at or under \$50,000	\$ 1,158.00	
	2. Project valued between \$50,001 and 1,999,999	\$ 1,883.00	
	3. Project valued at \$2,000,000 or more	\$ 2,400.00	base fee for 12 hours plus \$200 hourly charge for staff time in excess of that covered by the base fee
	Signs/Awnings	\$ 532.00	
	B. Design Review with the DRC		
	1. Project valued under \$50,000	\$ 1,738.00	
	2. Project valued between \$50,001 and 1,999,999	\$ 2,608.00	
	3. Project valued at \$2,000,000 or more	\$ 5,000.00	base fee for 25 hours plus \$200 hourly charge for staff time in excess of that covered by the base fee
	Additional Preview	\$ 456.00	
	C. Final Review with the DRC		
	1. Project valued under \$50,000	\$ 1,103.00	
	2. Project valued at or between \$50,001-\$149,999	\$ 1,286.00	
	3. Project valued at \$150,000 or more	\$ 3,684.00	
	Modifications - DRC Projects	\$ 547.00	
VIII.	Landmarks Preservation Commission Review		
	A. Initiation		
	1. Structure	\$ 50.00	as set by the Landmarks Preservation Ordinance
	2. District	\$ 50.00	as set by the Landmarks Preservation Ordinance
	B. Design Review - Structural Alteration (non-residential only)		
	1. Project valued under \$50,000	\$ 1,738.00	
	2. Project valued between \$50,001 and 1,999,999	\$ 2,608.00	
	3. Project valued at \$2,000,000 or more	\$ 5,000.00	base fee for 25 hours plus \$200 hourly charge for staff time in excess of that covered by the base fee
	C. Design Review - Signs and Awnings	\$ 818.00	
	D. Demolition Review (non-residential structures 40 or more years old as required under Section 23C.08.050C of the Zoning Ordinance)	\$ 1,055.00	
	E. Mills Act Historical Contract Processing - payable upon application (one-time payment)	\$ 4,000.00	
	F. Mills Act Historical Contract Monitoring		
	1. Payable upon application to cover 5 contract years	\$ 2,160.00	
	2. Assessed at the beginning of each subsequent 5 years	\$ 2,160.00	

EXHIBIT A,
excerpt of Planning Fee Schedule

FEE TYPE / DESCRIPTION		FEE	REMARKS
IX.	Appeals of Zoning & Landmarks Discretionary Actions		
A.	Non-applicant appeals to Zoning Adjustments Board	\$ 200.00	
B.	Non-applicant appeals to Zoning Adjustments Board: Fee reduced if 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	\$ 75.00	
C.	Non-applicant appeals of ZAB or LPC decision to City Council	\$ 500.00	
	Non-applicant appeals of ZAB or LPC decision to City Council: Fee reduced if 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	\$ 100.00	
D.	Appeal of AUP filed by Applicants	\$ 2,500.00	
E.	Appeal of ZAB or LPC decision to City Council by Applicants	\$ 2,500.00	
F.	Appeal of DRSL or DRC by non-applicant	\$ 95.00	
G.	Appeal of DRSL or DRC by applicant	\$ 1,734.00	
D.	Non-applicant appeals of all affordable housing projects (defined as projects which provide 50% or more affordable units for households at 80% or less of Area Median Income)	\$ 500.00	
E.	To address processing error by staff	Fee Waived	
X.	Plan Amendments, Reclassification Requests, and Waterfront Master Development Plan permits*		
	NOTE: The minimum deposits listed are intended to reflect typical project costs. Progress billings will be made during review of a project if charges exceed the deposit: prompt payment of bills will assure continued project review. Failure to remit a progress payment within the appropriate time frame as determined by the Director of Planning and Development or his/her designee, will be treated as a withdrawal without prejudice to the underlying proposal. All fees are required to be paid prior to scheduling the item for Council consideration.		
A.	General Plan Amendments	\$ 200.00	per hour of staff time; minimum \$2,500 deposit upon submittal
B.	Specific Plan Amendments	\$ 200.00	per hour of staff time; minimum \$10,900 deposit upon submittal
C.	Re-zoning/ Reclassification Requests	\$ 200.00	per hour of staff time; minimum \$2,500 deposit required
D.	Waterfront Master Development Plan permit	\$ 200.00	per hour of staff time; minimum \$10,900 deposit upon submittal
	NOTE: Any citizen may ask the Planning Commission or the Council to initiate amendments as an alternative		

EXHIBIT A,
excerpt of Planning Fee Schedule

FEE TYPE / DESCRIPTION		FEE	REMARKS
XI.	Miscellaneous Fees		
A.	Penalty for Late Filing (When Zoning Permit, Use Permit or Variance is required)	100%	of applicable fee
B.	Zoning Complaint Re-inspection		
	1. First Re-inspection	\$ 200.00	
	2. Second Re-inspection	\$ 300.00	
	3. Third Re-inspection and all inspections thereafter	\$ 400.00	
C.	Agenda Subscriptions and Mailing Fees	Amount specified per A. R. 3.8	
D.	Publications and Duplication of Records	Amount specified per A. R. 3.8	
E.	Maps- large, color	\$ 36.00	
F.	Cassette Tape Duplication of Zoning Adjustments Board, Landmarks Preservation Commission, and Design Review Commission meetings	Amount specified per A. R. 3.8	
G.	Microfilm Duplication Fee	Amount specified per A.R. 3.8	
H.	Records Management fee	\$ 50.00	per application
I.	Zoning Burn Letters Regarding Nonconforming Properties	\$ 200.00	per hour, 1 hour min.
J.	Housing Density Bonus Analysis	\$ 200.00	per hour of staff time
K.	Zoning Research	\$ 200.00	per hour, 1 hour min.
L.	Oak Tree Review	\$ 200.00	per hour, 1 hour min.
M.	Use Permit Monitoring	\$ 200.00	per hour of staff time
N.	Pre-application Reviews		
	1. Staff level review	\$ 750.00	
	2. Zoning Adjustments Board/Planning Commission Review (at staff discretion in consultation with the applicant)	\$ 3,000.00	
O.	Dedicated Project Review: In addition to all required fees, applicants may request (or the City may require) dedicated project review in which the applicant pays the City for staff overtime or to contract with a consulting firm with particular relevant expertise to review the application.		
	In such instances, the applicant shall remit a deposit equal to the total amount of the contract, based on the bids received by the City pursuant to its purchasing procedures. Progress billings will be made if charges are expected to exceed deposit; prompt payment of bills will assure continued project review. Failure to remit a progress payment within an appropriate time frame, as determined by the Director of Planning and Development or his/her designee, will be treated as a withdrawal without prejudice to the underlying proposal.		
P.	Community planning fee for General Plan and Zoning Ordinance Maintenance	15%	Surcharge on, AUPs, UPs, Modifications and Variances.
XII.	CONDOMINIUM		
A.	Rent Board Review	\$ 120.00	per unit
B.	Application Fee for a Notice of Local Law Compliance	\$ 2,978.00	
C.	Application Fee for Conversion to Condominiums - <u>one to four units</u>	\$ 6,748.00	
D.	Application Fee for Conversion to Condominiums - <u>five or more units</u>	\$ 10,121.00	
E.	Fee for appeal of an administrative determination on conversion of a TIC to the Planning Commission by an applicant	\$ 842.00	
F.	Fee for appeal of Planning Commission determination on conversion to the City Council by an applicant	\$ 842.00	
G.	Fee for appeal of Planning Commission determination on conversion to the City Council by a non-applicant	\$ 102.00	

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**UPDATE TO THE LAND USE PLANNING APPLICATION FEE
SCHEDULE TO PROVIDE FOR NEW CATEGORIES OF HOME
OCCUPATIONS**

The Planning and Development Department is proposing to amend the land use permit application fee schedule by removing fees for obsolete Home Occupation land use categories and assigning fees similar to other established fees for Zoning Certificates and Use Permits for each of the newly-adopted Home Occupation land use categories.

Current Fees

Category	Permit¹	Current Fee
Low-Impact	ZC	\$60
Teaching-Related	AUP	\$280
Moderate-Impact	UP(PH)	\$4,800

Proposed Fees

Category	Permit	Proposed Fee
Class I	ZC	\$200
Class II	AUP (Tier 3)	\$800
Class III	UP(PH) (Tier 1)	\$4,800

1ZC – Zoning Certificate; AUP – Administrative Use Permit; UP(PH) – Use Permit (Public Hearing)

The hearing will be held on July 27, 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 **July 15, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Paola Boylan, Assistant Planner, Land Use Planning Division at (510) 981-7418

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. 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 981-6900 or clerk@cityofberkeley.info for further information.

Published: July 16 and 23, 2021 - The Berkeley Voice Per Government Code 6062A

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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 July 15, 2021.

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Mark Numainville, City Clerk