ORDINANCE NO. 7,317–N.S.

REPEALING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 7.84 PERTAINING TO BUSINESS IMPROVEMENT AREA ASSESSMENTS; AND ADDING BMC CHAPTER 7.84 ESTABLISHING THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 7.84 of the Berkeley Municipal Code is hereby repealed.

Section 2. That the Council of the City of Berkeley hereby makes the following findings:

A. Pursuant to Section 36500 et seq. of the California Streets and Highways Code (the "Act") the City Council on October 15, 2013, adopted Resolution No.66,345-N.S. Resolution of Intention to Establish an Elmwood Business Improvement District; Notice of Public Meeting and Public Hearing (the "Resolution"), declaring its intention to establish a parking and business improvement district to be known as the Elmwood Business Improvement District (the "District"), to levy a benefit assessment on businesses and professions within said District, the proceeds of which shall be used for the public purposes herein described to benefit the businesses in the District.

B. Pursuant to the Act, Government Code Section 54954.6 and the Resolution, the City Council conducted a public meeting on November 12, 2013 and a public hearing on November 19, 2013, both in the Council Chambers at 2134 Martin Luther King Jr. Way, Berkeley, California. Due notice of both the public meeting and the public hearing was given, as required by the Act and Government Code Section 54954.6. At said public hearing the City Council received and considered all oral and written protests regarding the proposed establishment of the District, and protests from businesses in the proposed District that would pay 50 percent or more of the proposed assessment were not received.

C. The public interest, convenience and necessity require the establishment of the Proposed District, and the businesses within the District will be benefited by the expenditure of the funds raised by the assessments levied hereby in the manner prescribed herein.

D. Businesses in the District shall be subject to any amendments to the District's boundaries, amounts of assessments, improvements or activities subject to the requirements of the Act. For the purpose of establishing assessments in the District, Council may make a reasonable classification of businesses, giving consideration to various factors, including general benefit to businesses and the degree of benefit received from District activities. Assessments levied on businesses pursuant to this shall, to the maximum extent feasible, be levied on the basis of the estimated benefit to the businesses within the District.

Section 3. That Chapter 7.84 of the Berkeley Municipal Code is hereby added to read as follows:

Chapter 7.84

ELMWOOD BUSINESS IMPROVEMENT DISTRICT

Sections:

7.84.010 Definitions.
7.84.020 Establishment of district.
7.84.030 Boundaries of district.
7.84.040 Calculation of assessments.
7.84.050 Use of revenue.
7.84.060 Collection of benefit assessments.
7.84.070 Voluntary contributions to district.
7.84.080 Advisory board and annual report.
7.84.090 District proceeds do not offset City services.
7.84.100 Boundary and assessment modifications.

7.84.010 Definitions

In order to distinguish between District businesses and for the purpose of calculating and applying the amounts of assessments owed, the following definitions shall apply:

"Retail Businesses" means all businesses that retail merchandise, Berkeley Business License Tax Code R, Retail, except “Restaurants” that are placed in a separate classification defined below. “Retail Businesses” is understood to include all jewelers even if they are classified in Berkeley Business License Tax Code M as “manufacturing jewelers”. It also includes all businesses in Berkeley Business License Tax Code G, grocers.

"Restaurant Businesses" include those that prepare and serve food at the request of customers, North American Industry Classification System industry (NAICS) 722. It is also understood to include any bakery that serves food on premises to retail customers, even if it is classified in Berkeley Business License Tax Code M as a “manufacturing bakery.”

"Business, Personal and Repair Service Businesses" include those engaged in providing business, personal, transportation, or repair services, Berkeley Business License Tax Code B, except Hair, Nail and Skin Care Services that are placed in a separate classification defined below.

“Hair, Nail and Skin Care Businesses” (NAICS 81211) include those providing appearance care services to individual customers.

"Professional Businesses" include those providing services that require a high degree deal of training or expertise, Berkeley Business License Tax Code P. Examples include attorneys, architects, accountants, engineers, surveyors, therapists and others in a medical/health service field, consultants, real estate brokers, financial advisors, artists and designers.

“Entertainment and Recreation Businesses” include those engaged in providing any form of entertainment, recreation or amusement, Berkeley Business License Tax Code E.

"Financial Businesses or Institutions" include banks, savings and loans, credit unions and other similar businesses.

7.84.020 Establishment of district.

Pursuant to Section 36500 et seq. of the California Streets and Highways Code (the "Act"), a Parking and Business Improvement District is hereby established to be named the "Elmwood Business Improvement District" (the "District").

7.84.030 Boundaries of district.

The boundaries of the District are as specified in this section and in the District's Boundary Map is attached to the ordinance codified in this chapter and on file with the office of the City Clerk.

Western Boundary

A line connecting the western edge\ of all parcels fronting on the western side of College Avenue in the C-E zoning district from 2832 College to 2992 College but including the City-owned Elmwood parking lot that is accessed from Russell Street, and addresses on Ashby from 2629 to 2648. The parcels along the western boundary are as follows:

Assessor's Book 053:

Block 1695: Parcels 11, 12-1, and 12-2.

Assessor's Book 052:

Block 1568: Parcels 3, 4-1, 5-1, 5-2, 6-2, 7, 9, 11-1, 12-1, 49, 50, 51, 52, 53, 55, and 56.

Block 1573: Parcels 2, 4-1, 6, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, and 103.

Eastern Boundary

A line connecting the eastern edge of all parcels fronting on the eastern side of College Avenue from 2887 College Avenue to 2999 College Avenue and 2701 Webster Street. The parcels along the eastern boundary are as follows:

Assessor’s Book 053:

Block 1696: Parcel 15.

Assessor’s Book 052:

Block 1567: Parcels: 16, 17, 18, 19, 20, 21, 22, 23, 24, 62, 63, 64, 66, 67, 68, 87, 88, 89, 90, and 91.

Southern Boundary

Webster Street.

Northern Boundary

A line connecting the northern edge of parcel 053-1695-011 (2832 College) on the western side of College and the northern edge of parcel 053-1696-015 (2887 College) on the eastern side of College.

7.84.040 Calculation of assessments.

Businesses, trades, and professions located within the District boundaries shall, commencing on January 1, 2014, shall pay an annual benefit assessment to the District in the amounts shown in Table 7.84.040.

Table 7.84.040

Business Classifications and Assessment Rates	
Classifications	**Annual Rates**
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) • Gross receipts under $350,000 • Gross receipts $350,000-$999,000 • Gross receipts $1,000,000	 $250 $350 $500
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	$500
Professionals including offices of real estate brokers (Tax Code P) • Gross receipts under $100,000 • Gross receipts over $100,000	 $300 $400
Entertainment and Recreation (Tax Code E)	$450
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Cares Services (NAICS 81211)	$200
Hair, Nail and Skin Care Services (NAICS 81211)	$250
Parking lot operators	$1,000
Financial Institutions	$2,500

No person or business shall be required to pay an assessment based on a residential use of the property within the District. Any business that is classified as a nonprofit (Tax Code N) for business licenses purposes, shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services. Any new business established within the District shall not be required to pay an assessment on application for its business license but only on renewal at the end of the year it was initiated.

7.84.050 Use of revenue.

The funds raised by said benefit assessment shall be used for the statutory purposes set forth in the Act, which may include but are not limited to the following improvements and activities:

A. General promotion of business activities within the District through advertising, creation and maintenance of a website, and other forms of marketing;

B. Provision of public events which benefit businesses within the District, including insurance, security and other services necessary for their successful outcome;

C Furnishing of music or entertainment in any public place in the District;

D The acquisition, construction, installation, or maintenance of any tangible property including but not limited to benches, trash receptacles, decorations, and landscaping.

E. Physical improvements to the Elmwood Movie Theater, an iconic feature within the District owned by a non-profit controlled by merchants within the District.

7.84.060 Collection of benefit assessments.

The benefit assessment authorized by this chapter shall be billed annually by the City with all funds collected to be placed in an account separate from the City's General Fund to be expended in accordance with this chapter and subsequent resolutions and fund management agreements. The levy of assessments will be accomplished by mailing assessment notices to all businesses as herein defined within the District by first class mail in conjunction with the City's annual business license renewal notice. Any business exempt from paying City business license fees shall be assessed in January of each year. The City shall collect all assessments and any penalties hereon as required by this chapter.

7.97.070 Voluntary contributions to district.

Contributions to the District shall be permitted on a voluntary basis. The boundary of the District shall not be modified as a result of the contribution, nor shall said contributing business be considered a member of the District for voting or other purposes. However, said business making a voluntary contribution may be entitled to participate in the programs of the District upon a finding by the Board of Directors that the District derives a benefit from said business' participation in the program.

7.84.080 Advisory board and annual report.

A. Appointment. The City Council shall appoint an Advisory Board pursuant to Section 36530 of the Act in order to make recommendations to the City Council on the expenditure of revenues derived from the levy of assessments, on proposed improvements and activities, on the classification of businesses, and on the method and basis of levying assessments. This Advisory Board shall be made up of nine members. Members of the Advisory Board must own or represent a business in the District.

B. Resident Status. The Advisory Board is intended to represent the interests of businesses within the District and therefore members of the Advisory Board need not be residents of the City.

C. Annual Report. The Advisory Board shall prepare a report for each fiscal year for which assessments are to be levied. The report shall be filed with the City Clerk and shall comply with all the requirements of Section 36533 of the Act. The report shall be approved as filed or modified.

7.84.090 District proceeds do not offset City services.

Funds derived from the District are intend to provide services to the businesses above what is provided to the District through City maintenance or capital improvement

programs, including but not limited to, sidewalk cleaning and maintenance, street and parking lot cleaning and maintenance, tree trimming and maintenance, police patrol services as well as any other City service normally provided to business districts. The City declares its intent to provide at least the same level and standard of maintenance and repair of public property within the District as are provided to other business districts, and will not curtail or diminish services in the District unless and until revenues are not available and the same or similar cutbacks are made in other business districts of the City.

7.84.100 Boundary and assessment modifications.

City Council may, at the Advisory Board's recommendation, modify the boundaries or assessments, established pursuant to this chapter; the modifications shall be made pursuant to the requirements of the Act, but no assessment shall be modified which would impair the ability of the District to meet the obligation of a contract to be paid from the revenues derived from the levy of assessments. Such changes shall be made by ordinance adopted after a hearing before the City Council.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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 November 19, 2013 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.