

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 7.97 ESTABLISHING THE
BERKELEY-SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT

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

Section 1. The Council finds as follows:

A. Pursuant to Section 36500 et seq. of the California Streets and Highways Code (the "Act") the City Council on October 21, 2003, adopted Resolution No. 62,262 -N.S., declaring its intention to establish a parking and business improvement district to be known as the Berkeley Solano Avenue Business Improvement District (the "District"), to levy a benefit assessment on all businesses, trades, professions, and vendors 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 and the Resolution, City conducted a public hearing, after having given due notice thereof as required by law, on November 18, 2003, in the Council Chambers at 2134 Martin Luther King Jr. Way, Berkeley, California. At said public hearing the City Council received and considered all oral and written protests regarding the proposed establishment of the District, and written 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. Council may, for each of the purposes set forth in Section 36510 & 36513 of the Act, establish one or more separate benefit zones based upon the degree of benefit derived from the formation of the District and may impose a tiered assessment within each of the benefit zones, and all provisions of the Act applicable to the establishment, modification, or disestablishment of the District shall apply to the establishment, modification, or disestablishment of benefit zones.

E. 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 2. That Chapter 7.97, Berkeley Solano Avenue Business Improvement District, is added to the Berkeley Municipal Code (BMC) as follows:

Chapter 7.97

BERKELEY SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT

Sections:

- 7.97.010 Definitions.**
- 7.97.020 Establishment of district.**
- 7.97.030 Boundaries of district.**
- 7.97.040 Calculation of assessments.**
- 7.97.050 Use of revenue.**
- 7.97.060 Collection of benefit assessments.**
- 7.97.070 Voluntary contributions to district.**
- 7.97.080 Advisory board and annual report.**
- 7.97.090 District proceeds do not offset City services.**
- 7.97.100 Boundary and assessment modifications.**

7.97.010 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" include all businesses not covered by other definitions set out in this section, at least 50% of whose gross income is derived from "retail sales" as that term is defined under the California Sales and Use Tax Law. The fact that a substantial part of its business consists of sales other than retail sales does not exclude said business from this classification so long as such other business component does not account for more than 50% of said business' gross income.

"Restaurant Businesses" include cafes, eating establishments, sandwich shops, dinner houses, restaurants and fast food services and other similar businesses.

"Lodging Businesses" include inns, hotels, motels, RV Parks and other similar businesses.

"Service Businesses" include general office, news and advertising media, printers, photographers, personal care facilities and outlets, entertainment uses, service stations, repairing and servicing businesses, renting and leasing businesses, utilities, vending machine businesses, household finance companies, and other similar businesses.

"Professional Businesses" include attorneys, architects, accountants, engineers, surveyors, physicians, dentists, optometrists, chiropractors, therapists and others in a medical/health service field, consultants, real estate brokers, financial advisors, laboratories (including dental and optical), hearing aid services, artists and designers.

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

7.97.020 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 "Berkeley-Solano Avenue Business Improvement District" (the "District").

7.97.030 Boundaries of district.

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

ZONE A

Includes all businesses on real estate parcels with frontage on Solano Avenue or in the C-SO zone between The Alameda and the Berkeley/Albany line.

Northern Boundary:

A line connecting the northern edges of all parcels fronting on the northern side of Solano Avenue or in the C-SO zone from the Albany Town Line to The Alameda. The parcels along the northern boundary are as follows:

Assessor's Map 62:

Block 2848: Parcels 13 and 14

Block 2870: Parcels 16,17-2, 18,19 and 20

Block 2872: Parcels 17,18,19, 20, 21, 22, 23, 24, 25 and 26

Block 2871: Parcels 7-2, 10, 11, 12-1, 15-1, 16-1, 19, 20, 21 and 22

Assessor's Map 61:

Block 2602: Parcels 2, 3-1, 3-2, 4, 5, 5-1, 6, 8, 9, 33-1, 35-4, 37, 38, 40-1, 43-1,44-1, 45, 46, 47, 48, 49, 50 and 51

Eastern Boundary

The western edge of The Alameda

Southern Boundary

1. A line connecting the southern edges of all parcels fronting on the southern side of Solano Avenue or in the C-SO zone from The Alameda to the Albany Town Line. The parcels along the southern boundary are as follows:

Assessor's Map 61

Block 2603: Parcels 1,3-3 and 4

Block 2611: Parcels 1-2, 4, 25-3, 25-4 and 28-1

Block 2612: Parcels 1 and 2

Block 2613: Parcels 1-1, 5-1 and 6

Block 2614: Parcels 1, 2, 3, 4 and 22 through 28

2. The northern edge of Solano Avenue from Tulare Avenue to a point approximately 100 feet west of Neilson Street.

Western Boundary

The Albany Town Line

ZONE B

Includes all businesses within the boundaries of the District on parcels not fronting on Solano Avenue between The Alameda and the Berkeley/Albany line or in the C-SO zone. The boundaries of the Zone B areas are as follows:

Area 1

A line around the three parcels immediately south of Zone A on the western edge of The Alameda. This area includes the following parcels:

Assessor's Map 61

Block 2603: Parcels 5, 6, and 7

Area 2

A line around the block enclosed by the eastern edge of The Alameda, the southern edge of Solano Avenue, the western edge of Contra Costa Avenue and the northern Edge of Los Angeles Avenue. This area includes the following parcels:

Assessor's Map 61

Block 2575: Parcels 40-1, 41, 42, 43 and 44

Area 3

A line around Parcel 3-7, Block 2571, Assessor's Map 61

7.97.040 Calculation of assessments.

All businesses, trades, and professions located within the District boundaries shall, commencing on January 1, 2004, pay an annual benefit assessment to the District in the amounts shown in Table 7.97.040.

Table 7.97.040

**BERKELEY SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT
ANNUAL ASSESSMENT FORMULA**

Type of Business		Annual Assessments	
		Zone A	Zone B
a. Retailers and	1-5 employees	\$200	\$125
Restaurants:	6-9 employees	\$300	\$175
	10+ employees	\$400	\$225
b. Service Businesses:		\$175	\$100
c. Professional Businesses:		\$100	\$65
d. Financial Institutions		\$500	\$500

No person or business shall be required to pay an assessment based on: (a) a residential use of the property within the District, or (b) a non-profit or government organization as defined by Section 501 (C) (6) of the Internal Revenue Service Code located within the District. Any new business established within the District shall not be required to pay an assessment for the Billing Period during which said business is initiated.

7.97.050 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;
- B. Promotion of public events which benefit businesses within the District and which take place on or in public places within the District, including insurance;
- D. Furnishing of music in any public place in the District;
- E. The acquisition, construction, installation, or maintenance of any tangible property including but not limited to benches, trash receptacles, decorations and landscaping.

7.97.060 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, to be due and payable within 30 days of receipt. 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.

7.97.080 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.

7.97.090 District proceeds do not offset City services.

Funds derived from the District shall not be used to offset or diminish current maintenance or capital improvement programs, including but not limited to, public property and sidewalk cleaning, street cleaning and maintenance, tree maintenance, restroom cleaning and maintenance. The City declares its intent to provide at least the same level and standard of maintenance and repair of public property within the District providing City funds are available from year to year.

7.97.100 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 or by resolution, if approved in conjunction with confirmation of the annual report.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the glass 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.

Proposed Business Improvement District

Legend

BIDzones

-  A
-  B

