




Office of the City Manager

PUBLIC HEARING  
November 19, 2013

To: Honorable Mayor and Members of the City Council  
 From:  Christine Daniel, City Manager  
 Submitted by: Michael J. Caplan, Economic Development Manager  
 Subject: Establish the Elmwood Business Improvement District, Levy Assessments in the District for 2014, and Authorize a Contract with the Elmwood Merchants Association

#### RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance establishing the Elmwood Business Improvement District, including an Advisory Board to make recommendations to the Council on the District, adding Chapter 7.84 of the Berkeley Municipal Code (BMC); and repealing Chapter 7.84 of the BMC originally adopted by Ordinance No. 6,164-N.S.; and
2. Adopt a Resolution levying assessments in the Elmwood Business Improvement District for calendar year 2014 and giving the City Manager authority to contract with the Elmwood Merchants Association to receive assessment revenue and spend it on improvements and activities authorized in the Ordinance and the Resolution of Intention, Resolution No. 66,345-N.S.

#### FISCAL IMPACTS OF RECOMMENDATION

Estimated revenues of \$35,000 per year will be collected by the City through the business license renewal process (and special billing for the City parking lot and a bank exempt from City business licensing) and turned over to the Elmwood Merchants Association to promote, maintain and beautify the business district. The goal of these efforts is to attract more customers to the Elmwood commercial district, which would promote local businesses and indirectly also benefit the City through increased sales tax and other business-based revenues. The new Elmwood Business Improvement District (hereafter, "the Elmwood BID", "the EBID" or "the District") will require some ongoing staff time in the Office of Economic Development to administer the Advisory Board and to conduct the annual renewal of the assessment, and in the Finance Department to collect BID revenues, deposit and account for them in a special fund, and remit them to the Elmwood Merchants Association. The level of staff effort should be similar to what both units of the City devoted to the former Elmwood Theater Business Improvement Area that expired in May 2013.

The proposed assessment formula (Attachment 1, Ordinance, Table 7.84.040) assesses the City of Berkeley \$1,000 per year for operating a parking lot within the boundaries of the BID. The principle of assessing City property within BID boundaries is of course, well established in State law and the City pays much larger assessments to BIDs in Downtown Berkeley and the Telegraph area.

The BID organizing committee (the Elmwood District Steering Committee, hereafter “the Steering Committee”) asked the City to lend \$60,000 to the Elmwood Merchants Association to allow it to pay for longstanding merchant priorities and “jump start” the new BID. The Steering Committee proposed that the loan to be repaid over fifteen years through a portion of the proceeds of the assessment. (See request in the Elmwood District Steering Committee letter of September 5, 2013, Attachment 3.) Until the BID was established, staff felt it was premature to take action on this request. Upon approval of the creation of the EBID, staff will meet with the leadership of the Elmwood Merchants Association to discuss the possibility of a loan secured by BID receipts and will subsequently make a recommendation to the City Council.

#### CURRENT SITUATION AND ITS EFFECTS

The Elmwood BID is being formed under the authority of State legislation that authorizes the City Council to establish a special assessment district to fund improvements and activities that benefit businesses within the area being assessed. California Streets and Highway Code Section 36500, the Parking and Business Improvement Area Law of 1989 (hereafter, “the Law”), requires specific actions to create a new business improvement district including notice to the affected businesses and the opportunity for the businesses to express support or opposition to the proposal. If businesses that would pay a majority of the proposed assessment express opposition either in writing or orally at the required public hearing, Council cannot establish the proposed BID and levy the assessment.

On October 15, 2013, Council adopted Resolution No. 66,345–N.S., which stated its intention to establish the EBID, levy assessments for 2014 and directed the City Clerk to schedule a public meeting on November 12, 2013, and a public hearing on November 19, 2013 to consider the establishment of the District and the levying of assessments. The City Clerk’s Office gave joint notice of both by mailing Resolution No. 66,345-N.S. to all affected businesses in the proposed District.

The proposed EBID would assess businesses an annual fee according to classifications and rates defined in the proposed Ordinance, Section 7.84.040, attached. (As required by law, the classifications and rates were also included in Resolution No. 66,345-N.S. mailed to all businesses to allow them to estimate what they would be paying if the BID goes into effect.)

The Law, Section 36536, requires that the classifications and their corresponding assessment rates be made on the “basis of estimated benefit to businesses.” At least in principle, the type of activities and improvements proposed to be financed by this

District (i.e., maintenance, improvement and beautification of public areas, and promotion of the district through a website, sponsorship of events, banners, etc.) can be held to confer a diffuse, general benefit on all businesses in the district. The fact that they will be administered by the Elmwood Merchants Association means that the membership will ensure that events and improvements will take place throughout the district, which in any case is a very restricted area. Following from this principle that the benefits would be similar for all, or most, businesses in the district, the Steering Committee, and an on-line poll of merchants, established the principle that the rates should be relatively flat, but with a provision that restaurants and larger retail and professional businesses should pay somewhat more on the grounds that they not only had a greater capacity to pay but derived greater benefit from the improvements and activities paid for by the District. In the Elmwood, restaurants are limited in number by a quota system and a restaurant permit can be quite valuable, justifying the \$500 annual fee. For retail businesses, the variation is from a minimum of \$250 when gross receipts are under \$350,000 to a maximum of \$500 when gross receipts exceed one million per year. Service businesses like dry cleaners that draw customers for what is likely convenience rather than being “attracted” to the District pay the least (\$200). The bank and parking lot pay the most (\$2,500 and \$1,000, respectively) because they were thought to have the greatest ability to pay and derive the greatest benefit from efforts to attract customers to the District.

The Parking and Business Improvement Area Law of 1989, Section 36527 requires that the “city council shall appoint an advisory board to make a recommendation to the city council on the expenditure of revenues derived from the levy of assessments pursuant to this part, on the classification of businesses, as applicable, and on the method and basis of levying the assessment.” Accordingly, the Ordinance, 7.84.080, establishes an Advisory Board of nine members to fulfill the functions mandated by Section 36527. This section allows the Advisory Board membership to be limited “to persons paying the assessment.” The Ordinance, 7.84.080A, does this in principle but says that “Members must own *or represent* a business in the District” to allow family members or employees of business owners to be appointed. Since the majority of business owners and their employees do not live in Berkeley, 7.84.080B allows non-residents to be appointed to the Advisory Board.

Merchants are reluctant to support the formation of new BIDs if they fear that the City will diminish services or improvements previously provided because it expects the BID to pay for them out of its revenues. The Elmwood Steering Committee expressed this concern in its letter of September 5 requesting creation of an Elmwood BID (Attachment 3):

“Some of our members worry that, when our merchant association has some money to spend on maintenance and beautification, City staff will be tempted to cut back on the very moderate amount of landscape maintenance that they perform in the Elmwood parking lot and other public areas. We therefore expect the City to provide a normal package of services to our district even after our BID is established. We would like to

meet with city staff over the next few months to specify a baseline service package so the merchants will know that they are paying only for enhanced services above the baseline level. In addition, we expect that the City will continue to allocate \$2,500 in “special event” funding that we have received for many years.”

Accordingly, Section 7.84.090 of the Ordinance contains language intending to prohibit the City from shifting the cost of providing services onto the EBID but, as the letter above noted, it is meaningless unless the merchants can document what services the City should be providing. Staff is working with various departments to compile a statement of baseline City services that can be used for this purpose. Once a draft is available, it will be sent to the Elmwood Merchants Association for comment. It is likely that the baseline level of service in the Elmwood will be a topic for discussion between staff and the EMA for several months.

In adopting the Ordinance as Chapter 7.84 of the Berkeley Municipal Code, the Council is also being asked to repeal the current Berkeley Municipal Code Chapter 7.84, Business Improvement Area Assessments, adopted on January 14, 1993 by Ordinance No. 6,164-N.S. This local BID authorizing legislation allows both property and businesses to be assessed with only a public hearing and a “no majority protest” procedure similar to that being used to form the EBID. Proposition 218 approved by California voters in 1996, however, requires a majority vote of property owners before property can be assessed. The City Attorney has therefore advised that the current BMC Chapter 7.84 be repealed.

#### BACKGROUND

Elmwood merchants were familiar with BIDs because for twenty years they had paid an assessment to assist in the restoration of the Elmwood Movie Theater and prior to that they had paid a Parking and Business Improvement Area assessment to assist in the financing of the Elmwood parking lot. When the Elmwood Theater Business Improvement Area was nearing its expiration date, the Elmwood Merchants Association requested that the City assist it to form a new BID that would finance improvements and activities that would benefit the business district. Details of the EBID formation process are included in the October 15, 2013, staff report and, especially its Attachments 2-7.

In the narrowest sense, the EBID will provide a regular, predictable source of funding for the Elmwood Merchants Association. It has collected voluntary dues from merchants for many years in an effort to conduct activities and improvements that benefit the business district. However, as is the case with many voluntary business associations, only a minority of businesses pay their dues, with the majority being content to benefit from the association’s activities as “free riders.” The EBID will solve the “free rider” problem and the prospect of a larger budget for promotions and events will, hopefully, provide an incentive for merchants to participate in their association.

### RATIONALE FOR RECOMMENDATION

The EBID is being established at the request of Elmwood merchants and is intended to fund a program of services and activities that they have developed and that will benefit them. An improved business climate in the District would also benefit the City itself through increased business-based tax revenue.

### ALTERNATIVE ACTIONS CONSIDERED

Assisted by staff, the Elmwood Steering Committee considered several alternative ways of assessing businesses before settling on the assessment method specified in the Ordinance, Section 7.84.040. Merchants who did not participate in the Steering Committee were notified of the alternatives and asked to state their preferences in an on-line and paper survey instrument. Similar methods were used to evaluate merchant preferences for services and improvements to be finance through BID revenues. All of this is described and documented in the October 15 staff report and especially its attachments 2-7.

### CONTACT PERSON

Dave Fogarty, Economic Development Project Coordinator, Office of Economic Development, 981-7534

Michael J. Caplan, Economic Development Manager, 981-2490

### Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Letter from Elmwood Steering Committee, September 5, 2013, Re: Creation of a Business Improvement District for the Elmwood District
- 4: Resolution No. 66,345-N.S. (Includes Notice of Public Hearing)

ORDINANCE NO. -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**

<b>Business Classifications and Assessment Rates</b>	
<b>Classifications</b>	<b>Annual Rates</b>
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> <li>• Gross receipts under \$350,000</li> <li>• Gross receipts \$350,000-\$999,000</li> <li>• Gross receipts \$1,000,000</li> </ul>	\$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) <ul style="list-style-type: none"> <li>• Gross receipts under \$100,000</li> <li>• Gross receipts over \$100,000</li> </ul>	\$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.

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

LEVYING ASSESSMENTS IN THE ELMWOOD BUSINESS IMPROVEMENT AREA FOR CALENDAR YEAR 2014 AND AUTHORIZING A CONTRACT WITH THE ELMWOOD MERCHANTS ASSOCIATION TO RECEIVE ASSESSMENT REVENUES AND SPEND IT FOR PURPOSES AUTHORIZED IN RESOLUTION NO. 66,345-N.S. AND THE ORDINANCE ESTABLISHING THE DISTRICT

WHEREAS, Council has now held a public meeting and public hearing on the establishment of the proposed Elmwood Business Improvement District (hereafter, "the District"); and

WHEREAS, Resolution No. 66,345-N.S. was mailed to all businesses in the proposed District that would be expected to pay the assessments levied in the District containing information on how businesses would be classified and the rates that each classification would be expected to pay; and

WHEREAS, the Resolution also specified the improvements and activities that the assessments would pay for and estimated the cost of providing them; and

WHEREAS, Resolution No. 66,345-N.S. gave notice that any affected business may protest orally or in writing the establishment of the District, the furnishing of any activity or improvement proposed to be funded, or the levy of assessments; and

WHEREAS, the Resolution also gave notice that, if protests were received from businesses proposed to pay a majority of the assessment, that the City Council would not establish the District or levy the assessment; and

WHEREAS, the City Council has now adopted the first reading of an Ordinance establishing the District; and

WHEREAS, there have not been protests by business owners who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that protests are over-ruled and an assessment is levied for 2014, effective on the date that the Ordinance establishing the District becomes effective.

BE IT FURTHER RESOLVED that the City Manager is authorized to enter into a contract with the Elmwood Merchants Association to disburse assessment revenues and expend them for the purposes described in Resolution No. 66,345-N.S.

ATTACHMENT 3

September 5, 2013

To: Members of the Berkeley City Council

From: Elmwood District Steering Committee

Re: Creation of a Business Improvement District for the Elmwood District



Dear Council members,

The Elmwood Merchants Association would like the City Council to approve a Resolution of Intention to establish a new Business Improvement District (BID) for the Elmwood C-E Zoning District. The new Elmwood BID would finance the following improvements and services (see attached budget):

- Beautification of the Elmwood (addition of new planters and/or benches)
- Graphic design services to update the Elmwood's logo & marketing materials
- Creation and maintenance of a new Elmwood web site
- Print and online advertising
- Print and social media marketing
- Holiday decorations and entertainment
- Administrative assistance to implement the preceding improvements and services

Some of our members worry that, when our merchant association has some money to spend on maintenance and beautification, city staff will be tempted to cut back on the very moderate amount of landscape maintenance that they perform in the Elmwood parking lot and other public areas. We therefore expect the City to provide a normal package of services to our district even after our BID is established. We would like to meet with city staff over the next few months to specify a baseline service package so the merchants will know that they are paying only for enhanced services above the baseline level. In addition, we expect that the City will continue to allocate \$2,500 in "special event" funding that we have received for many years.

A majority of merchants have agreed on the following annual assessment method, based on Business Category:

- Services = \$200.00

- Salons = \$250.00
- Retail, including jewelers and groceries:
  - Gross receipts below \$350,000 = \$250.00
  - Gross receipts between \$350,000 - \$1,000,000 = \$350.00
  - Gross receipts above \$1,000,000 = \$500.00
- Entertainment & Recreation: \$450.00
- Professionals:
  - Gross receipts below \$100,000 = \$300.00
  - Gross receipts above \$100,000 = \$400.00
- Restaurants: \$500.00
- Parking Lot Operators: \$1,000
- Financial Institutions: \$2,500

New businesses will be assessed at the time of their first business license renewal.

In order to achieve many of our goals during the first year of our BID, as has been discussed with some Council members, we request a loan in the amount of \$60,000 from the City of Berkeley, to be repaid over a period of 15 years through annual disbursements to the City through the BID. We request an interest rate of 5%.

Thank you very much for your attention to this matter.

Best regards,

 9/15/13

Maureen O'Neil Garcia, Owner, The Treehouse Green Gifts  
Ann Leyhe, Owner, Mrs. Dalloway's  
Claudia Hunka, Owner, Your Basic Bird  
David Salk, Owner, The Focal Point  
Christina Begley, Owner, Collector  
Jon Moriarty, Owner, 14 Karats  
Jason & Melissa Wayman, Owners, Elements  
Lynn Nice, Owner, Labels  
Anita Coulter, Owner, Trickster  
Charlene Reis, Owner, The Summer Kitchen  
Garbis Baghdassarian, Owner, La Mediterranee  
Melissa Hatheway, Manager, Rialto Cinemas Elmwood

cc. David Fogarty, Economic Development Project Coordinator, City of Berkeley  
Office of Economic Development

## RESOLUTION NO. 66,345–N.S.

## RESOLUTION OF INTENTION TO ESTABLISH AN ELMWOOD BUSINESS IMPROVEMENT DISTRICT; NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

WHEREAS, merchants in the Elmwood Commercial District have requested that the City of Berkeley initiate proceedings to establish a Business Improvement District; and

WHEREAS, Business Improvements Districts in several districts of the City of Berkeley, including previously in the Elmwood Commercial District itself, have provided improvements and activities that have greatly benefitted businesses and properties in the affected areas, as well as the general public.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that

- (a) Pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highways Code Sections 36522 *et. seq.*, the City of Berkeley proposes to establish a parking and business improvement area that would be coterminous with the Elmwood (C-E) Zoning District: addresses numbered from 2629 to 2648 on Ashby Avenue, 2832 to 2999 on College Avenue, 2642 to 2708 on Russell Street and 2701 Webster as shown on the map attached as Exhibit A.
- (b) This area shall be known as the Elmwood Business Improvement District (hereafter the "area" or the "district").
- (c) Special assessments levied on businesses in the area are proposed to fund maintenance, improvement and beautification of public areas in the district; marketing of the district by a new website and promotion in all forms of media; design services needed to create the marketing materials and enhance the image of the district; installation of possible seasonal banners and decorations; sponsorship of events and hiring of musicians and other entertainment; possible hiring of security; possible allocations to support the merchant-owned nonprofit Elmwood theater; and hiring of any administrative assistance needed to implement the preceding improvements and services.
- (d) Except when funds are otherwise available, an assessment will be levied annually on businesses within the district to pay for all improvements and activities within it.
- (e) The method and basis for the assessment is as described in Exhibit B.
- (f) New businesses will not pay an assessment with their initial business license application but only when their license is renewed.
- (g) Pursuant to Government Code Section 54954.6, the Berkeley City Council will hold a public meeting on the creation of the proposed Elmwood Business Improvement District and the proposed levy of assessments on November 12, 2013 in the Council Chambers 2134 Martin Luther King Jr. Way, Berkeley, California, 94704. The public meeting will begin no earlier than 7 pm. The Council will also hold a public hearing on the creation of the proposed Elmwood Business Improvement District and the proposed levy of assessments on Tuesday, November 19, 2013 in the Council Chambers, 2134 Martin Luther King

Jr. Way, Berkeley California, 94704. The Public Hearing will begin no earlier than 7 pm.

- (h) At the hearing the testimony of all interested persons for or against the establishment of the area, the extent of the area, or the furnishing of specified types of improvements or activities will be heard. A protest may be made orally or in writing by any interested person and may be against the establishment of the area, the extent of the area, or the furnishing of specified types of improvements or activities. Each written protest shall contain a description of the business in which the person subscribing the protest is interested, sufficient to identify the business. If the person subscribing the protest is not shown of the official records of the City as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. If written or oral protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, the City Council will not create the Elmwood Business Improvement District or levy the assessments.
- (i) Owners of businesses who wish to protest the proposed assessment may do so orally at the public hearing on November 19, 2013, or in writing to City Clerk, City of Berkeley, 2180 Milvia, Berkeley, CA 94704. Written protests submitted directly to the City Clerk prior to the public hearing must be submitted to the City Clerk's Office at 2180 Milvia Street, First Floor, Berkeley, no later than 3:00 p.m. on November 19, 2013.
- (j) Owners wanting further information on the proposed assessment may call David Fogarty at 510-981-7534, dfogarty@cityofberkeley.info, or write to him at Office of Economic Development, City of Berkeley, Berkeley, CA 94704.

BE IT FURTHER RESOLVED that the City Clerk will mail a complete copy of this Resolution of Intention by first class mail to each business owner in the area within seven days of the City Council's adoption of it.

The foregoing Resolution was adopted by the Berkeley City Council on October 15, 2013 by the following vote:

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

Noes: None.

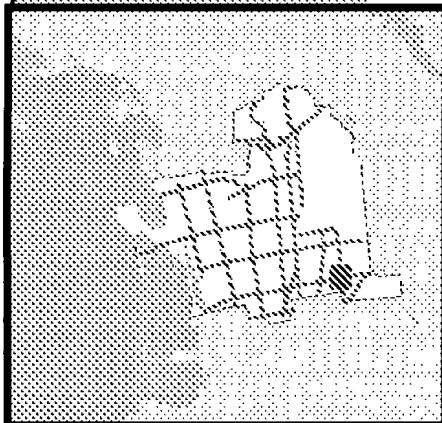
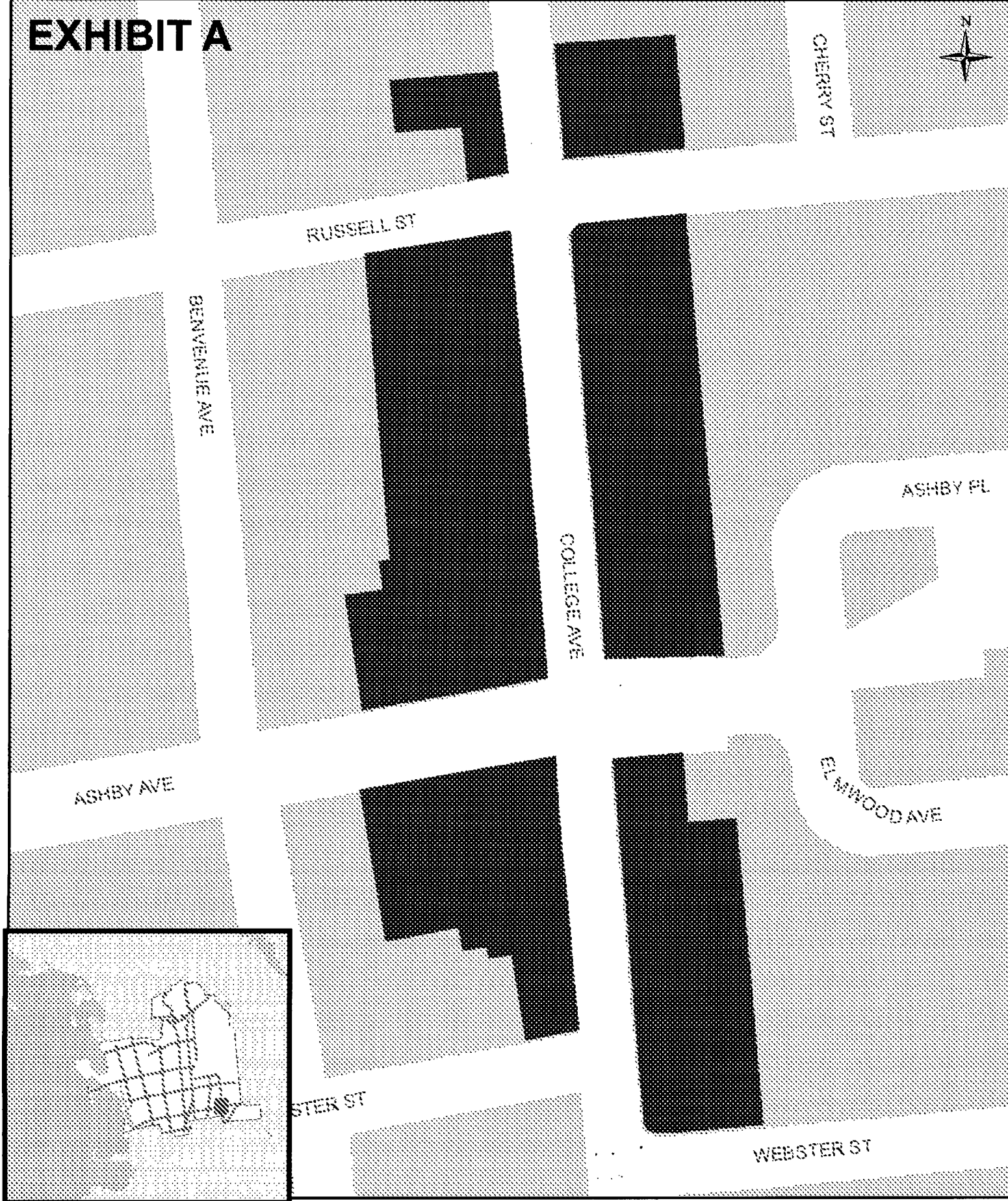
Absent: Moore.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numairville, CMC, City Clerk



# EXHIBIT A



## PROPOSED ELMWOOD BUSINESS IMPROVEMENT DISTRICT

0 1,000 3,000 7,000  
Meters

September 10, 2013

## Business Classifications and Assessment Rates

Classifications	Rates
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> <li>• Gross receipts under \$350,000</li> <li>• Gross receipts \$350,000=\$999,000</li> <li>• Gross receipts \$1,000,000</li> </ul>	\$250.00 per year \$350.00 per year \$500.00 per year
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	\$500.00 per year
Professionals including offices of real estate brokers (Tax Code P) <ul style="list-style-type: none"> <li>• Gross receipts under \$100,000</li> <li>• Gross receipts over \$100,000</li> </ul>	\$300.00 per year \$400.00 per year
Entertainment and Recreation (Tax Code E)	\$450.00 per year
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Care Services (NAICS 81211)	\$200.00 per year
Hair, Nail and Skin Care Services (NAICS 81211)	\$250.00 per year
Parking lot operators	\$1,000.00 per year
Financial Institutions	\$2,500.00 per year

Any business that is classified as a nonprofit (Tax Code N) for business license purposes, shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification.