



Office of the City Manager

PUBLIC HEARING

November 21, 2023

(Continued from November 14, 2023)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Renewal of the Elmwood Avenue BID for Calendar Year 2024

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution confirming the Annual Report and Budget for the Elmwood Business Improvement District (hereafter, “the District”, “the Elmwood BID” or “the BID”) and, if no majority protest exists, levy annual assessments in the District for calendar year 2024 to finance services and improvements and authorize a fiscal agency contract with Elmwood Business Association for receipt and expenditure of District funds.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$30,000 will be deposited into the Elmwood BID Fund, and expensed from budget code 782-21-208-251-0000-000-446-636110. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Advisory Board. The City of Berkeley operates a parking lot within the district and will thus be assessed \$1,000, paid through the Off-Street Parking Fund (835-4942-410-4046). To the extent that the work of the Elmwood BID enhances the development of the Elmwood and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code Section 36500 et. seq.) that authorized the establishment of the Elmwood BID, the City Council must hold a public hearing before levying assessments for 2024. The renewal process was initiated on October 10, 2023, when Council approved by Resolution No. 71,078-N.S. (Attachment 1, Exhibit A) the Annual report of 2023 and budget for 2024 and set the public hearing date for November 14, 2023. The City Clerk noticed businesses in the Elmwood BID area by publishing Resolution No. 71,078-N.S. in a newspaper of general circulation. If no majority protest is received at the public hearing, at its conclusion the City Council may confirm the Annual report of 2023 and budget for 2024 and levy assessments.

BACKGROUND

The Elmwood BID was established in November 2013 to provide the Elmwood Business Association with a sustainable, predictable source of funding for its activities to promote, maintain and beautify the Elmwood commercial district. The Elmwood Business Association has used the funds raised through the BID to implement a variety of activities such as marketing, place-based branding, events, and capital improvements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By maintaining and enhancing the district, the Elmwood BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The environmental enhancements contribute to making the Elmwood a more pleasant walking destination. Because the district is served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation choices.

RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Elmwood BID by conducting a public hearing on the proposed renewed assessment for the coming year.

ALTERNATIVE ACTIONS CONSIDERED

The Advisory Board has considered many alternatives for expenditure of its limited revenues and has decided upon the activities described in the Annual Report as its priorities for 2024.

CONTACT PERSON

Kieron Slaughter, Office of Economic Development, 510-981-2490

1: Resolution

Exhibit A: Resolution No. 71,078-N.S., with incorporated Annual Report, map of the District and Assessment table

2: Public Hearing Notice

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

CONFIRMING THE ANNUAL REPORT FOR THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT (BID), LEVYING AN ANNUAL ASSESSMENT FOR THE ELMWOOD BID FOR 2024, AND AUTHORIZING A CONTRACT OR CONTRACT AMENDMENTS WITH ELMWOOD BUSINESS ASSOCIATION TO SERVE AS FISCAL AGENT FOR RECEIPT AND EXPENDITURE OF ELMWOOD BID FUNDS

WHEREAS, the Elmwood Business Improvement District (BID) Advisory Board recommended an Annual Report to the Berkeley City Council that outlined the activities of the District proposed for the year 2024, including a budget for said activities, as required by California Streets and Highways Code Section 36533 and Berkeley Municipal Code Section 7.97.080; and

WHEREAS, on October 10, 2023, the City Council by Resolution No. 71,078-N.S. (attached as Exhibit A) approved the Annual Report and proposed budget of the Elmwood BID for 2023-24 and declared its intent to levy an assessment in the District to finance the proposed activities for the calendar year 2024; and

WHEREAS, Resolution No. 71,078-N.S. also scheduled a public hearing for November 14, 2023, to consider levying said assessment and gave notice that interested parties could attend and be heard on the issue, for and against; and

WHEREAS, the City Clerk has notified potential assessees of the public hearing by publishing the Resolution of Intention in a newspaper of general circulation; and

WHEREAS, the public hearing has now been held and there has 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 any protests are overruled and the Annual Report of the Elmwood BID is confirmed, thereby levying an annual assessment for the Elmwood BID for calendar year 2024.

BE IT FURTHER RESOLVED that the Council authorizes the City Manager to enter into a contract or contract amendments with Elmwood Business Association to receive and spend funds for purposes approved in the Annual Report and Budget and as directed by the Elmwood BID Advisory Board.

Exhibit A: Resolution No. 71,078-N.S., including the 2023-24 Annual Report, map of the District and Assessment Table

RESOLUTION NO. 71,078-N.S.

APPROVING THE 2023 ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2024; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2024; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 14, 2023 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2024

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the City Council established the Elmwood Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2023 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Elmwood BID assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves the Elmwood Business Improvement District Annual Report for 2023-24 (Exhibit A) as submitted to the City Clerk by the Elmwood Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Elmwood Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the Elmwood BID Annual Report and Budget which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and Budget (Exhibit A) and appended hereto. Council intends that these funds be used for designated activities and improvements in the Elmwood commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 14, 2023. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Elmwood Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

All formal written and oral protests against the levying of the District assessment should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Elmwood Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before 3 pm on November 14, 2023 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.


Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

The foregoing Resolution was adopted by the Berkeley City Council on October 10, 2023 by the following vote:

Ayes: Hahn, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Bartlett and Harrison.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

EXHIBIT A

Annual Report for the Elmwood Business Improvement District for 2023-24

August 31, 2023

To: Members of the Berkeley City Council
From: The Elmwood Business Improvement District Advisory Board
Re: 2024 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2024 fiscal year, with the same boundary as the prior year (Exhibit A1). The assessment method and basis remain the same.

The Elmwood BID was established in November 2013 to promote, maintain and beautify the Elmwood commercial district. Revenues of roughly \$30,000 per year provide a regular, predictable source of funding for the Elmwood Business Association (EBA) activities, and an additional \$5,000 of grant funding and fundraising is also anticipated. The Elmwood BID has allowed the EBA to expand its activities into areas such as maintenance and capital improvements.

The Elmwood Business Association is continuing to be the catalyst for Elmwood Business District's ongoing vitality. Here are some highlights:

- Rolled out SmartSpace Pilot (employee parking program) in collaboration with CoB Transportation Dept.
- Discussed AC Transit EasyPass program to Elmwood merchants with employees encourage public transit use
- Maintenance of year-round lighting installation on district buildings
- Website: www.shoptheelmwood.com serves as one of the district's main marketing tools – District Events, Introducing New Businesses, and ongoing marketing updates
- Installation of Welcome to Elmwood banners as well as seasonal banners on light posts and ongoing maintenance
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- Maintenance of security camera at Russell St. parking lot
- Maintaining a part-time Administrative Assistant to:
 - Post on social media
 - Manage merchant communications
 - Promote monthly specials among Elmwood Merchants
 - Updating the website to keep it current
 - Project manage events around Elmwood BID
- Sponsored the following events:
 - Spring and Fall Outdoor Movie Nights

- Fall Live Music Stroll
- Shop Local Promotions
- Held a Merchant Social at the newly opened Five Tacos and Beers restaurant
- Outreach to merchants at the southern end of Elmwood toward Alcatraz to include them in the Elmwood BID expansion plan effective in calendar year 2025.
- Applied and received Berkeley Civic Arts Grant to put on the Elmwood Music Festival
- Members of the board active in other Berkeley commercial and residential neighborhoods to promote harmony and cooperation

Below for your review is a summary of our current financial position and our proposed budget for 2023-24.

2023-24 Actual and Projected Expenditures Elmwood Business Association

INCOME	2024 Budget	2023 Actual
Operating Income		
BID Membership dues	\$ 30,000	\$ 30,000
Other (Grant Income, Wine Walk Income etc)	\$ 5,000	\$ -
Total Operating Income	\$ 35,000	\$ 30,000
Non-Operating Income		
Other		
Total Non-Operating Income		\$ -
Total INCOME	\$ 35,000	\$ 30,000

EXPENSES		
Advertising & Marketing		
Banner Maintenance	\$ 1,500	\$ 5,199
Building Light Maintenance	\$ 1,000	\$ -
Wine Walk production	\$ 4,000	\$ -
Spring event production	\$ 1,200	\$ -
Summer event production	\$ 1,000	\$ -
Web Hosting and Domains	\$ -	\$ 504
General Marketing, Ads, Social media	\$ 500	\$ 253
Halloween event production	\$ 500	\$ 1,130
Holiday season event production (incl. tree lights)	\$ 8,000	\$ 12,573
EBA Expansion research	\$ 250	\$ -

Consulting & Accounting			
	Accounting SW (Xero)/Tax Filing	\$ 200	\$ 195
Dues and Subscriptions			
	Chamber of Commerce	\$ 305	\$ 305
Insurance			
	Liability for EBA	\$ 500	\$ 500
	Liability for Board members	\$ 800	\$ 754
License & Permits			
	Taxes & Licenses	\$ 150	\$ 128
Other: Office Supplies/Annual Mtg.			
	Printing/copy	\$ 650	\$ 960
	Postage & Delivery (PO Box)	\$ 250	\$ 202
	Misc.		\$ -
	Annual Mtg. Food/Beverage	\$ 600	\$ 317
Repairs and Maintenance			
	Gardening (Tree wells)	\$ 500	\$ -
	Sidewalk Cleaning (Power Wash)	\$ 500	\$ -
Professional Fees			
	Legal and Professional Fees	\$ 100	\$ -
Security			
	Holiday Private Security	\$ 8,500	\$ 7,072
Admin Support			
	Wages	\$ 12,000	\$ 9,500
	Total Operating Expenses	\$ 43,005	\$ 39,596

Related Party			
Advantages		\$ (2,000)	\$ (2,000)

Exhibit A1: Elmwood Business Improvement District, Map

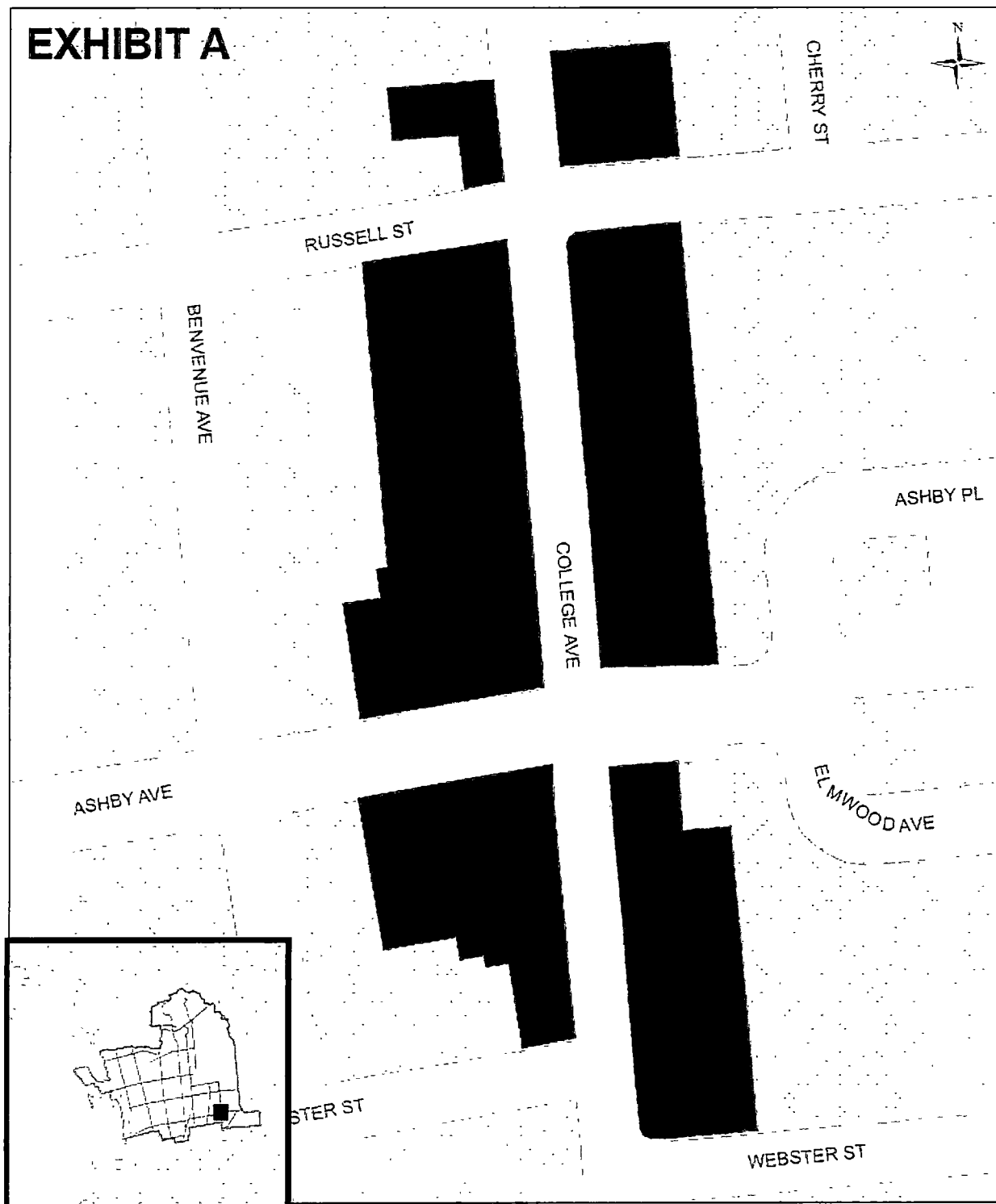


Exhibit A2: Elmwood Business Improvement District, Assessment Rates

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"> • Gross receipts under \$350,000 • Gross receipts \$350,000=\$999,000 • Gross receipts \$1,000,000 	\$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"> • Gross receipts under \$100,000 • Gross receipts over \$100,000 	\$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 Cares 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 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. (Ord. 7317-NS § 3 (part), 2013)

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**RENEWAL OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT
AND LEVYING OF ASSESSMENT FOR 2024**

The Elmwood Business Improvement District (BID) Advisory Board is proposing that the Berkeley City Council confirm the Annual Report of the Elmwood BID for 2023 and levy an assessment for 2024.

The hearing will be held on November 14, 2023 at 6:00 p.m. at the Berkeley School District Board Room, 1231 Addison Street, Berkeley, CA 94702

A copy of the agenda material for this hearing will be available on the City’s website at www.berkeleyca.gov as of **November 2, 2023**.

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 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 (510) 981-6900 or clerk@berkeleyca.gov for further information.

For further information, please contact Kieron Slaughter, Office of Economic Development, at 510-981-2490.

Published: Resolution of Intention No. 71,078-N.S. October 27, 2023 –Berkeley Voice As required by Streets and Highways Code Section 36534.

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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 November 2, 2023.

Mark Numainville, City Clerk