



Office of the City Manager

PUBLIC HEARING
December 6, 2022

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 2023

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”) for 2022-23 and, if no majority protest exists, levy annual assessments in the District for calendar year 2023 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 2023. The renewal process was initiated on November 29, 2022, when Council approved by Resolution No. 70,591-N.S. (Attachment 1, Exhibit A) the Annual report and budget for 2022-23 and set the public hearing date for December 6, 2022. The City Clerk noticed businesses in the Elmwood BID area by publishing Resolution No. 70,591-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 and budget for 2023 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

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 2023.

CONTACT PERSON

Kieron Slaughter, Community Development Project Coordinator, 510-981-2490

1: Resolution

Exhibit A: Resolution No. 70,591-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 2023, 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 2023, 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 November 29, 2022, the City Council by Resolution No. 70,591-N.S (attached as Exhibit A) approved the Annual Report and proposed budget of the Elmwood BID for 2022-23 and declared its intent to levy an assessment in the District to finance the proposed activities for the calendar year 2023; and

WHEREAS, Resolution No. 70,591-N.S. also scheduled a public hearing for December 6, 2022, 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 2023.

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. 70,591-N.S., including the 2022-23 Annual Report, map of the District and Assessment Table

RESOLUTION NO. 70,591-N.S.

APPROVING THE 2022 ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2023; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2023; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR DECEMBER 6, 2023 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2023

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 a 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 2022-23 (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 2022-23 Annual Report 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 December 6, 2022 in the Council Chambers, 1231 Addison St, Berkeley, California. The public may participate in this hearing virtually on a publicly accessible video conference call or in-person. 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.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests 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 December 6, 2022 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.

Exhibits

A: Annual Report for the Elmwood Business Improvement District for 2022-23

A1: Map of the Elmwood BID

A2: Assessment Rates

The foregoing Resolution was adopted by the Berkeley City Council on November 15, 2022 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Jesse Arreguin, Mayor

Attest: _____
Mark Numainville, City Clerk

EXHIBIT A

Annual Report for the Elmwood Business Improvement District for 2022-23

August 31, 2022

To: Members of the Berkeley City Council
From: The Elmwood Business Improvement District Advisory Board
Re: 2023 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2023 fiscal year, without any changes to the assessment method or amount.

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 activities of the Elmwood Business Association (EBA). 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 on-going vitality. Here are some highlights of our projects:

- Maintenance of year-round lighting installation on district buildings
- Website: www.shoptheelmwood.com serves as one of the district's main marketing tool – District Events, Introducing New Businesses, and on-going marketing updates
- Installation of Welcome to Elmwood 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 happenings/specials among Elmwood Merchants
 - Updating the website to keep it current
- Sponsored the following events:
 - Holiday events: Live bands, and Tapdancing Trees
 - Shop Local Promotions
- Held a Merchant Social in an outdoor setting along with our Annual Meeting
- 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 2022-23

2022-23 Projected Expenditures

Elmwood Business Association

INCOME		2023 Budget	2022 Actual
Operating Income			
	BID Membership dues	\$ 30,000	\$ 30,000
	Other (Partial BID Payment, Wine Walk Income)	\$ 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	\$ 2,000	\$ 6,713
	Building Light Maintenance	\$ 1,000	\$ 1,240
	Wine Walk production	\$ 4,000	
	Spring event production	\$ 1,000	
	Summer event production	\$ 1,000	
	Special Event-Art & Music Week		
	Web Hosting and Domains	\$ 500	\$ 274
	General Marketing, Ads, Social media	\$ 300	
	Halloween event production	\$ 300	
	Holiday season event production (incl. tree lights)	\$ 9,000	\$ 7,989
	Event planning	\$ 250	
	EBA Expansion research	\$ 100	
Charity			
	Wine Walk Partner		
Consulting & Accounting			
	Accounting S/W (Xero)/Tax Filing	\$ 300	\$ 301
Dues and Subscriptions			
	Chamber of Commerce	\$ 300	\$ 305
Insurance			
	Liability for EBA	\$ 350	\$ 350
	Liability for Board members	\$ 1,100	\$ 1,061
License & Permits			
	Taxes & Licenses	\$ 50	
	Lobbyist registration	\$ 500	
Other: Office Supplies/Annual Mtg.			
	Printing/copy	\$ 600	\$ 369
	Postage & Delivery (PO Box)	\$ 200	\$ 150
	Misc.		\$ 269

Repairs and Maintenance	Annual Mtg. Food/Beverage	\$ 600	\$ 610
	Gardening (Tree wells)	\$ 500	
	Sidewalk Cleaning (Power Wash)	\$ 500	
Professional Fees			
Security	Legal and Professional Fees	\$ 100	
	Surveillance System Installation		\$ 2,720
Admin Support	Surveillance System Maintenance	\$ 500	
	Holiday Private Security	\$ 7,200	\$ 7,168
	Wages	\$ 9,000	\$ 9,000
Total Operating Expenses		\$ 41,250	\$ 38,519

Retained Earnings		\$ (6,250)	\$ (8,519)
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Thank you for your attention to this matter. We look forward to an equally productive year for the BID in 2023.

Exhibit A1: Elmwood Business Improvement District, Map

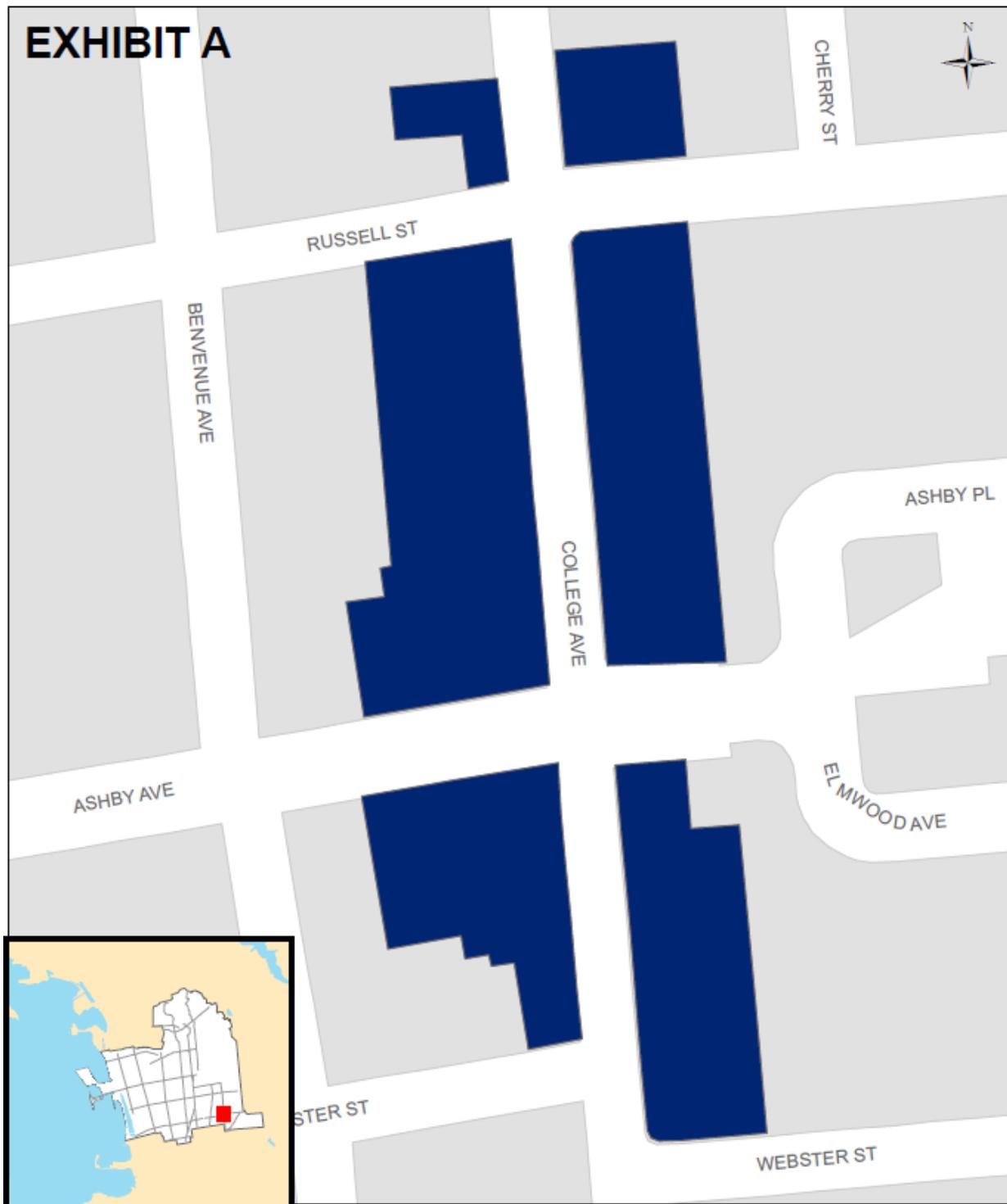


Exhibit A2: Elmwood Business Improvement District, Assessment Rates

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 license 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 and occupies a space zoned for commercial purposes.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**RENEWAL OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT
AND LEVYING OF ASSESSMENT FOR 2023**

The public may participate in this hearing by remote video or in-person.

The Elmwood Business Improvement District (BID) Advisory Board is proposing that the Berkeley City Council confirm the Annual Report of the Elmwood BID for 2022 and levy an assessment for 2023.

The hearing will be held on, **Tuesday, December 6, 2022 at 6:00 p.m.** at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City’s website at <https://berkeleyca.gov/> as of **November 23, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

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.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers. 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 or in person to the City Clerk. 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.

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

Published: Resolution of Intention No. 70,591-N.S. November 25, 2022 –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 23, 2022.

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Mark Numainville, City Clerk

