



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
MAY 11, 2023

2966 College Avenue – Elmwood Theater

Use Permit #ZP2023-0002 to add the sale of beer and wine for on-site consumption incidental to a movie theater.

I. Background

A. Land Use Designations:

- General Plan: NC – Neighborhood Commercial
- Zoning: C-E – Elmwood Commercial District

B. Zoning Permits Required:

- Use Permit to add service of beer and wine incidental to a movie theater, under BMC Section 23.310.020

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

D. Parties Involved:

- Applicant: Pleasantown Motion Picture Company, LLC, Sebastopol
- Applicant's Representative: Beth Aboulafia
- Property Owner: Elmwood Theater Foundation, Inc., Berkeley

Figure 1: Vicinity









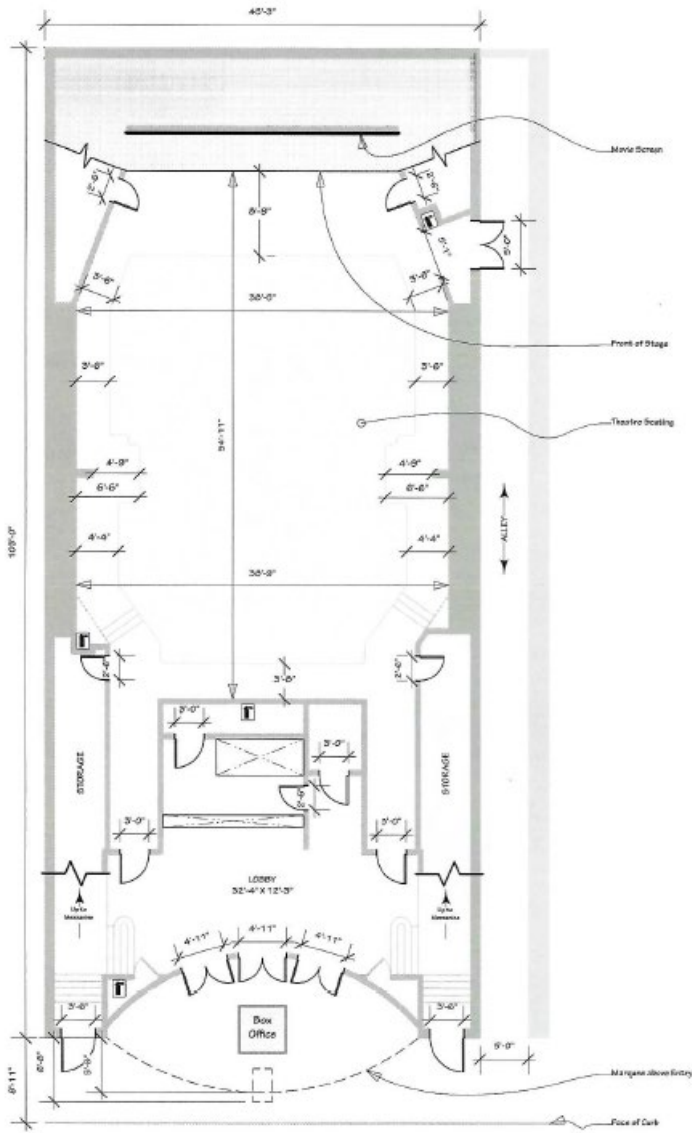
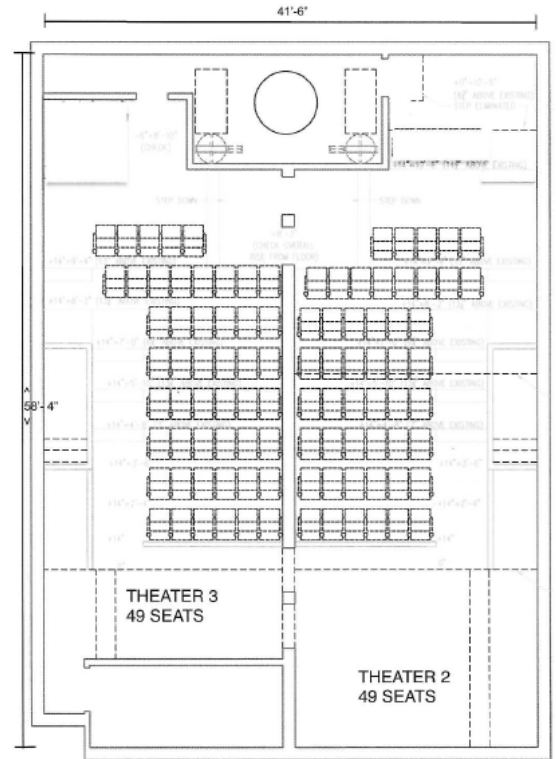
	C-E	Elmwood Commercial
	R-1	Single-Family Residential
	R-2	Restricted Two-Family Residential
	R-2A	Restricted Multi-Family Residential
	R-4	Multi-Family Residential
		Landmarks / Structure of Merit



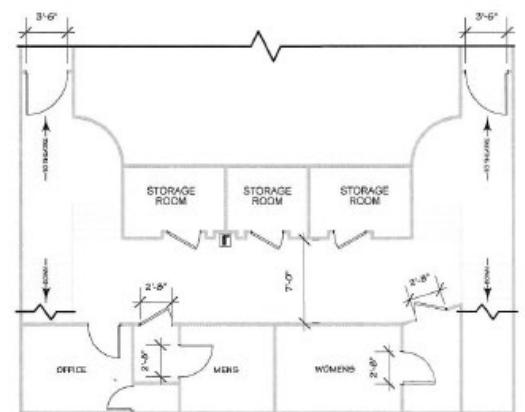
Figure 2: Floor Plan



First Floor



Second Floor



Mezzanine

Figure 3: Liquor Licenses within 1,000 feet of the project site



■ 20	Off-site beer and wine
▲ 41	On-site beer and wine
▲ 47	On-site beer, wine, and liquor

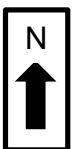


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Movie Theater	Elmwood Commercial	Neighborhood Commercial
Surrounding Properties	North	Commercial		
	South	Commercial		
	East	Commercial		
	West	Retail		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service Public Convenience or Necessity	Yes	This project is an application to serve beer and wine incidental to a movie theater use. There are eight other Type 41 ABC licenses within 1,000 feet of the project site. Therefore, public convenience and necessity findings are required.
Historic Resources	Yes	The Elmwood Theater is a historic building. A Historic Resource Evaluation review is not required because there are no proposed changes to the building's exterior.
Natural Gas Prohibition (Per BMC 12.80.020)	No	This project would not result in the construction of a new building and is therefore not subject to the natural gas prohibition.
Seismic Hazards (SHMA)	No	The site is not located in a seismic hazard area as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The site is in an environmental management area, but no construction work is proposed.
Transit	Yes	The site is served by AC Transit routes 51B, 851, 80, and 81.

Table 3: Project Chronology

Date	Action
January 5, 2023	Application submitted
April 14, 2023	Application deemed complete
April 27, 2023	Public hearing notices mailed/posted
May 11, 2023	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The immediate area around the Elmwood Theater consists mostly one- and two-story buildings housing a mix of commercial uses. These include retail, restaurants, offices, and personal services. The neighborhood is easily walkable, and it is served by several AC Transit bus lines. Available parking is mostly

on the street, but there is one public parking lot about one block to the north. The College and Ashby Avenue commercial corridors are bordered by a mix of one-, two-, and multi-family housing.

- B. Site Conditions:** The subject site is located on the west side of College Avenue, between Ashby Avenue and Webster Street, and developed with a two-story movie theater with a mezzanine level for storage, offices, and restrooms. It is a historic landmark known as either the Strand Theater Building or the Elmwood Theater Building. It is one of Berkeley's last remaining movie theaters.

III. Project Description

Rialto Cinemas is applying for a use permit to allow the Elmwood Theater to serve beer and wine, under a Type 41 ABC license, as part of its concession's offerings. It would be sold for on-site consumption only, and only during the hours in which movies are playing.

IV. Community Discussion

- A. Neighbor/Community Concerns:** On January 4, 2023 the applicant installed a pre-application poster on the front of the building. On April 27, 2023, the City mailed public hearing notices (Attachment 3) to property owners and occupants within a 300-foot radius of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has received only one communication regarding this project. It was an email in support from the Elmwood Business Association (Attachment 5).
- B. Landmark Preservation Commission / Design Review Committee Review:** The project is in a designated landmark, the historic Elmwood Theater building. However, no changes to the structure are proposed. Therefore, committee review is not required.

V. Issues and Analysis

A. Alcoholic Beverage Service: On-site service of beer and wine is allowed in the C-E District if a Use Permit is granted by the Zoning Adjustments Board (ZAB) in accordance with required findings as specified under BMC 23.310.020.

Alcoholic beverage service is also regulated by BMC 23.310.020(D) for Special Use Standards. This section requires the City to make all of the "Public Convenience or Necessity" findings if an existing establishment has an ABC license of the same type, other than beer and wine service incidental to food service, within a 1,000-foot radius of the project site. As shown in Figure 3, there are eight other existing Type 41 ABC licenses within 1,000 feet of the project site (Table 5). Therefore, the "Public Convenience or Necessity" findings must be made.

Table 5: Type 41 ABC Licenses Within 1,000 Feet of the Project Site

Business Name	Address
Baker & Commons	2900 College Avenue
5 Tacos & Beers of Berkeley	2914 College Avenue
In the Wood (soon changing to Type 47)	2930 College Avenue
La Mediterranee	2936 College Avenue
Summer Kitchen Bake Shop	2944 College Avenue
Manpuku	2977 College Avenue
Dream Pie Pizza	2985 College Avenue
Nabolom Bakery & Pizzeria	2708 Russell Street

In order to approve the Use Permit, the Board must affirm all of the "Public Convenience or Necessity" findings under BMC Section 23.310.020(D) as follows:

- 1) The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.*

Staff Analysis: The proposed addition of alcoholic beverage service would mean greater tax revenue for the City of Berkeley. It would also increase the economic health of the business, which, in turn, will enable it to continue contributing to the cultural, economic, and social opportunities in the C-E District.

- 2) The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales.*

Staff Analysis: Modern movie going audiences have come to expect expanded refreshments at movie theaters beyond the traditional soda, coffee, and water. Rialto Cinemas Elmwood needs to embrace the present and future and preserve Berkeley's last commercial first-run movie theater.

- 3) *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley as verified by the Police Department, the ZAB shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

Staff Analysis: A letter from the Berkeley Police Department (BPD), dated April 12, 2023, (Attachment 4) notes that their research indicated no violations at the Elmwood Theater or at Rialto Cinema's other area locations.

- 4) *If the proposed establishment is located within 1,000 feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: The project site is not located within 1,000 feet from a public park or school.

- 5) *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.*

Staff Analysis: Staff referred this application to the BPD for review and comment. In a letter of support dated April 12, 2023, the BPD stated that, "We see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area."

B. C-E District Findings: To approve a Use Permit in the C-E District, the ZAB must make the following permit findings in accordance with required findings BMC Section 23.204.080(E):

- 1) *The proposed use will:*
 - a) *Encourage and maintain the present street frontage and pedestrian orientation of the district;*
 - b) *Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and*
 - c) *Be compatible with the purposes set forth in Section 23.204.080.A and the existing character of the district.*
- 2) *The proposed use will not:*
 - a) *Interfere with the continuity of retail or compatible service facilities at the ground level;*
 - b) *Interrupt a continuous wall of building facades;*

- c) *Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;*
- d) *Result in domination of this district by one type of use; and*
- e) *Generate objectionable odors nor excessive levels of noise.*

Staff Analysis: This project will not alter the present street frontage and, therefore, is compatible with the pedestrian orientation and character of the district and neighborhood. It may result in a slight increase in customers, but negative effects on the surrounding neighborhood and businesses would be negligible. The project aims to bring more people to the neighborhood, which should be beneficial to the surrounding businesses.

C. General Non-Detriment Finding: BMC Section 23.406.040(E) requires that, before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use and the project must not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

Staff Analysis: The alcohol service would be incidental to the movie theater business, and due to the incidental nature of the service, as well as the size and location of the theater, the addition of beer and wine would not have a detrimental impact on public health, safety, or peace. The permit is subject to the standard conditions for food and alcohol service (alcohol service will remain incidental to the primary business, will be limited to normal meal hours of operation, off-site sales of alcoholic beverages will be prohibited, all applicable ABC regulations will be in effect, etc.).

D. General Plan Consistency: The 2002 General Plan contains policies applicable to the project, including the following:

1. Policy LU-1–Community Character: Maintain the character of Berkeley as a special, diverse, unique place to live and work.
2. Policy LU-2--Preservation: Protect Berkeley’s character by identifying, restoring, and preserving historic buildings.
3. Policy LU-11—Pedestrian- and Bicycle-friendly Neighborhoods: Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.

Staff Analysis: Given that the Elmwood is one of the last remaining movie theaters in Berkeley, this project is an opportunity to help preserve this historic landmark which exists in a pedestrian-friendly commercial area that is surrounded by walkable residential areas, and is well served by public transportation.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal negative impacts on surrounding properties, staff recommends that the Zoning Adjustments Board:

- A. APPROVE Use Permit #ZP2023-0002 pursuant to Section 23.406.040(D) subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received January 5, 2023
3. Notice of Public Hearing
4. Berkeley Police Department letter, dated April 12, 2023
5. Correspondence Received

Staff Planner: Russell Roe, rroe@cityofberkeley.info, (510) 981-7548

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 11, 2023

2966 College Avenue – Elmwood Theater

Use Permit #ZP2023-0002 to add the sale of beer and wine for on-site consumption incidental to a movie theater.

PERMITS REQUIRED

- Use Permit to add service of beer and wine incidental to a movie theater, under BMC Section 23.310.020

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”). The project meets all of the requirements of this exemption, as follows:
 - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcel within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
 - (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - A. The project is consistent with all applicable C-E District standards, including use and hours of operation;
 - B. The addition of beer and wine service in the existing movie theater will not expand the footprint of the business. The proposed service will provide an additional attraction for patrons in the College Avenue area;
 - C. The alcohol service will be incidental to the overall movie theater use, and as such, alcohol sales will not have detrimental impact on public health, safety, or peace; and
 - D. The permit is subject to the standard conditions for alcohol sales, which will ensure that the restaurant will continue to be a good neighbor.

III. OTHER FINDINGS FOR APPROVAL

1. As required by Section 23.204.080(E) of the BMC, the Zoning Adjustments Board finds that:
 - 1) *The proposed use will:*
 - a) *Encourage and maintain the present street frontage and pedestrian orientation of the district;*
 - b) *Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and*
 - c) *Be compatible with the purposes set forth in Section 23.204.080.A and the existing character of the district.*
 - 2) *The proposed use will not:*
 - a) *Interfere with the continuity of retail or compatible service facilities at the ground level;*
 - b) *Interrupt a continuous wall of building facades;*
 - c) *Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;*
 - d) *Result in domination of this district by one type of use; and*
 - e) *Generate objectionable odors nor excessive levels of noise.*
2. As required by Section 23.310.020(D) of the BMC, the Zoning Adjustments Board finds that:
 - A. There are eight other Type 41 ABC permits within a 1,000-foot radius of the subject site.
 - B. The proposed establishment beer and wine service will promote the City's economic health, contribute to General Plan policies, and further the district purposes because the addition of alcoholic beverage service will mean greater tax revenue for the City of Berkeley, would increase the economic health of the business, which is one of the last remaining movie theaters in the community, and the additional service would contribute to the cultural, economic, and social opportunities in the Elmwood Commercial District.
 - C. The addition of beer and wine service to the theater's offerings would potentially increase the economic success of the business in a way that would likely not be available without alcoholic beverage service, and it will allow the theater to compete more effectively with similar businesses in the region.

- D. This theater, which has existed for many years at its current location, has not been the subject of any State of California violations, and has not had any substantial calls for service from the Berkeley Police Department in the last three years.
- E. There are no public parks or schools within 1,000 feet of the project site.
- F. The Berkeley Police Department has indicated support for the proposed project.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

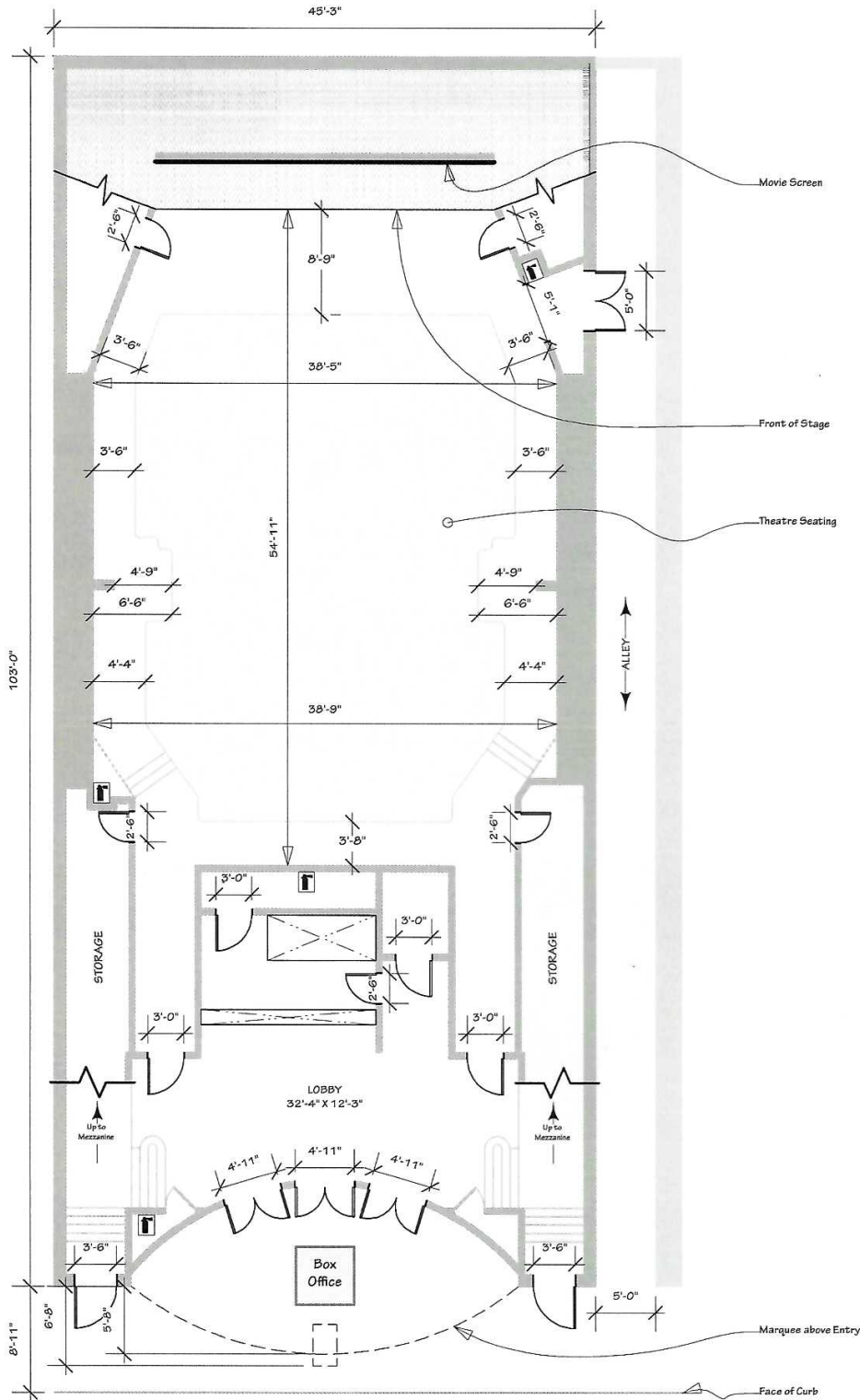
10. The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
11. Alcoholic beverage service shall be "incidental" to the primary theater use, as defined in Zoning Ordinance 23.502.020. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services

- than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.
12. The service of alcohol shall be limited to normal business hours (per ABC). Patrons may only purchase food or finish drinks already purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of theater operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
 13. The sale of alcoholic beverages for consumption off the premises is prohibited.
 14. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
 15. All alcoholic beverages served to patrons must be served in durable restaurant tableware (i.e. cups or glasses). No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container.
 16. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption.
 17. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
 18. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
 19. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within six months of employment at the establishment. Employees who have completed the course within the last five years shall be exempt from this requirement.
 20. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
 21. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
 22. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.

- 23.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 - 24.** At no time shall the operator rent the theater space to a third-party promoter.
 - 25.** The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
 - 26.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 - 27.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
-



Legend
Rialto Cinemas Elmwood



Plan
 Scale: 1:150

Project: Rialto Cinemas Elmwood
 Project Address: 2966 College Ave., Berkeley, CA 94705

SCOTT | AG

SCOTT ARCHITECTURAL
 GRAPHICS INCORPORATED
 1275 NORTH DUTTON AVENUE
 SANTA ROSA CALIFORNIA 95401
 TEL: 707.545.4519 FAX: 707.571.7802

Elmwood Theatre
 Berkeley, California
 #3705-200

First Floor
 Plan View

Fire Extinguisher

project manager
 MICHAEL BURCH

phase
 FABRICATION DESIGN

scale
 1:150

drawn by
 BRAD ACREDOLO

date
 11.19.2008


FD

SCOTT | AG

SCOTT ARCHITECTURAL
GRAPHICS INCORPORATED
1275 NORTH DUTTON AVENUE
SANTA ROSA CALIFORNIA 95401
TEL: 707.545.4519 FAX: 707.571.7802

Elmwood Theatre
Berkeley, California
#3705-200

Upper Lobby Plan

 Fire Extinguisher

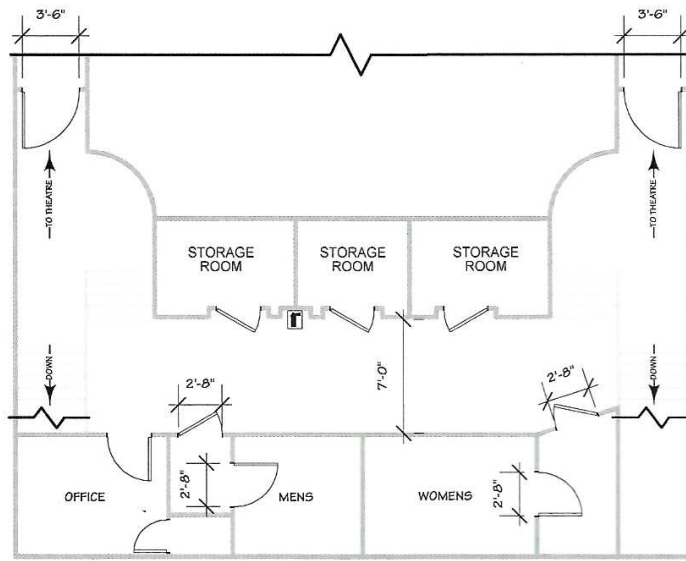
project manager
MICHAEL BURCH

phase
FABRICATION DESIGN

scale
1" = 10'

drawn by
BRAD ACREDOLO

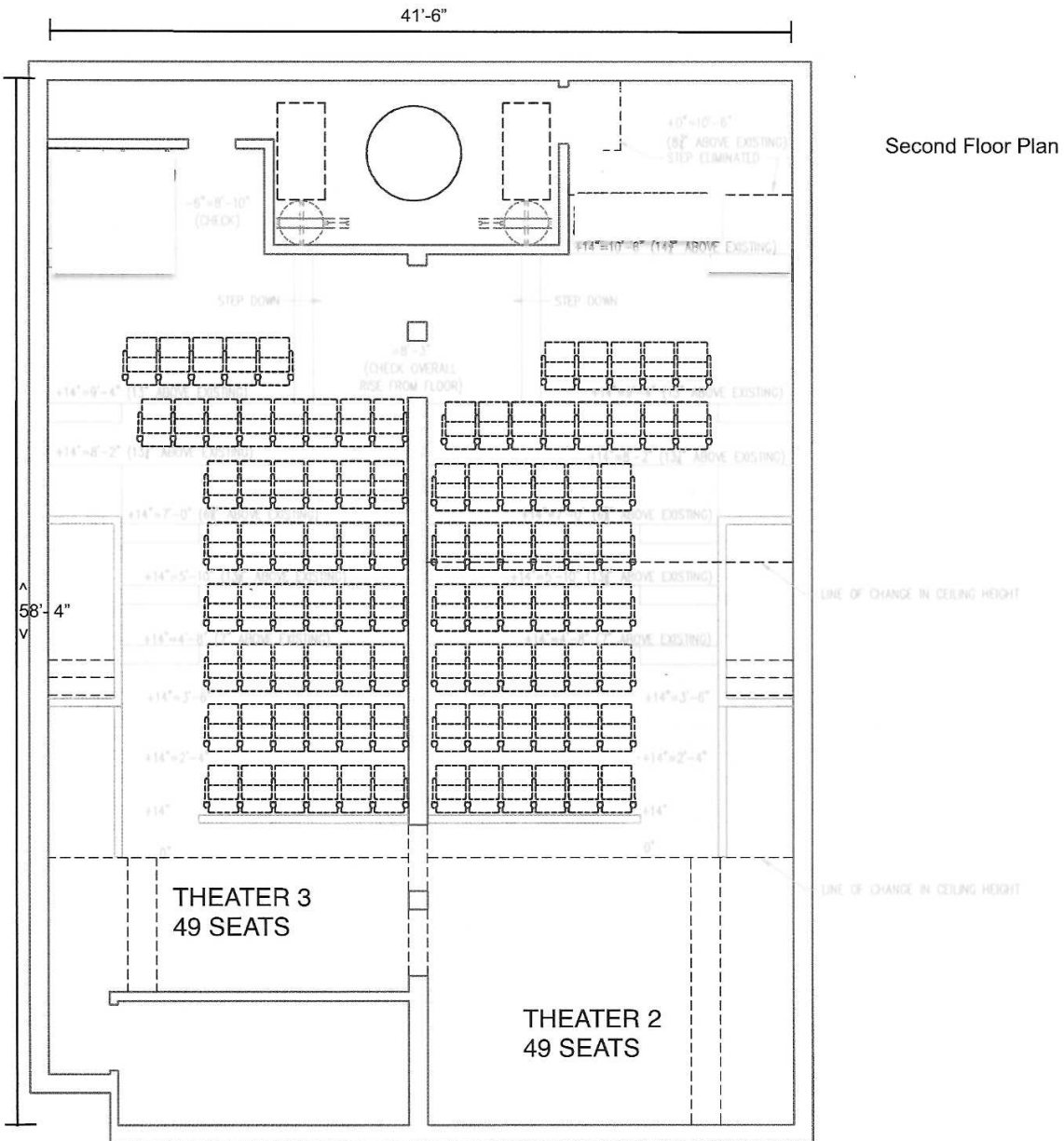
date
11.17.2008



PLAN
Scale: 1" = 10 ft

Project: Rialto Cinemas Elmwood
Project Address: 2966 College Ave., Berkeley, CA 94705

FD



Project: Rialto Cinemas Elmwood
Project Address: 2966 College Ave., Berkeley, CA 94705



Z O N I N G
A D J U S T M E N T S
B O A R D

NOTICE OF PUBLIC HEARING

2966 College Avenue

Use Permit #ZP2023-0002 to add the sale of beer and wine for on-site consumption incidental to a movie theater.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.404.

When: Thursday, May 11, 2023, 7:00 pm

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please see the Agenda for details https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-11_ZAB_Agenda.pdf

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: NC (Neighborhood Commercial)
- Zoning: C-E (Elmwood Commercial District)

B. Zoning Permits Required:

- Use Permit, pursuant to BMC Section 23.310.020, to add the service of beer and wine incidental to a movie theater.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant Pleasantown Motion Picture Company, Sebastopol
- Applicant's Representative: Beth Aboulafia, San Francisco
- Property Owner Elmwood Theater Foundation, Inc., Berkeley

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Russell Roe, at (510) 981-758 or rroe@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

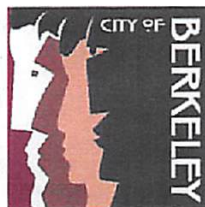
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
 2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
 3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
 4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
 5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
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Internal



Police Department

April 12th, 2023

TO: Russell Roe, Associate Planner
City of Berkeley, Department of Planning and Development
1947 Center Street
Berkeley, CA 94704

Re: Elmwood Theater Foundation Inc., 2966 College Av. Berkeley 94705

Dear Mr. Roe,

This letter is in response to your request to review a proposed change to the above business as outlined in the attached Zoning Project Application. The owner (Elmwood Theater Foundation Inc.) of the Rialto Cinemas Elmwood is requesting to add sale of beer and wine for on-site consumption to their existing movie theater. The applicant/owner indicates they will obtain an Alcohol Beverage Control License Type 41 (On Sale Beer and Wine Eating Place).

Based on the information from the Applicant's statement and research of our records, Berkeley Police Department supports approval of this application.

As previously noted, it appears from the application there are no substantive changes to the business or its operation, other than the addition of beer and wine sales. The existing theater has been present in the same spot in the Elmwood District for over 10 years. We believe this addition will not cause a radical change to the area. The neighborhood is very active with businesses, other restaurants/bars, and students. There is no reason to believe this addition will change the amount or patterns of their clientele. A records check with ABC shows Rialto Cinemas has operations in both El Cerrito and Sebastopol, both are in good standing.

An analysis of police service data at 2966 College Av., reveals 7 calls for service in our current database, over the past year. These calls for service include: trespassing and disturbances caused by trespassers.

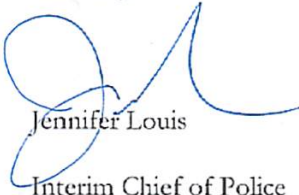
Internal

Based on this information, we believe the proposed addition is not at all likely to increase crime or disorder in the Elmwood district.

Researching other applications, we have noticed a correlation between businesses having live music and increased calls for service to BPD, often for noise complaints. Rialto Cinemas Elmwood will not have live music.

In conclusion, we see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area.

Sincerely,



Jennifer Louis
Interim Chief of Police

JL/kf

From: [D P](#)

Sent: Friday, February 10, 2023 10:31 AM

To: [Wu, Grace](#); [Williams-Ridley, Dee](#); [Klein, Jordan](#); [Buckley, Steven](#)

Subject: The Elmwood Business Association's Endorsement of the Food/Wine Program at the Elmwood Theatre

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Secretary Wu, Ms. Williams-Ridley, Mr. Klein and Mr. Buckley,

The Elmwood Business Association wishes to formally recommend that the City of Berkeley do everything in its power to approve the Elmwood Theatre's efforts to expand their offerings to include food and/or alcohol service.

The Elmwood Theatre is the Elmwood District's anchor tenant, and its survival is critical to the viability of the neighborhood and its businesses. We would further argue that with the rapid disappearance of many/most/all of Berkeley's other movie theatres -- many of which played an outsized role over the years in making Berkeley the cultural hotbed that it is -- that it's even *more* important to ensure we don't lose one of the city's last remaining neighborhood cinemas.

Additional offerings and flexibility seems crucial to their long-term viability/profitability, especially at a time of increased competition from at-home viewing opportunities. If the theater is interested in serving food, we urge the Planning Department to review the list of Food Establishments to determine if there's an available permit within the current quota. We also encourage the City to prioritize and expedite a review of the Theater's request to serve alcohol.

The Elmwood Business Association thanks you in advance for your timely consideration of this appeal.

Sincerely,

Dan Polsby
EBA Member, Former EBA President

--

Dan Polsby
Vintage Berkeley
(510) 549-9501