



Office of the City Manager

PUBLIC HEARING
November 16, 2021

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 2022

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 2021-22 and, if no majority protest exists, levy annual assessments in the District for calendar year 2022 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 2022. The renewal process was initiated on October 26, 2021, when Council approved by Resolution No.70,088 -N.S. (Attachment 1, Exhibit A) the Annual report and budget for 2021-22 and set the public hearing date for November 16, 2021. The City Clerk noticed businesses in the Elmwood BID area by publishing Resolution No.70,088-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 2022 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 2022.

CONTACT PERSON

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

1: Resolution

Exhibit A: Resolution No.70,088-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 2022, 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 2022, 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 26, 2021, the City Council by Resolution No.70,088-N.S (attached as Exhibit A) approved the Annual Report and proposed budget of the Elmwood BID for 2021-22 and declared its intent to levy an assessment in the District to finance the proposed activities for the calendar year 2022; and

WHEREAS, Resolution No.70,088-N.S. also scheduled a public hearing for November 16, 2021, 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 2022.

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.70,088-N.S., including the 2021-22 Annual Report, map of the District and Assessment Table

RESOLUTION NO.70,088-N.S.

APPROVING THE 2021 ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2022; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2022; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 16, 2021 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2022

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 2022 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 2021-22 (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 2021-22 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 November 16, 2021, virtually on a publicly accessible video conference call. 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 November 16, 2021 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 2021-22
 - A1: Map of the Elmwood BID
 - A2: Assessment Rates

EXHIBIT A

Annual Report for the Elmwood Business Improvement District for 2021-22

August 31, 2021

To: Members of the Berkeley City Council
From: The Elmwood Business Improvement District Advisory Board
Re: 2022 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2022 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
- Hired a landscaping contractor to maintain 70 tree wells – currently on a bi-monthly maintenance schedule
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- Installation and 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:
 - Due to Covid pandemic, EBA had to halt all in-person events that would bring people to the shopping district
- 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
- Planned (but halted during pandemic) Elmwood District Shopping Guide/Map
- Halloween window scavenger hunt, Christmas holiday hunt

Below for your review is a summary of our current financial position and our proposed budget for 2020-2021

2021-22 Projected Expenditures

Elmwood Business Association

Elmwood Business Association

2022 Budget

INCOME	2022 Budget	2021 Actual	2021 Budget
Operating Income			
BID Membership dues	\$ 22,000	\$ 30,000	\$ 30,000
<i>Other (Partial BID Payment, Wine Walk Income)</i>	\$ 9,700	\$ -	\$ 10,200
Total Operating Income	\$ 31,700	\$ 30,000	\$ 40,200
Non-Operating Income			
Other			
Total Non-Operating Income	\$ -	\$ -	\$ -
Total INCOME	\$ 31,700	\$ 30,000	\$ 40,200

EXPENSES			
Advertising & Marketing			
Banner maintenance	\$ 2,400	\$ -	\$ -
Wine Walk production	\$ 4,600	\$ -	\$ 5,500
Spring event production	\$ 1,100	\$ -	\$ -
Summer event production	\$ 2,200	\$ -	\$ -
<i>Special Event-Art & Music Week</i>	\$ -	\$ -	\$ 9,800
Web Hosting and Domains	\$ 750	\$ 693	\$ 750
General Marketing, Ads, Social media	\$ 300	\$ -	\$ -
Halloween event production	\$ 300	\$ -	\$ -
Holiday season event production (incl. tree lights)	\$ 600	\$ 6,966	\$ 3,000
Event planning	\$ 250	\$ -	\$ -
EBA Expansion research	\$ 100	\$ -	\$ -
Charity			
Wine Walk partner	\$ 1,500	\$ -	\$ 1,500
Consulting & Accounting			
Accounting S/W	\$ 100	\$ 73	\$ 120
Dues and Subscriptions			
Chamber of Commerce	\$ 300	\$ 3	\$ 900
Insurance			
Liability for EBA	\$ 550	\$ 500	\$ 500
Liability for Board members	\$ 750	\$ 711	\$ 1,200
License & Permits			
Taxes & Licenses	\$ 50	\$ 30	\$ 50
Lobbyist registration	\$ 500	\$ -	\$ -
Other: Office Supplies/Annual Mtg.			
Printing/copy	\$ 650	\$ 143	\$ 800
Postage & Delivery (PO Box)	\$ 150	\$ 150	\$ 150
Miscellaneous	\$ 200	\$ 134	\$ 1,200
Repairs and Maintenance			
Gardening (Tree wells)	\$ 700	\$ -	\$ 600
Professional Fees			
Legal and Professional Fees	\$ 200	\$ -	\$ 500

Security			
Surveillance System Installation	\$ 2,500	\$ -	\$ 2,500
Surveillance System Maintenance	\$ 400		
Holiday Private Security	\$ 5,500	\$ 4,000	\$ 6,500
Admin Support			
Wages	\$ 9,000	\$ 8,250	\$ 9,000
Total Operating Expenses	\$ 35,650	\$ 21,653	\$ 44,570
Retained Earnings	\$ (3,950.00)	\$ 8,347	\$ (4,370)

Thank you for your attention to this matter. We look forward to an equally productive year for the BID in 2022.

Exhibit A1: Elmwood Business Improvement District, Map

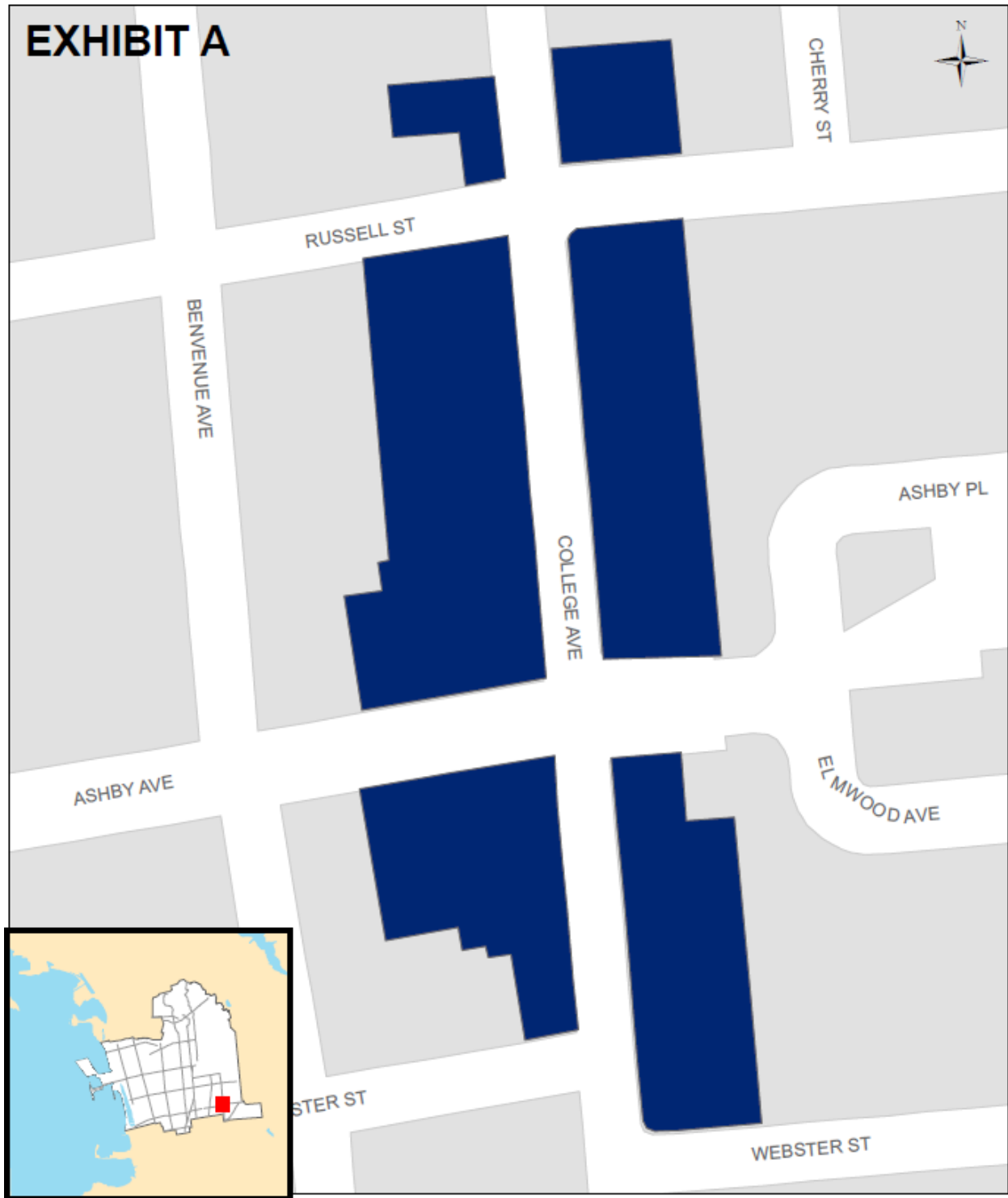


Exhibit A2: Elmwood Business Improvement District, Assessment Rates

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 2022**

The Elmwood Business Improvement District (BID) Advisory Board is proposing that the Berkeley City Council confirm the Annual Report of the Elmwood BID for 2021 and levy an assessment for 2022.

The hearing will be held on, November 16, 2021, at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **November 4, 2021. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

Written comments should be mailed 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. 70,088-N.S. November 5, 2021 – 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 4, 2021.

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Mark Numainville, City Clerk

