



Office of the City Manager

PUBLIC HEARING  
November 18, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Michael J. Caplan, Economic Development Manager

Subject: Public Hearing and Levying of Assessments in the Elmwood Business Improvement District for 2015

### 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 2015 and, if no majority protest exists, levy annual assessments in the District for calendar year 2015 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 revenue of approximately \$32,000 will be collected in the Elmwood BID fund (revenue budget code 972-8703-370-6503) and expensed from 972-8703-465-3510. The FY 2015 Adopted Budget assumed revenues and expenditures of \$30,000. Revising the budget to \$32,000 will require a budget amendment that will be included in the First Amendment to the FY 2015 Annual Appropriations Ordinance. The Elmwood BID is carrying over roughly \$30,000 in unexpended calendar year 2014 funds; due to contracting delays, no funds were dispersed as of October 16, 2014.

Collection of Elmwood BID assessment revenues requires a small amount of staff time from the Finance Department, but since billing is done with the City business license renewal and assessment collections are integrated with business license collections, the workload impact is marginal. Economic Development staff administers the regular meetings of the Elmwood BID Advisory Board (hereafter, “the Advisory Board”) and prepares the annual BID renewal. The work with the Elmwood BID constitutes the main way Economic Development staff engages with and assists the Elmwood business district and, in that sense, it is an integral part of its regular workload.

The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts recommended by the Advisory Board. BID revenues will finance public space improvements, cleaning, promotional activities, holiday decorations and special events. 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 2015. The renewal process was initiated on October 28, 2014, when Council approved by Resolution No. 66,834-N.S. (Exhibit A to Attachment 1) the Annual report and budget for 2015 sent to it by the Advisory Board and set the public hearing date for November 18. (The Annual Report with a budget is part of Exhibit A to Attachment 1.) The City Clerk noticed businesses in the Elmwood BID area by publishing Resolution No. 66,834-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 2015 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. As of October 2014, disbursement of the Elmwood BID proceeds has been held up by the process of incorporating the Elmwood Business Association as a legal entity and establishing the organization as an approved City vendor. That process is expected to be completed in October 2014, at which point funding can be disbursed and the Elmwood Business Association will pursue activities as described in the attached Annual Report.

### ENVIRONMENTAL SUSTAINABILITY

The BID Advisory Board plans to explore opportunities to make Elmwood more pedestrian-friendly, which has both economic and environmental benefits.

### 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 2015.

### CONTACT PERSON

Andrew Han, Chair, Elmwood BID Advisory Board, 841-3073  
Jordan Klein, Economic Development Project Coordinator, 981-7534

### 1: Resolution

Exhibit A: Resolution No. 66,834-N.S., with incorporated Annual Report, map of the District and Assessment table

## 2: Public Hearing Notice

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

CONFIRMING THE YEAR 2015 ANNUAL REPORT FOR THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT (BID), LEVYING AN ANNUAL ASSESSMENT FOR THE ELMWOOD BID FOR 2015, 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 2015, 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 28, 2014, the City Council by Resolution No. 66,834-N.S. (attached as Exhibit A) approved the Annual Report and proposed budget of the Elmwood BID for 2015 and declared its intent to levy an assessment in the District to finance the proposed activities for the balance of calendar year 2015; and

WHEREAS, Resolution No. 66,834-N.S. also scheduled a public hearing for November 18, 2014, 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 protests are over-ruled and the Annual Report of the Elmwood BID is confirmed, thereby levying an annual assessment for the Elmwood BID for calendar year 2015.

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 66,834-N.S., including the 2015 Annual Report, map of the District and Assessment Table

## RESOLUTION NO. 66,834–N.S.

APPROVING THE ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2015; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2015; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 18, 2014 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR 2015

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 2015 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 the year 2015 (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 2015 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 18, 2014 in the Council Chambers, 2134 Martin Luther King, Jr. Way, Berkeley, California. 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 18, 2014 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.

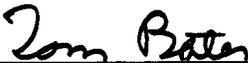
\* \* \* \* \*

The foregoing Resolution was adopted by the Berkeley City Council on October 28, 2014 by the following vote:

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

Noes: None.

Absent: Maio.

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

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

## EXHIBIT A

### Annual Report for the Elmwood Business Improvement District for 2015

September 30, 2014

To: Members of the Berkeley City Council  
From: The Elmwood Business Improvement District Advisory Board  
Re: 2015 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2015 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 \$32,000 per year will provide a regular, predictable source of funding for the activities of the Elmwood Business Association (EBA). The Elmwood BID will allow the EBA to expand its activities into areas such as maintenance and capital improvements. Unfortunately, due to delays in formal incorporation of the EBA and establishing the organization as a City vendor, EBA has not yet been able to access the 2014 proceeds of the Elmwood BID. We expect that incorporation and contracting will be completed in October 2014, at which point the EBA can begin making expenditures.

Despite our lack of funding, our Elmwood Business Association Board of Directors and subcommittees have been meeting regularly. We have established relationships with vendors and are ready to implement the following project proposals once BID proceeds are disbursed:

- Holiday decorations and entertainment
- Marketing strategy development
- Graphic design services to create a new logo and/or print marketing materials
- Web site construction
- Beautification projects, including:
  - New planters and foliage
  - New benches surrounding tree wells
- Special events
  - Third Thursdays
  - Street Fair

Below for your review is a summary of our current financial position and our proposed budget for 2015.

Thank you for your attention to this matter. We are hopeful that we will be able to see some of the above projects implemented in the next few months and look forward to a more productive year for the BID in 2015.

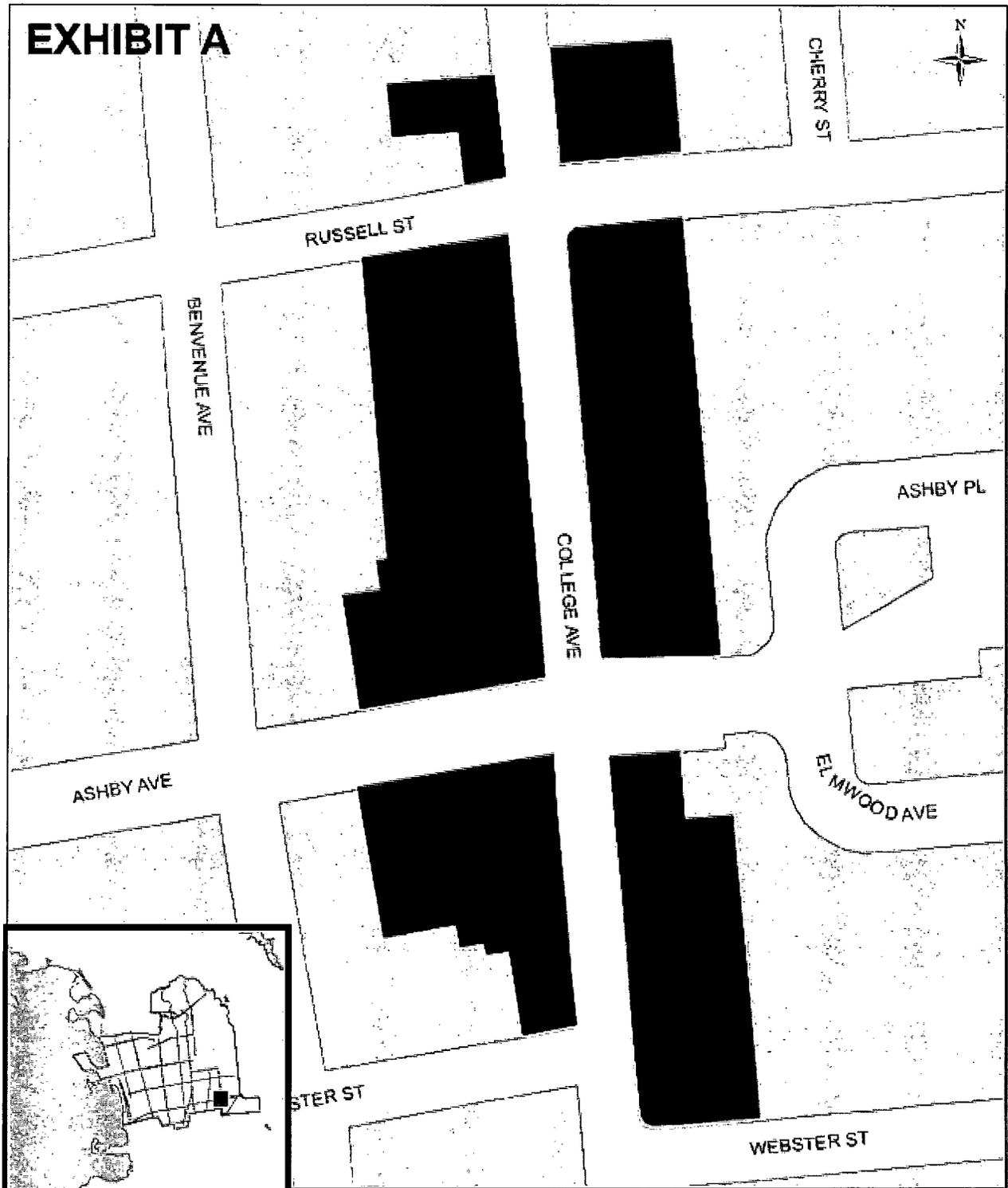
**Elmwood BID Financial Position, September 2014 (As of 9/22/14)**

Total Assessments Collected, 2014	\$26,576
Outstanding Assessments	\$6,255
<b>Total 2014 Assessments Revenue</b>	<b>\$32,831</b>
Allowance for uncollectable assessments (2%)	(\$657)
<b>Total Anticipated 2014 Revenue</b>	<b>\$32,174</b>
<b>Anticipated 2014 Expenditures</b>	
Holiday decorations	\$9,000
Special Events	\$2,500
<b>Total Anticipated 2014 Expenditures</b>	<b>\$11,500</b>
<b>Carryover to 2015 (Expected)</b>	<b>\$20,674</b>

**Elmwood BID, Proposed 2015 Budget**

<b>Revenues</b>	
2014 Carryover	\$20,674
2015 Assessments	\$32,831
Allowance for uncollectable assessments (2%)	(\$657)
<b>Total Revenue, 2015</b>	<b>\$52,849</b>
<b>Expenditures</b>	
Bookkeeping & Administrative Support	\$2,880
Capital Projects (e.g., benches, planters)	\$7,600
Cleaning and Maintenance	\$1,700
Design and Printing	\$5,000
Holiday Decorations & Activities	\$11,000
Insurance	\$500
Marketing	\$8,810
Special Events	\$4,800
Theater Repair & Upgrade	\$3,000
Website and Social Media	\$6,990
<b>Total Expenditures, 2015</b>	<b>\$52,280</b>

Exhibit A1: Elmwood Business Improvement District, Map



**Exhibit A2: Elmwood Business Improvement District, Assessment Rates**

<b>Classifications</b>	<b>Rates</b>
Retail including jewelers and groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services and Drinking Places) <ul style="list-style-type: none"> <li>• Gross receipts under \$350,000</li> <li>• Gross receipts \$350,000=\$999,000</li> <li>• Gross receipts \$1,000,000</li> </ul>	\$250.00 per year \$350.00 per year \$500.00 per year
Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)	\$500.00 per year
Professionals including offices of real estate brokers (Tax Code P) <ul style="list-style-type: none"> <li>• Gross receipts under \$100,000</li> <li>• Gross receipts over \$100,000</li> </ul>	\$300.00 per year \$400.00 per year
Entertainment and Recreation (Tax Code E)	\$450.00 per year
Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin 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 2015**

The Elmwood Business Improvement District (BID) Advisory Board is proposing that the Berkeley City Council confirm the Annual Report of the Elmwood BID for 2015 and levy an assessment for the balance of 2015.

The hearing will be held on November 18, 2014 at 7:00 p.m. in the City Council chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **November 6, 2014**.

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](mailto:clerk@cityofberkeley.info) for further information.

For further information, please contact Jordan Klein, Economic Development Project Coordinator, at 510-981-7534.

**Published:** Resolution of Intention No. 66,834-N.S. November 7, 2014 – The 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 Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 6, 2014.

Mark Numainville, City Clerk