



Elmwood Advisory Board

CONSENT CALENDAR
July 16, 2013

To: Honorable Mayor and Members of the City Council

From: Elmwood Advisory Board

Submitted by: David Salk, Chairperson, Elmwood Advisory Board

Subject: Terminate the Elmwood Theater Business Improvement Area and Its Advisory Board (“Elmwood Advisory Board”) and Allocate Surplus Revenues

RECOMMENDATION

Adopt a Resolution : 1) recognizing that assessments levied in the Elmwood Theater Business Improvement Area (hereafter, “the Area” or the “Elmwood BID”) have repaid a 20-year City loan and additional financing to the Elmwood Theater Foundation (hereafter, “the Foundation”), thereby fulfilling the exclusive purpose of the Area); 2) directing City staff to remove any liens held by the City against the Elmwood Theater property, 2966 College, that secured the loans; 3) allocating all surplus revenues collected in the Area to help repay additional City loans to the Foundation made in 2004-2005 for seismic improvements to the Theater; 4) terminating the Elmwood Theater Business Improvement Area established by Resolution No. 57,086-N.S. of July 20, 1993; 5) terminating the Advisory Board for the Elmwood Theater Business Improvement Area (hereafter “Elmwood Advisory Board” or “the Advisory Board”) established by Resolution No. 56,802-N.S. of January 12, 1993 that had advised on the Area and the levying of assessments within it, and 6) rescinding Resolution No. 57,086-N.S. and Resolution No. 56,802-N.S.

FISCAL IMPACTS OF RECOMMENDATION

As may be seen from the attached spreadsheet (Resolution, Exhibit A) provided by the City Finance Department, assessments levied in the Area from FY1993/94 through FY2012/13 and deposited in Accounts 010.3302.312.0600 (Elmwood Assessment-Property Tax) and 010.3202.318.5111 (Elmwood Assessment-Business License) have repaid the 20-year \$215,000 loan at 6% interest made by the City of Berkeley to the Elmwood Theater Foundation that allowed it to purchase the Elmwood Movie Theater. They have also repaid an additional \$40,000 loan at 6% interest made by the City to the Foundation in 2008 that allowed it to undertake physical improvements to the building requested by a new movie operator, Rialto Cinemas/Elmwood. Repayment of the additional loan was possible without any increase in the assessment rates established in 1993 because the yield of the assessment increased with rising business receipts.

Exhibit A also shows that as of May 29, 2013, the Area enjoyed a surplus of \$19,576 above what was needed to repay the existing 20-year financing. Some additional revenue will be received by the end of the current fiscal year, bringing the total expected surplus to approximately \$22,000. At its final meeting on April 26, 2012, the Elmwood Advisory Board recommended to the City Council that "any surplus revenues from the assessment be dedicated to repayment of the third loan to the Elmwood Theater Foundation made in 2004-2005 for seismic improvements to the Theater." (M/S/C-Moudry-Moriarty, Ayes: Leyhe, Moriarty, Moudry, O'Neil; Noes: None.) Up until now, Foundation revenues from the lease to the Theater operator, Rialto Cinemas, had been used to repay the third loan. However, Resolution No. 64,090 of June 17, 2008, made "physical improvements to the Elmwood Theater" an allowed purpose of the Elmwood Theater Business Improvement Area" and approved allocation of revenues not needed for repayment of the existing loans. Seismic improvements to the Theater clearly qualify as physical improvements. Payments for the seismic improvement loan (Housing and Community Development Service Department Loan No. 0418) go into accounts 481-8703-399-0232 (principal) and 481-8703-361-1013 (interest), with the balance prior to allocation of the surplus \$133,698.

BACKGROUND

The Area was established by Resolution No. 57,086-N.S. of July 20, 1993 to repay a \$215,000 loan that the City granted to the non-profit Elmwood Theater Foundation on the same date by Resolution No. 57,086A-N.S. (Attachments 2 and 3) It was a crucial part of a financing plan that the non-profit foundation had put together to assist it to repair, seismically reinforce, and restore to operation the Elmwood Movie Theater. (Attachment 5 contains excerpts from this financing plan.)

Ever since it was built in 1914, the Theater had functioned as the night-time and weekend anchor for this small commercial district. In December 1988, however, a fire that destroyed an adjacent building spread into the Theater balcony and caused it to be closed down. However, since the Elmwood's walls were brick (unreinforced masonry), it was clear from the beginning that repairs would have to be part of a larger project to seismically strengthen the building to make it safe in the event of an earthquake. The closing caused the other businesses in the district to suffer an immediate loss of foot traffic and in March 1990, travel agent Burl Willes initiated a petition campaign asking the Theater's owner, United Artists (UA), to repair and reopen it. In March 1990, however, UA announced that it was instead selling the property to an Oakland investor—and with a deed restriction preventing it from ever being operated as a movie theater. Merchants and residents asked the City to act to invalidate the deed restriction and preserve the movie theater. In July 1991, the City Council approved Ordinance No. 6076-N.S. that made movie theaters in the Elmwood commercial district a "protected use" and prohibited any contractual arrangement which contradicted the protected use. Soon after, UA said that it would work with the City and the merchants to find a purchaser who would operate the Elmwood as a movie theater.

Given that no profit-oriented developer would purchase it with this goal in mind, merchants and professionals in the district decided to attempt to purchase it themselves. In November, 1991, the new non-profit Elmwood Theater Foundation succeeded in acquiring it from United Artists for \$190,000 using money borrowed from supporters in the area. The Foundation spent the next months investigating the feasibility and cost of seismically reinforcing and rehabilitating the building, and whether the revenue from leasing the restored Theater to a movie operator would be sufficient to service the debt. Foundation members concluded that seismic reinforcement, repair, and conversion of the balcony to two new screens would cost about \$445,000. They knew that they could borrow this amount from private lenders and that the income from a movie theater operator would be enough to pay back this amount over time. However, the revenue from the theater operator would not be enough to both service this debt and pay back the \$190,000 that the Foundation had already borrowed to purchase the Theater. Based on extensive discussions within the merchant community, they proposed that the City lend this amount plus accrued interest, and that the merchant community as a whole would pay back the City loan by assessments levied through a new Business Improvement District. (See Attachment 5) The City loan and its repayment by the BID would serve as "gap financing" that made the Theater restoration project economically feasible.

On May 5, 1992, the City Council approved an interim loan of \$17,000 to help the Foundation temporarily service the debt to private lenders, to be followed by an additional loan of \$192,000 for permanent financing of the purchase if Elmwood merchants agreed to an assessment to repay the entire amount of City assistance at 6% interest over twenty years. The total of \$215,000 also included \$6,000 to pay Special Counsel to draft local Business Improvement District legislation that would qualify a privately-owned improvement such as a Movie Theater for assessment financing, so long as the improvement could be shown to benefit businesses and property in the Business Improvement Area. (The State legislative analyst had determined that existing State Business Improvement District Legislation, the Parking and Business Improvement District Law of 1989, could not be used to finance a privately-owned improvement.)

On December 15, 1992, the City Council adopted Ordinance No. 6164-N.S., *Business Improvement Area Assessments*, drafted by Special Counsel Robert Brunsell. On January 12, 1993, the City Council approved Resolution No. 56,802-N.S. establishing the Advisory Board for the Proposed Elmwood Theater Business Improvement Area (Attachment 4). The Advisory Board, subsequently called "Elmwood Advisory Board" by the City Clerk, was composed of merchants and property owners charged with recommending to the Council the boundaries of the assessment area and the method and basis for levying the assessment.

Between March 15 and May 1, 1993, the Advisory Board met seven times under the Chairpersonship of Peggy Casey, owner of Bill's Trading Post, to design an equitable way of assessing businesses and properties. Economic development staff provided

economic and fiscal data to help design the assessment while Special Counsel Brunsell provided legal advice. On May 25, the Advisory Board submitted its recommendations and the City Council approved them as a Resolution of Intent to Establish an Elmwood Theater Business Improvement Area.¹ After notice to businesses and property owners within the Area, on July 20, 1993 the City Council approved Resolutions establishing the Area and authorizing the loan (Attachments 2 & 3).

With financing in place, the Foundation hired contractors to seismically reinforce and repair the Theater and convert the balcony into two small Theater auditoriums. The Elmwood Theater reopened on the weekend of October 22-23, 1994.

The Theater has operated successfully for the last nineteen years showing a mix of foreign and independent films, though many of them have are "move over" films that have played elsewhere in the East Bay. The Elmwood has always been operated by small exhibitors that control only a few screens and the distributors prefer to give quality "first run" films to Theaters operated by larger companies with more market power. The current operator, Rialto Cinemas/Elmwood, has improved the marquee, installed new seating in the downstairs auditorium, and made great efforts to persuade the distributors to give the Elmwood quality films.

The economics of owning a small movie theater continue to be challenging. The rent from the Theater operator has allowed the Foundation to service the debt to private lenders that it took on to rebuild the Theater but it has not been able to retire very much of it. As noted earlier, it also owes money to the City of Berkeley for additional seismic improvements to the Theater required by the Building and Safety Division in 2004. The Foundation also recently had to help the operator, Rialto Cinemas/Elmwood, finance an expensive conversion of the Theater to digital film projection. While the Foundation regards its preservation and continued operation of a small movie theater in a neighborhood commercial district as a great success, it may never be able to afford to donate revenues to local arts organizations, as it had hoped to do when it was formed in 1991.

RATIONALE FOR RECOMMENDATION

The Area has fulfilled its legally-authorized purpose, retiring a 20-year loan that financed the purchase and improvement of the Elmwood Movie Theater, 2966 College Avenue. The method and basis for levying the assessment was calibrated to the relative benefits of restoring the Theater for different types of businesses and properties. Accordingly, this particular assessment cannot be used to finance anything else, such as general improvements and activities in the Elmwood Commercial District. Surplus revenues not needed to retire the 20-year financing must be used to improve the Theater or returned

¹ Advisory Board for the Proposed Elmwood Theater Business Improvement Area, *Report Recommending a Resolution of Intention to Establish an Elmwood Theater Business Improvement Area*, on the Council agenda of May 25, 1993.

to the assessees. Accordingly, the Advisory Board recommended that they be used to help repay a loan for seismic improvement of the Theater building.

Staff and Advisory Board considered proposing to "repurpose" the existing Advisory Board to advise on the new Business Improvement District requested by the Elmwood Merchants Association. However, the paperwork and logistics for doing this are more complex than simply terminating the existing one and proposing to form a new one closer to the time when a new BID and assessment will be proposed to the City Council.

CONTACT PERSON

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David Salk, Chairperson of the Advisory Board for the Elmwood Theater Business Improvement Area, 510 910-5253

Attachments:

1. Resolution
 Exhibit A: Spreadsheet: Elmwood Loan Schedule
2. Resolution No. 57,086-N.S., Resolution Overruling Protests, Establishing Elmwood Theater Business Improvement Area, and Levying Assessments for FY 1993-94
3. Resolution No. 57,086A-N.S., Authorizing Execution of a Loan Agreement with the Elmwood Theater Foundation, to be Repaid Through a Levy of Special Assessments in the Elmwood Theater Business Improvement Area
4. Resolution No. 56,802-N.S. establishing the Advisory Board for the Proposed Elmwood Theater Business Improvement Area
5. Business Plan for the Restoration of the Elmwood Theater (excerpts)

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

RECOGNIZING THAT ASSESSMENTS LEVIED IN THE ELMWOOD THEATER BUSINESS IMPROVEMENT AREA HAVE REPAID LOANS TO THE CITY AND THEREBY FULFILLED THE PURPOSE OF THE AREA; AUTHORIZING THE CITY MANAGER TO REMOVE ANY LIENS HELD BY THE CITY AGAINST THE ELMWOOD THEATER PROPERTY, 2966 COLLEGE; ALLOCATING SURPLUS REVENUES COLLECTED IN THE AREA; AND TERMINATING THE AREA AND ITS ADVISORY BOARD

WHEREAS, on July 20, 1993 the City Council adopted Resolution No. 57,086-N.S., Resolution Overruling Protests, Establishing Elmwood Theater Business Improvement Area (hereafter, "the Area"), and Levying Assessments for FY1993-94; and

WHEREAS, on the same date, the City Council adopted Resolution No. 57,086A-N.S., Authorizing Execution of a Loan Agreement with the Elmwood Theater Foundation, to be Repaid Through a Levy of Special Assessments in the Elmwood Theater Business Improvement Area; and

WHEREAS, the Special Assessments have now been levied in the Area for the scheduled twenty year period 1993/94-2012/13; and

WHEREAS, the City Finance Department has now recognized in a spreadsheet, (attached as Exhibit A), that the entire original loan principal with interest, as well as additional loan principal with interest authorized by Resolution No. 64,159-N.S. of July 22, 2008, have now been repaid; and

WHEREAS, said spreadsheet Exhibit A also shows that the Area has generated surplus revenue of \$19,576 beyond what was needed to retire the loans authorized by Resolution Nos. 57,086A-N.S. and 64,159-N.S, with this surplus likely to increase somewhat as additional revenues are collected during the balance of the year; and

WHEREAS, the Advisory Board for the Area ("Elmwood Advisory Board") has voted to recommend to the City Council that all surplus revenues from the assessments be dedicated to repay an additional loan to the Elmwood Theater Foundation for seismic improvements to the Theater (Housing and Community Development Department Loan 0418); and

WHEREAS, with repayment of the loans and allocation of the surplus for a purpose, improvement of the Elmwood Theater, authorized as a purpose of the Area, the Area and its Advisory Board have fulfilled their legal purposes.

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

1. It recognizes that the loans authorized by Resolution Nos. 57,086A and 64,159-N.S. have been completely retired.
2. It directs the City Manager to remove any liens or other encumbrances that the City holds against the Elmwood Theater property, 2966 College Avenue, Berkeley, California, to secure said loans.
3. Any surplus revenues in Accounts 010.3302.312.0600 (Elmwood Assessment-Property Tax) and 010.3202.318.5111 (Elmwood Assessment-Business License) are hereby transferred to repay loans made to the Elmwood Theater Foundation for additional seismic improvements authorized by Resolution Nos. 62,759-N.S. and 63,025-N.S. (Housing and Community Development Dept. Loan No. 0418, accounts 481-8703-399-0232 (principal) and 481-8703-361-1013 (interest)).
4. The Elmwood Theater Business Improvement Area established by Resolution No. 57,086-N.S. is hereby dis-established as having fulfilled its purposes and legal mandate.
5. The Advisory Board for the Area is terminated for the same reason.

BE IT FURTHER RESOLVED that Resolution No. 57,086-N.S. and Resolution No. 56,802-N.S. are hereby rescinded.

Exhibits

A: Spreadsheet: Elmwood Loan Schedule