



Advisory Board for the Elmwood Theater Business Improvement Area

CONSENT CALENDAR

July 10, 2007

To: Honorable Mayor and
Members of the City Council

From: Advisory Board for the Elmwood Theater Business Improvement Area

Submitted by: Dave Fogarty, Secretary to the Advisory Board for the Elmwood Theater
Business Improvement Area

Subject: Assessment: Elmwood Theater Business Improvement Area

RECOMMENDATION

Adopt a Resolution: 1) approving the Annual Assessment Report for the Elmwood Theater Business Improvement Area for Fiscal Year 2007; 2) declaring an intention to levy annual assessments in the Improvement Area for Fiscal Year 2008; and 3) setting a public hearing on the levy of assessments for July 31, 2007.

FISCAL IMPACTS OF RECOMMENDATION

Assessment revenues repay a City General Fund loan of \$215,000 at 6% annual interest made in August 1993. Loan repayment is ahead of schedule (due date is May 2014).

BACKGROUND

On June 7, 2007, the Advisory Board for the Elmwood Theater Business Improvement Area met to discuss a draft Annual Assessment Report for FY 2007 (Attachment 2) presented by its Secretary, Dave Fogarty. The Board passed the following motion: M/S/C (Moriarty/Harvey) that the Board approve the Annual Assessment Report, including its recommendation that the special assessments be levied for FY 2008 on the same basis and method as they were levied for FY 2007, with changes in the assessment status of some businesses discussed in the Report and the later addition of new businesses to be assessed a business license surcharge to be determined by the Secretary in conjunction with Planning and Finance Department staff.. (Ayes: Harvey, Moriarty, Leyhe; Noes: None)

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Dave Fogarty, Secretary to the Advisory Board for the Elmwood Theater Business Improvement Area, 981-7534

David Salk, Chairperson of the Advisory Board for the Elmwood Theater Business Improvement Area, 510 231-0656

Attachments:

1. Resolution
2. Public Hearing Notice
3. Annual Assessment Report, 2007

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

APPROVING THE ANNUAL ASSESSMENT REPORT FOR THE ELMWOOD THEATER BUSINESS IMPROVEMENT AREA FOR FY07; DECLARING AN INTENT TO LEVY ASSESSMENTS IN THE AREA FOR FY08; AND SETTING A PUBLIC HEARING ON THE LEVY OF ASSESSMENTS FOR JULY 31, 2007

WHEREAS, on July 20, 1993, the City Council adopted Resolution No. 57,086-N.S., Overruling Protests, Establishing Elmwood Theater Business Improvement Area, and Levying Assessments for Fiscal Year 1994; 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 City Clerk has received an Annual Assessment Report from the Advisory Board for the Elmwood Theater Business Improvement Area for the fourteenth year of the assessments, FY07; and

WHEREAS, said Annual Assessment Report on file with the City Clerk discusses the successful operation of the Elmwood Theater as a motion picture theater and community meeting hall during FY 2007 (the“activity” financed in the Area); and

WHEREAS, the Annual Assessment Report and materials attached to it on file with the City Clerk contain a detailed description of the boundaries of the Elmwood Theater Business Improvement Area as well as the Core Benefit Zone and the Broad Benefit Zone established within it (including a map entitled “Boundaries of Elmwood Theater Business Improvement Area”); and

WHEREAS, said Annual Assessment Report and exhibits on file with the City Clerk also contain information on the method and basis for levying the assessment.

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

BE IT FURTHER RESOLVED the Annual Assessment Report for the Elmwood Theater Business Improvement Area for FY 2007 is hereby approved.

BE IT FURTHER RESOLVED the City Council declares its intent to levy real property assessment for FY08 upon the same properties and at the same rates as it did for FY 1994 through 2007. The City Council declares its further intent to levy business license assessments on businesses in the Core Area according to the same method of calculation as it did for FY 1994 through 2007 with the changes or potential changes specified in the appropriate section of the Annual Assessment Report.

BE IT FURTHER RESOLVED the activity financed in the Area is the purchase of the Elmwood Theater and its preservation as an operating motion picture theater and community meeting hall through a loan by the City of Berkeley to the Elmwood Theater Foundation, a nonprofit corporation, in the amount of \$215,000 as authorized by Resolution No. 57,086-N.S. of July 20, 1993. The amount of this loan, together with interest at the rate of six percent (6%) per annum on the unpaid balance thereof, is being recovered over a term of twenty (20) years through the annual levy of special assessments on business licenses of businesses operated within the Area and on real property within the Area classified as Commercial (3x Series) or Improved Commercial (8x or 9x Series) under the two-digit use code system of the Alameda County Assessor's Office.

BE IT FURTHER RESOLVED the Elmwood Theater Business Improvement Area is located in Berkeley, California, within 1,600 feet of the Elmwood Theater at 2966 College Avenue, excepting property with addresses on Telegraph Avenue and Claremont Avenue. The Annual Assessment Report and materials attached to it on file with the City Clerk contain a detailed description of the boundaries of the Elmwood Theater Business Improvement Area as well as the Core Benefit Zone and the Broad Benefit Zone established within it (including a map entitled 'Boundaries of the Elmwood Theater Business Improvement Area'), and information on the method and basis for levying the assessments within these Zones.

BE IT FURTHER RESOLVED the City Council will conduct a hearing on this proposal on Tuesday, July 31, 2007 in the Chambers of the City Council, 2134 Martin Luther King Jr. Way, Berkeley, California. Council meetings begin at 7:00 p.m. a protest may be made orally or in writing by any interested person. Written protests shall be filed with the City Clerk at or before the time fixed for the public hearing. Each written protest shall contain a description of the business or property in which the person subscribing the protest is interested sufficient to identify the business or property.

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
THE ELMWOOD THEATER BUSINESS IMPROVEMENT AREA
TUESDAY, JULY 31, 2007 AT 7:00 P.M.**

**INTENTION TO LEVY ASSESSMENTS FOR THE ELMWOOD THEATER BUSINESS
IMPROVEMENT AREA**

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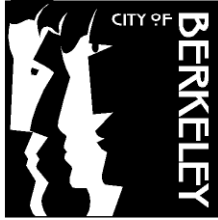
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Pamyla Means, MMC, City Clerk



Advisory Board for the Elmwood Theater Business Improvement Area
% Office of Economic Development

ELMWOOD THEATER BUSINESS IMPROVEMENT AREA
ANNUAL ASSESSMENT REPORT, 2007

On July 20, 1993, the City Council approved Resolution No. 57,086–N.S. establishing the Elmwood Theater Business Improvement Area and levying assessments for FY 1994. On the same date, the City council approved Resolution No. 57,086A–N.S., authorizing execution of a loan agreement for \$215,000 with the Elmwood Theater Foundation to be repaid through the levy of special assessments in the Elmwood theater Business Improvement Area. The assessments repay the \$215,000 loan at 6% interest over twenty years.

Ordinance No. 6164–N.S., “Business Improvement Area Assessments,” Section 17, requires an annual assessment report for each fiscal year. Accordingly, City staff has prepared this report covering the thirteenth year of the assessment (FY 2007) for review by the Advisory Board for the Elmwood Theater Business Improvement Area. The report must be filed with the City Clerk and approved by the City Council before the Council levies assessments for the next fiscal year.

Status of the Activity financed by the assessment

The Activity financed in the Area “...is the purchase of the Elmwood Theater, 2966 College Avenue, and its preservation as an operating motion picture theater.” (Resolution No. 57,086–N.S.) The City loan of \$215,000 provided permanent financing for the Elmwood Theater Foundation’s purchase of the theater. When the City financing was in place, the Foundation borrowed approximately \$425,000 from private lenders, secured by a first deed of trust on the theater property, to finance repair, seismic upgrade and improvements to the theater that were necessary before it could be reopened. Most of the lenders were individuals who live and/or work in the Elmwood area. These lenders are being repaid through revenues the Theater Foundation receives by leasing the theater to a movie theater operator. The monthly lease payments from the theater operator are used to repay principal and interest on the debt to the lenders. The theater restoration project therefore included a combination of public financing (through the City loan repaid through the assessment district) and private financing (money borrowed by the Foundation and money and equipment invested by the theater operator).

The Elmwood Theater reopened on October 22, 1994, and operated successfully until October, 2004, when it was closed for repairs to the downstairs auditorium caused by water damage from a blocked sewer line on adjacent property. Since there was a

possibility that raw sewage had contaminated the theater, the project has entailed complete removal and replacement of seats, rugs, wooden flooring and even the concrete under-floor. Fortunately, the theater operator had liability insurance that is paying for this work.

Because the theater was closed for repairs anyway, the Elmwood Theater Foundation decided to perform at the same time additional seismic work that had been requested by the City of Berkeley. This work was financed by an additional loan from the City of Berkeley for a total of \$170,000 at an interest rate of 5%. Work included strengthening of the support for the roof trusses and the front of the theater to make the building safe in the event of an earthquake. The City of Berkeley now considers that the Elmwood Theater conforms to the City's codes for the seismic safety of buildings in its occupancy class.

The second City loan of \$170,000 is being repaid through lease revenues from the theater operator.

The theater reopened in October, 2005, and has operated on a regular schedule since then.

The current leaseholder, San Carlos Cinemas/Theater Services, recently notified the Elmwood Theatre Foundation that it plans to sell the lease of the Elmwood Theatre to another operator. By the terms of the lease, such a transfer would require the permission of the Elmwood Theatre Foundation. This proposed new operator has met with Foundation representative to outline tentative plans for operating the Elmwood. They involve significant investments to upgrade sound equipment as well as seating and sightlines in the two second floor auditoriums. The proposed new operator would also attempt to improve the quality of film bookings at the Elmwood, including showing some foreign and independent films that had not already been shown elsewhere in the East Bay market. Assuming that negotiations for a lease with the new operator are successful, the new operator would assume control of the Elmwood Theatre toward the end of June.

Assessment Revenues

Assessments levied in the Elmwood Theater Business Improvement Area repay a City loan of \$215,000 at six percent (6%) interest over twenty years. Given these terms, the assessments need to raise \$18,744.68 per year.

The Advisory Board recommended, and the Council approved, an assessment that included two benefit zones intended to reflect the degree of benefit businesses and properties would receive from restoration of the movie theater:

- The "Core Benefit Zone" is coterminous with the Elmwood Commercial district C1B(E) that extends for approximately two blocks on College Avenue plus a few addresses on Ashby, Russell and Webster. Within this district real property was

assessed at the rate of five cents (\$.05) per square foot. The assessment on commercial property within the Core Benefit Zone was projected to raise \$9,314.00.

- The “Broad Benefit Zone” consists of territory beyond the Core Benefit Zone but within 1,600 feet of the Elmwood Theater, Commercial property within this district was assessed at twenty percent (20%) of the rate established for real property in the Core Benefit Zone. In practice, the Broad Benefit Zone includes Alta Bates Hospital and nearby medical office buildings. The property tax-based assessment in the Broad Zone was expected to raise \$6,432.27.

The real property assessment in both zones was therefore projected to raise a total of \$15,746.27.

In addition, the Advisory Board recommended, and the Council approved, an annual assessment on business licenses of businesses operated after 6 p.m. more than two (2) nights per week within the Core Benefit Zone. Businesses classified as Eating and Drinking Places (Industry Group 58) were assessed an amount equal to 25% of their business license tax payment. Businesses open 24 hours per day, including financing institutions with automatic teller machines were assessed 40% of the business license tax. (Financial institutions exempt from the City business license tax pay an in-lieu business license assessment equal to three times the real property assessment.) Finally, all other businesses open after 6 p.m. more than two nights per week were to pay an amount equal to 12.5% of their business license tax payment. While the exact amount raised by the assessment on business licenses would depend on gross receipts reported by the individual businesses (i.e., the basis for the business license tax payment), the assessment was projected to yield more than \$4,000. This added to the amount raised by the real property assessment would yield the requisite \$18,744.68 per year.

Assessment Revenues as of June, 2007

Collections for 2007 are still incomplete because the second property tax installment has not yet been received from Alameda County and some businesses have not yet paid the business license surcharge. Nevertheless, the property tax assessment billed (\$16,080.10) and business license surcharge payments have already exceeded the target loan repayment amount of \$18,744.68.

For the first few years of the assessment, revenues fell slightly under the target amount of \$18,744.68 per year because some businesses, particularly Wells Fargo Bank, refused to pay. However, on January 15, 1997, Wells Fargo Bank made a lump-sum payment of \$24,127 to the City of Berkeley as settlement for its refusal to pay the in-lieu business license assessment. The bank had contended that it was exempt from all municipal taxes, including the in-lieu business license assessment. While the bank did not formally alter its position, it paid the amount owed, including back payments of \$1,898.85 for 1994, 1995 and 1996 and the Net Present Value of future payment out to the end of the 20-year assessment.

With the Wells Fargo prepayment, repayment of the loan was ahead of schedule. In addition, since 1999 annual revenue has surpassed the target amount of \$18,744.68 without even counting the prepayment. This can be attributed to the increased number of businesses, particularly restaurants, open after 6 pm and therefore subject to the business license surcharge. While the loan is scheduled to be repaid in 2014, it will almost certainly be repaid by 2010. With the conversion of the Wright's Automotive building to retail, business license surcharge revenues should increase even more.

Recommendations

The Advisory Board recommends that the City levy special assessments for Fiscal Year 2008 in the Elmwood Theater Business Improvement Area within the same boundaries, and on the same basis and method as they were levied for Fiscal Years 1994 – 2006. The Advisory Board notes that “Yak & Yeti” Nepalese restaurant has replaced Locando Olmo restaurant, “House of Curry” has replaced Naan N Curry, Ozzie's lunch counter has closed, and Ici-Ice Cream has opened. Because two buildings within the district are undergoing major renovations that will result in turnover in existing spaces and the creation of new retail space, it recommends that Advisory Board staff be empowered to work with the Finance Department to add new retail businesses to the list of those to be charged the business license surcharge.