



# City of San Leandro

Meeting Date: December 15, 2014

## Staff Report

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**File Number:** 14-529

**Agenda Section:** PUBLIC HEARINGS

**Agenda Number:** 4.A.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report for the Public Hearing Regarding the City Council of San Leandro's Intention to Establish the West San Leandro Shuttle Business Improvement District (BID) and an Ordinance of the City Council of San Leandro Amending Title 2 of the San Leandro Municipal Code to Delete Chapter 15 and to Add a New Chapter 15 Establishing the West San Leandro Shuttle Business Improvement District for a Period of Fifteen Years (January 2015 - December 2029)

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### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council hold a public hearing and take testimony regarding the City's intention to re-establish the West San Leandro Shuttle Business Improvement District (BID). Staff further recommends that the City Council adopt (second reading) the Ordinance amending Title 2 of the San Leandro Municipal Code to delete Chapter 15 and add a new Chapter 15 re-establishing the West San Leandro Shuttle Business Improvement District for a period of fifteen years.

On October 20, 2014, the City Council adopted a Resolution of Intention to re-establish the BID. In order to re-establish the BID, the City Council must hold a public meeting and hold a public hearing and tally the protest votes submitted by business owners within the BID, as provided for under the Parking and Business Improvement District Law of the California Streets and Highways Code (36500 et seq.). The public meeting and first reading of the ordinance were held on December 1, 2014.

If, at the conclusion of the public hearing on December 15, 2014, there are written protests by business owners amounting to more than fifty percent (50%) of the total assessment, the BID will fail and cannot be formed. Should the protest vote be 50% or less, the City Council may vote to form the BID at the conclusion of the public hearing by passing the second reading of this ordinance.

### BACKGROUND

The current BID, which funds approximately half of the LINKS Shuttle service, expired on June 30, 2014. In anticipation of the need to re-authorize the BID, City staff and the San Leandro Transportation Management Organization (SLTMO) engaged in an extensive process to re-evaluate the service to determine what changes would be needed to ensure that it best meets the needs of the West San Leandro industrial area. The proposal for re-authorization of the BID adjusts the BID rate and BID territory to match the plan for enhanced services that was previously presented to the City Council and the San Leandro business community.

### **Service Updates**

After extensive outreach to businesses and in-depth work with transportation experts, City staff and the SLTMO propose to divide the LINKS route into two distinct loops. Proposed service enhancements include new service to Marina Boulevard, more frequent service with shorter headways, and reduced time required for a round-trip ride. The SLTMO is also working on other enhancements to assist riders including updated signage, benches and bus shelters and offering Wi-Fi and a digital tool that could allow riders to track the buses from their computers or phones. Re-authorization of the BID will also help businesses in the BID area to comply with new Bay Area Air Quality Management District (BAAQMD) regulations requiring businesses with 50 or more employees to provide commuter benefits to their employees.

### **Proposed BID Assessment**

The proposed BID is a simple fee of \$21 per employee, per year. This assessment will replace the existing methodology, which combines a base fee of \$26.73 and a per-employee charge of \$11.63. If approved, the BID will include businesses within one-quarter mile of the proposed LINKS route. Businesses within one-half mile of the San Leandro Downtown BART station will be excluded from the BID (see the attached map.) The proposed assessment would also exclude businesses with three or fewer employees, landlords, non-profit businesses and home-based businesses. The annual assessment would be collected along with the City's Business License tax. Annual assessments may be increased in an amount up to the increase, if any, of the Consumer Price Index: San Francisco-Oakland-San Jose, All Urban Consumers. The proposed term of the BID is fifteen years.

### **BID Process**

On October 20, 2014 the City Council adopted a Resolution of Intention (Resolution No. 2014-115) to re-establish the West San Leandro Shuttle Business Improvement District. On September 17, 2014 all affected businesses within the proposed BID boundaries were mailed a notice of the proposal to re-establish the BID. The packet included the following pieces in a City of San Leandro envelope stamped "PUBLIC NOTICE BUSINESS IMPROVEMENT DISTRICT BID BALLOT" in red ink for emphasis.

- BID Public Hearing Notice & Information Sheet
- Map showing the shuttle route and the boundaries of the proposed BID
- Copy of the Resolution of Intention, as required by law
- Self-addressed protest card, as a convenience to those business owners that choose

to register a protest.

The public hearing notice and informational sheet provides the following information: the type and purpose of assessment, who the fees affect, how the assessment is collected and the amount, and the time and place for the public hearing. The information sheet also clearly explains how to register a protest vote.

A revised public hearing notice was sent to all businesses on October 21, 2014 and included notification of the Public Meeting scheduled for December 1, 2014 as well as a new date for this public hearing, scheduled for December 15, 2014.

Protest votes are weighted by the number of employees according to the City's Business License records. For example, a protest vote from the owner of a company with 20 employees will count as 20 votes against the BID. If, at the conclusion of the public hearing on December 15, 2014, there are written protests by business owners amounting to more than fifty percent (50%) of the total number of employees, the BID will fail and cannot be formed; thus the current BID will lapse. Furthermore, no other attempt may be made to form the BID in the stated area for a period of one year. In the event that re-establishment of the BID fails, the original BID area will sunset. Should the protest vote be 50% or less, the City Council may vote to form the BID at the conclusion of the public hearing.

### **Protest Votes Received**

At the time this report was prepared, the City Clerk has received 33 protest cards for the BID, representing a protest vote of 3.7%, or 547 of the 14,768 employees in the BID. These cards, along with any cards submitted prior to the conclusion of the public hearing, shall constitute all protest votes against the BID. At the conclusion of the public hearing, the City Clerk will provide to the City Council a certified total of BID protest votes and percentage of the total assessment using the most current employee counts of BID paying businesses in the City's Business License records.

### **Previous Actions**

- Resolution 2003-185, adopted by the City Council on September 2, 2003 approving a Resolution of Intention to form the West San Leandro Shuttle Business Improvement District.
- Ordinance No. 2004-013, adopted June 21, 2004, amending Title 2 of the San Leandro Municipal Code to add a new Chapter 15 establishing the West San Leandro Shuttle Business Improvement District.
- Ordinance No. 2005-017, adopted October 3, 2005, amending Title 2 of the San Leandro Municipal Code to add a new Chapter 15 re-establishing the West San Leandro Shuttle Business Improvement District and to sunset June 30, 2009.
- Motion, December 15, 2008, accepting the SLTMO and the BID Advisory Board's recommendation to direct staff to prepare a Resolution of Intention to re-establish the BID at current rates for a five-year term.
- Resolution No. 2009-014 declaring the City Council's intention to establish the West San Leandro Shuttle Business Improvement District (BID) and setting a Public Hearing for March 16, 2009.
- Ordinance No. 2009-002 amending Title 2 of the San Leandro Municipal Code to delete

Chapter 15 and to add a new Chapter 15 establishing the West San Leandro Shuttle Business Improvement District.

- Resolution of Intention (Resolution No. 2014-115), adopted by the City Council on October 20, 2014 to establish the West San Leandro Shuttle Business Improvement District (BID) and Setting a Public Hearing Relating Thereto for December 15, 2014 (starts the 45-day process to re-establish the BID, which would levy an annual \$21 per employee assessment on the approximately 600 businesses in the BID to fund approximately 50% of an enhanced LINKS shuttle service.

### **Summary of Public Outreach Efforts**

Staff and the SLTMO have engaged in extensive outreach in anticipation of the BID re-authorization to alert businesses to the upcoming ballot process and the proposed enhancements to the LINKS shuttle service more generally.

Outreach efforts have included:

- One-on-one meetings with interested businesses.
- A letter detailing how LINKS relates to the new BAAQMD Commuter Benefits Program mailed to all businesses with 50+ employees on August 18, 2014.
- Information brochure mailed to all impacted businesses on August 28, 2014.
- Community meeting held on September 10, 2014.
- A redesign and update of the LINKS website.
- Public Hearing Notice and Informational Packet mailed on September 17, 2014.
- Revised Public Hearing Notice, Notice of Public Meeting and Informational Packet mailed on October 21, 2014.
- Resolution of Intention published in the Daily Review on October 21, 2014.
- Public Meeting held at the December 1, 2014 City Council meeting.

### **Legal Analysis**

The public hearing notice and ordinance have been reviewed by the City Attorney and approved as to form.

### **ATTACHMENT**

#### **Attachment to Ordinance**

Proposed LINKS BID Area Map

**PREPARED BY:** Jeff Kay, Business Development Manager, Community Development Department



# City of San Leandro

Meeting Date: December 15, 2014

## Ordinance

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**File Number:** 14-510

**Agenda Section:** PUBLIC HEARINGS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Cynthia Battenberg  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** ORDINANCE of the City Council of San Leandro Amending Title 2 of the San Leandro Municipal Code to Delete Chapter 15 and to Add a New Chapter 15 Establishing the West San Leandro Shuttle Business Improvement District (BID) in the City of San Leandro (re-establishes the BID for a period of 15 years, until December 2029, and imposes an annual per-employee assessment on businesses within the district)

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WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code Sections 36500 et seq.) authorizes cities to establish a business improvement area for the purpose of improving the economic activity within the area; and

WHEREAS, cities may fund these improvements through assessments on businesses for certain purposes; and

WHEREAS, the City Council adopted Ordinance No. 2004-013 on June 21, 2004, amending Title 2 of the San Leandro Municipal Code to add a new Chapter 15 establishing the West San Leandro Business Improvement District (BID) and setting an assessment to be levied on businesses within the BID; and

WHEREAS, the City Council adopted Ordinance No. 2005-017, on October 3, 2005, amending Title 2 of the San Leandro Municipal Code to add a new Chapter 15 re-establishing the West San Leandro Business Improvement District and to sunset June 30, 2009; and

WHEREAS, the City Council adopted Ordinance No. 2009-002 on April 6, 2009 re-establishing the West San Leandro Shuttle Business Improvement District (BID), and setting an assessment to be levied on businesses within the BID; and

WHEREAS, Ordinance No. 2009-002 included a term for the BID assessment to sunset after five years and expire on June 30, 2014; and

WHEREAS, the BID funds approximately fifty percent of West San Leandro Shuttle

Service, known as the LINKS Shuttle, administration and operational costs; and

WHEREAS, pursuant to state law, the City has submitted protest ballots to business owners within the BID, and will hold a public hearing on December 15, 2014; and

WHEREAS, unless a majority protest is received, the BID ordinance will continue in full force and effect; and

WHEREAS, in order to do so, the City has determined that the BID needs to be re-established rather than merely amended; and

WHEREAS, the Resolution of Intention (ROI) adopted by the City Council on October 20, 2014 (Resolution no. 2014-115) to re-establish the BID was duly published and copies thereof were mailed as provided by law; and

WHEREAS, as specified in the ROI a public meeting concerning the formation of the district was held on December 1, 2014 at 7:00 p.m. before this City Council in the City Council Chambers at City Hall, 835 East 14th Street, San Leandro, California, 94577; and

WHEREAS, as specified in the ROI a public hearing concerning the formation of the district was held on December 15, 2014 at 7:00 p.m. before this Council in the City Council Chambers at City Hall, 835 East 14th Street, San Leandro, California, 94577; and

WHEREAS, at the hearing all protests, both written and oral, made or filed, were considered and duly overruled and denied and this City Council determined that there was no majority protest within the meaning of Section 36523 of the Act; and

WHEREAS, protests in writing from businesses in the proposed BID paying fifty percent (50%) or more of the proposed assessment have not been received; and

WHEREAS, the City Council finds that all of the businesses within the BID will benefit by the expenditure of the funds raised and the assessment levied hereby in the manner prescribed herein; and

WHEREAS, the existing advisory board established by the City Council may continue to serve as the advisory board as required pursuant to the California Streets and Highways Code; and

WHEREAS, the programs to be provided in the district by the BID will be funded by the levy of assessments on all businesses within the boundaries except as provided herein. The revenue from the levy of assessments within the district shall not be used to provide programs outside the district or for any purpose other than the purposes specified in the ROI; and

WHEREAS, the assessments levied on businesses pursuant to this Ordinance shall, to the maximum extent feasible, be levied on the basis of the estimated benefit to the businesses within the BID.

NOW, THEREFORE, the City Council of the City of San Leandro does ORDAIN as follows:

SECTION 1: Title 2, Chapter 15 is hereby deleted, and a new Chapter 15 is hereby added to Title 2 of the San Leandro Municipal Code to read as follows:

2-15-010 Purpose. The purpose of this chapter is to establish the West San Leandro Shuttle Business Improvement District.

2-15-020 Establishment of the District. Pursuant to the Act, a business improvement district area is hereby created and established and designated as the "West San Leandro Shuttle Business Improvement District" for the area located within one-quarter mile of the West San Leandro Shuttle route excepting therefrom that area within one-half mile of the San Leandro BART Station, as shown on the map attached as "Attachment A" and incorporated herein by this reference into the ordinance codified in this Chapter.

2-15-030 Amendments. All businesses within the boundaries of the district established by this Chapter shall be subject to any amendments of the Parking and Business Improvement Area Law of 1989, codified as California Streets and Highways Code Sections 36500 et seq.

2-15-040 Assessment. The assessment is to be levied on all businesses, existing and future, within the BID in the City of San Leandro based upon a fee of \$21.00 per employee per year per business. Annually, the assessment may be increased in an amount up to the increase, if any, of the Cost of Living Index for San Francisco-Oakland-San Jose, All Urban Consumers. Businesses that have a Home Occupation Permit, businesses with three (3) or less employees, businesses that have received Internal Revenue 501(c)(3) tax-exempt status, and businesses that are exempt from local assessments under State or Federal law are exempt from the assessment.

2-15-050 Protests to Formation. All protests, both written and oral, are overruled and denied and the City Council finds that there is not a majority protest within the meaning of Section 36525 of the Act.

2-15-060 Review of Annual Report. All of the assessments imposed pursuant to this Chapter shall be reviewed by the City Council annually based upon the annual reports prepared by the advisory board appointed pursuant to Sections 36530 and 36533 of the California Streets and Highways Code. Pursuant to Section 36533(c), the City Council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified.

2-15-070 Use of Assessments. No portion of the revenues from the assessments within the district shall be used to provide improvements outside of the district for any purpose. The assessments shall be used exclusively to fund the West San Leandro Shuttle, other related transportation activities, and the administrative costs of collecting the assessment, or as modified by the City Council pursuant to compliance with Sections 36534 and 36535 of the California Streets and Highways Code.

2-15-090 Effective Period of Assessment. The assessment imposed by this Chapter shall remain in effect for fifteen (15) years from the effective date of the ordinance codified in this Chapter, unless sooner terminated, as provided in the Act.

2-15-100 Imposition of Assessment. The assessment imposed by this Chapter is levied on an annual basis upon all businesses within the district and the owner of each business shall be solely responsible for paying all assessments when due. The assessment will be collected annually at the same time, and in the same manner, as the business license tax imposed by Title 2, Chapter 2 of this Code. If a new business opens in the district before January 1 of any year in which an assessment is collected, that business will be responsible for paying the full amount of the assessment. If a new business opens in the district after January 1 of any year in which an assessment is collected, that business will be responsible for paying fifty percent (50%) of the assessment. Failure to pay the assessment when due shall be deemed a delinquency, and collection of such delinquency shall be in a manner consistent with the collection of delinquent business license taxes.

SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part hereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of this Ordinance irrespective of the fact that one or more of them would be declared unconstitutional or invalid. To this end, the provisions of this Ordinance are declared to be severable.

SECTION 3: This Ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Prola on this 1st day of December, 2014, and passed to print by the following called vote:

Members of the Council:

AYES:	Councilmembers Cutter, Gregory, Lee, Prola, Reed, Souza	(6)
NOES:	None	(0)
ABSENT:	Mayor Cassidy	(1)



# Proposed LINKS Route and BID Area

