

# ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



## STAFF REPORT

**MEETING DATE:** 12/13/2023

**Staff Report No.** 23-391g

**TO:** AC Transit Board of Directors  
**FROM:** Linda A. Nemeroff, Board Administrative Officer/District Secretary  
**SUBJECT:** Redistricting to Seven-Ward Election System

### ACTION ITEM

**AGENDA PLANNING REQUEST:**

#### **RECOMMENDED ACTION(S):**

Consider the adoption of either Ordinance 20 (Evergreen) or Ordinance 20 (Jade) establishing a seven-ward election system, including one option for the sequencing of elections beginning with the November 2024 Statewide General Election pursuant to Elections Code Section 10010; and waive the second reading of the selected ordinance.

Staff Contact:  
Linda A. Nemeroff, Board Administrative Officer/District Secretary  
Jill A. Sprague, General Counsel/Chief Legal Officer

#### **STRATEGIC IMPORTANCE:**

Goal - Strong Public and Policymaker Support  
Initiative - Internal and External Diversity, Equity, Inclusion and Accessibility Programs and Priorities

#### **BUDGETARY/FISCAL IMPACT:**

Adopting one of the two ordinances will save AC Transit approximately \$2.5 million in at-large election costs for the 2024 and 2026 election cycles based on 2022 figures. This does not include any additional savings that will result from reducing the size of each ward, which will have fewer voters.

#### **BACKGROUND/RATIONALE:**

On July 27, 2023, the Board of Directors adopted Resolution No. 23-033 declaring its intent to transition from hybrid ward-based and at-large elections to solely ward-based elections, to initiate procedures, and implement ward-based elections for at-large members of the Board of Directors.

On September 6 and September 13, 2023, the Board of Directors held the first and second of five public hearings required to transition AC Transit's Board elections to a seven-ward election system. Public hearings #1 and #2 were held prior to any draft maps being drawn and covered the public input process and the composition of the new voting wards prior to the drawing of any draft maps. At its September 13 hearing, the Board provided direction to begin drawing draft maps for a seven-ward election system. Based on public input

and Board feedback, the District's demographer prepared six redistricting plans for review: Green, Blue, Purple, Red, Orange, and Yellow. These plans were made publicly available on September 25, 2023, as were the plans submitted by the public by the September 20<sup>th</sup> deadline. Community of Interest submissions received through the online DistrictR mapping tool were also provided.

At Public Hearing #3 held on October 4, 2023, the Board received an in-depth overview of the six draft redistricting plans and discussed their preferences regarding the plans and the sequencing of elections. After considering all the plans, there was consensus to direct the demographer to:

- Number the wards 1 through 7, north to south for all variations of the plans presented at the next meeting;
- Address questions about sequencing at the next meeting in terms of which wards will come up for election in 2024 versus 2026;
- Renumber the Green Plan as described above;
- Prepare a variation of the Green Plan that includes Wards 1 through 5, and Wards 6 and 7 from the Red Plan; and
- Prepare a variation of the Green Plan that splits the downtown area of Oakland into at least two and up to three wards and has flexibility as to potentially rotating through Emeryville/the Oakland Hills while maintaining the community of interest in East Oakland.

On October 25, 2023, the Board held Public Hearing #4. An updated set of draft maps (referenced as Pine, Apple, Emerald and Lemon), was prepared for review and discussion. Also discussed at length was the sequencing of future elections associated with each map. After a lengthy discussion, there was consensus to move forward with Plan Pine as presented and an amended Plan Emerald moving:

1. Bushrod neighborhood in Oakland to Ward 2
2. Remaining portions of Downtown Oakland east of Broadway to Ward 3
3. Glenview neighborhood in Oakland to Ward 4
4. Cherryland to Ward 5
5. Fairview to Ward 6

In addition, the Board authorized the District Secretary to make technical, non-substantive corrections and to correct a minor external boundary adjustment in Ward 6 (previously Ward 4). The resulting prepared plans are named Plan Evergreen (previously Pine) and Plan Jade (amended Emerald).

The Board gave final direction to prepare ordinances for the November 8<sup>th</sup> public hearing as follows:

- Draft an Ordinance for Plan Evergreen with two sequencing options: 1) prioritizing wards 1, 6 and 7 for the 2024 election cycle, and 2) prioritizing wards 1, 2 and 6 for the 2024 election cycle.
- Draft an Ordinance for Plan Jade with two sequencing options: 1) prioritizing wards 1, 6 and 7 for the 2024 election cycle, and 2) prioritizing wards 1, 2 and 6 for the 2024 election cycle.

There was consensus that the proposed ordinances be presented for public comment on November 8<sup>th</sup> with the selection and adoption of one of two ordinances on December 13, 2023.

**Public Hearing #5**

In accordance with the Board's direction given at the October 25, 2023 public hearing, staff submitted two ordinances for review and final comment from the public. The revised map for Plan Emerald (now Plan Evergreen) and the map for Plan Jade were published seven days prior to the hearing. Following the close of the public hearing, the Board voted to introduce and waive the reading of both proposed Ordinances.

With respect to ordinances, Board Policy 101, Section 6.8, Board of Directors Rules for Procedure, provides:

"Unless otherwise requested by a Director, it shall be unnecessary for the District Secretary to read aloud more than the title of a written ordinance submitted to the Board for action. No ordinance shall be passed by the Board on the day of its introduction nor within three (3) days thereafter, nor at any time other than at a regular or adjourned-regular meeting.

Following action adopting an ordinance, the ordinances shall be signed by the Board President. Each ordinance shall include a certification by the General Counsel approving the document as to form and content and a certification by the District Secretary specifying the date of adoption and roll call vote adopting the ordinance.

All ordinances shall be published after passage once a week for two consecutive weeks. Ordinances shall become effective thirty (30) days from the date of final passage."

**Election Sequencing**

The issue of election sequencing is a complicated topic. As noted in the demographer's presentation at hearings #3 and #4, it is unusually complicated for AC Transit as the District is dealing with two different legal issues at the same time: transitioning from a hybrid board to one in which all seven members are elected by ward under the California Voting Rights Act ("CVRA") and redistricting deferral, meaning that because board terms are staggered, some voters must wait six years to vote for their ward representative.

**1. CVRA Considerations**

California Elections Code Section 10010(b) provides,

"In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts."

In looking for legal guidance regarding the meaning of this statutory language, Staff has conducted a diligent search of cases and redistricting decisions. The plain language of the statute provides that *both* the purposes of the CVRA and the preferences expressed by members of the districts shall be taken into account. Unfortunately, there is a dearth of case law interpreting the statute and Staff was not able to glean applicable sequencing guidance from any other jurisdictions given the District's unique fact pattern.

In looking at the legislative history of the statute, the legislature raised concerns regarding placing the only

majority Latino majority district (in the City of Anaheim) in a midterm election. In that instance, the Latino voters objected to this sequencing. In addition, the Simi Valley City Attorney's office stated in a staff report that Section 10010(b) "is interpreted to mean that if there is a district that includes a significant number of members of a 'protected class' that the California Voting Rights Act was designed to protect, that district or districts should have the opportunity to have the first election in 2020 rather than waiting to 2022." The Simi Valley staff report did not cite any cases or other authority, however.

The District has conducted extensive outreach to obtain public comment on the sequencing issue, and the "preferences expressed by members of the districts" are consistent with placing the majority Asian ward in a midterm election year. In addition, the attorney for the protected classes has submitted a letter on the class representatives' behalf stating that it is not the representative plaintiffs' position "that the Board's proposal to elect a Director from Ward 7 first at the expense of an elected representative for Ward 2 between 2024 and 2026 furthers the goals of the CVRA."

Moreover, in one tentative ruling, a Los Angeles Superior Court judge approved a sequencing in which the majority Asian area was sequenced in a midterm election year stating that, "Petitioner does not cite any evidence that scheduling Area 4 [Asian majority area] for a midterm election would be reasonably expected to dilute Asian voting rights." *Hacienda La Puente Unified School District v. Dean Logan, Recorder/County Clerk of the City of Los Angeles*, Case No. 20STCP02108, Tentative Decision on Petition for Writ of Mandate (hearing date July 10, 2020).

## 2. Deferral and Acceleration

After the 2024 election, the Board will be made up of seven seats. Four of those will come from those seats elected in 2022. Because the law prohibits cutting short the term of any of these members, the following seats will remain the same until they are up in 2026:

- \* At Large (Young)
- \* Old 3 (Syed)
- \* Old 4 (McCalley)
- \* Old 5 (Shaw)

If the person (listed above) representing one of those seats were to vacate that seat, the seat would be filled based on the old lines.

After the 2024 election, in addition to the aforementioned four seats, the Board will have three seats elected in 2024 under the new lines. Thus, during the transitional period from 2024 to 2026, the Board will continue to be constituted of seven members: 4 old + 3 new = 7.

For example, if the new Ward 2 does not vote in 2024, as under sequencing Option 1, the Board would not end up with 6 Directors. Rather, it would be made up of 4 members elected under the old lines (At Large, Old 3, Old 4, Old 5) plus three under the new (New 1, New 6, New 7). Similarly, no such sequencing scenario would result in expanding the Board to eight. Pub. Util. Code, section 24801 requires a seven-person board. Public Utilities Code section 24862 would not allow for a fourth ward to vote in 2024.

The result of these sequencing issues is that between 2024 and 2026, some people will end up with two-ward elected representatives (excluding the at-large seat), and some will end up with no-ward elected representatives but will have an at-large representative for whom they were able to vote in 2022. The former is ACCELERATION: People who vote in both 2022 and 2024 for a ward will end up with two representatives. The latter is DEFERRAL: People who voted in 2020 and then not again until 2026 would not have a ward-based representative for two years but would still have an at-large representative.

Thus, in addition to considering the purposes of the CVRA, the Board should consider deferral and acceleration as they do impact questions of fair and equal representation. As a result, the courts have said minimizing deferral is something that can legitimately be considered in determining the sequence of elections. However, some degree of acceleration and deferral is an inherent part of the redistricting process and usually unavoidable. Importantly, this is a temporary situation that will be corrected in 2026.

As an example, under both plans, and both sequencing options, some people in the Old Ward 2 are moved into the New Ward 4 and as a result would be deferred. This was done for a legitimate policy purpose, primarily to unite a previously divided community of interest (Fruitvale). The example shows why the mere existence of deferral has not been found to create a violation of fair and equal representation principles. Rather, it is just one of many factors that has to be considered in the process.

Attachment 4 provides a breakdown under both plans and both sequencing options of persons deferred and accelerated. Counsel will be prepared to address any lingering questions about election sequencing at the meeting.

### ***Community Outreach***

Community outreach throughout the redistricting process has been robust and has provided the public with several opportunities to participate in the process. At this juncture, six workshops have been held to educate the public about the process, instruct on how to use the tools available to draw maps and solicit feedback on the various redistricting plans. Please reference Staff Report 23-391b for more information about the public outreach plan for the restricting process.

### **ADVANTAGES/DISADVANTAGES:**

A significant advantage of adopting an ordinance is the substantial savings to the District in the cost of administering elections for seats on the Board of Directors. Another important outcome would be the implementation of an election system that addresses the concerns raised in the CVRA demand letter received by the District in March.

### **ALTERNATIVES ANALYSIS:**

The process to transition to a seven-ward election system is set forth in statute; therefore, there are no practical alternatives to the course of action outlined in this report.

### **PRIOR RELEVANT BOARD ACTION/POLICIES:**

Resolution No. 23-033

SR 23-391e - Public Hearing #4

**ATTACHMENTS:**

1. Ordinance 20 (Evergreen) and related Exhibits
2. Ordinance 20 (Jade) and Related Exhibits
3. Demographics for Evergreen and Jade Plans
4. Sequencing Options for Evergreen and Jade Plans (Acceleration & Deferral)

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