

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 2/12/2020

Staff Report No. 20-069

TO: AC Transit Board of Directors
FROM: Denise C. Standridge, General Counsel
SUBJECT: Impose Penalty on Director Greg Harper for Violation of the Brown Act and Board Policies

ACTION ITEM

RECOMMENDED ACTION(S):

Consider adopting Resolution No. 20-015 imposing a penalty on Director Greg Harper for violating the California Brown Act and Board Policies 101 and 702.

STRATEGIC IMPORTANCE:

Goal - Strong Public and Policymaker Support

Adopting Resolution No. 20-015 imposing penalties on Director Harper for his violation of the Brown Act and Board Policies supports the District's commitment to ethical conduct and preserving the public's confidence in the District.

BUDGETARY/FISCAL IMPACT:

Adopting this resolution does not have a budgetary or fiscal impact.

BACKGROUND/RATIONALE:

This resolution arises out of Director Harper's admitted disclosure of documents from Closed Session.

On November 13, 2019, the Board met in Closed Session with Nathaniel Kramer, the District's Chief Labor Negotiator, at which time he presented an update on the District's labor negotiations with Amalgamated Transit Union - Local 192 (ATU). During the presentation he provided the Board with a handout, which was supposed to be returned at the end of the presentation. Director Harper admitted that he took at least four (4) pages from the presentation when he left the Closed Session.

Three days later, on November 16, 2019, Director Harper attended ATU's Informational Picket held at the Fruitvale BART station from 10:00 a.m. to 1:00 p.m. Director Harper admits that he had copies of the Closed Session documents that he did provide to approximately two people. Director Harper admits that he did not have Board permission to disclose these documents.

Disclosure of these documents is in violation of Board Policy 101, Section 6.16, Board Policy 702, Section IV.E

and the Brown Act, specifically California Government Code Section 54963. This violation came to the attention of the Board and the Board directed then General Counsel, Denise Standridge, to obtain a legal opinion from outside counsel. The opinion letter was issued December 19, 2019 by Robin Johansen and James Harrison. The Board waived the attorney-client privilege of this opinion letter, minus the attachments, at the meeting on January 22, 2019. One of the recommendations was to amend Board Policy 702 to allow the Board to exclude someone who violated closed session from further closed sessions on the topic. This recommendation was finalized at the January 22, 2019 meeting. The opinion letter is very clear that Director Harper violated the law and the Board policies despite his argument that he did not believe what he disclosed was confidential information. Regardless of his intention and beliefs, the outside counsel opinion is clear that Director Harper indeed disclosed confidential information.

Resolution No. 20-015 is provided as Attachment 1 to this report and recommends that Director Harper be censured and excluded from future closed sessions regarding ATU labor negotiation discussions pertaining to the current contract being bargained.

ADVANTAGES/DISADVANTAGES:

The advantage of imposing a penalty is to reinforce the District's commitment to upholding its Board policies as well as the law. There is no disadvantage to the District imposing a penalty on Director Harper.

ALTERNATIVES ANALYSIS:

The alternative is to not impose any penalty on Director Harper for his misconduct. This is not recommended because it is important for Director Harper to understand the seriousness of his misconduct and it is important for the public, employees and policymakers to know that the District is committed to ethical and legal conduct and upholding the law and its policies.

PRIOR RELEVANT BOARD ACTION/POLICIES:

BP 101 - Board of Directors Rules of Procedure
BP 702 - Conflicts of Interest and Standards for Ethical Conduct

ATTACHMENTS:

1. Resolution No. 20-015
2. Outside counsel opinion of Remcho, Johansen & Purcell.

Prepared by:

Denise C. Standridge, General Counsel