



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

MINUTES

Board of Directors - Regular Meeting

VIRTUAL MEETING

The members of the Board will participate from remote locations.
See page 2 of the agenda for public participation instructions.

Wednesday, April 22, 2020 at 5:00 PM

Closed Session - 4:00 PM (Items 7A-7D)

MEMBERS OF THE BOARD OF DIRECTORS

JOE WALLACE, PRESIDENT (WARD 1)

ELSA ORTIZ, VICE PRESIDENT (WARD 3)

GREG HARPER (WARD 2)

MARK WILLIAMS (WARD 4)

DIANE SHAW (WARD 5)

H. E. CHRISTIAN PEEPLES (AT-LARGE)

JOEL YOUNG (AT-LARGE)

BOARD OFFICERS

MICHAEL A. HURSH, GENERAL MANAGER

JILL A. SPRAGUE, GENERAL COUNSEL

LINDA A. NEMEROFF, DISTRICT SECRETARY

1. CALL TO ORDER

The Alameda-Contra Costa Transit District Board of Directors held a regular virtual meeting on Wednesday, April 22, 2020.

Members of the Board participated via video conference from off-site locations in accordance with the statewide shelter in place order issued on March 16, 2020, and extended through May 4, 2020.

At 4:02 p.m., the Board of Directors convened in Closed Session to discuss Items 7.A. - 7.D. as listed on the agenda. All Board members were present with the exception of Director Harper who was absent. Closed Session concluded at 4:28 p.m.

President Wallace called the Board of Directors meeting to order at 5:03 p.m.

2. ROLL CALL

Present: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

3. PUBLIC COMMENT

Yvonne Williams, President and Business Agent of ATU Local 192, expressed frustration that that the union still did not reached a contract with the District, nor had the union received a response to its most recent proposal.

Joyce Willis, Financial Secretary for ATU Local 192, complained about the status of contract negotiations with the District and shared the same frustration expressed by Ms. Williams.

4. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

5. CONSENT CALENDAR

Director Harper pulled item 5.B. for clarification.

Approval of the Consent Agenda

MOTION: PEEPLES/ORTIZ to receive, approve or adopt the items on the Consent Calendar as indicated with the exception of Item No. 5.B. which was pulled off the consent calendar by Director Harper. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 5.A.** Consider receiving the Retirement Board minutes of February 20, 2020. [20-169](#)

MOTION: PEEPLES/ORTIZ to receive, approve or adopt items on the Consent Calendar, as indicated. The motion carried by the following vote:

- 5.B.** Consider adoption of Resolution No. 20-016 authorizing the General Manager or his designee to file and execute applications and funding agreements with the California Department of Transportation [20-117](#)

(Caltrans) for allocations of FY 2019-20 Low Carbon Transit Operations Program (LCTOP) funds for the Easy Bay Bus Rapid Transit (BRT) operating assistance; to provide Certifications and Assurances, and assign the General Manager, or his designee, as the Authorized Agent for the LCTOP.

Director Harper pulled Item 5.B. off the consent calendar to inquire if the BRT buses that would be purchased with the funds would be hybrid buses. Chief Operating Officer Salvador Llamas confirmed that all of the buses the District planned to purchase were diesel-hybrid models.

MOTION: PEEPLES/ORTIZ to adopt Resolution No. 20-016 authorizing the General Manager or his designee to file and execute applications and funding agreements with the California Department of Transportation (Caltrans) for allocations of FY 2019-20 Low Carbon Transit Operations Program (LCTOP) funds for the Easy Bay Bus Rapid Transit (BRT) operating assistance; to provide Certifications and Assurances, and assign the General Manager, or his designee, as the Authorized Agent for the LCTOP. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 5.C.** Consider adoption of Resolution 20-017 authorizing the General Manager, or his designee, to file and execute applications and funding agreements with the Metropolitan Transportation Commission (MTC) for Fiscal Year (FY) 2020-21 allocations of Transportation Development Act (TDA), State Transit Assistance (STA), Assembly Bill 1107 (AB 1107) and Regional Measure 2 (RM2) bridge toll revenues. [20-118](#)
- 5.D.** Consider adoption of Resolution No. 20-021 authorizing the General Manager, or his designee, to execute related documents under the FY 2017-18 State of California's Affordable Housing and Sustainable Communities (AHSC) Program as a joint applicant and joint grantee with BRIDGE Housing (BRIDGE) in connection with the Berkeley Way Project located at Berkeley Way and Henry Street, Berkeley, CA 94707. [18-316a](#)
- 5.E.** Consider receiving the Monthly Report on Investments for February, 2020. [20-175](#)
- 5.F.** Consider approving minor, non-substantive amendments to Board Policy 360 - Actuarial Valuations for Retirement Fund Policy. [20-161](#)
- 5.G.** Consider approving contract assignment from York Risk Services Group to Sedgwick Claims Management Services. [15-164b](#)
- 5.H.** Consider authorizing the General Manager to enter into a six-month contract extension with Concentra for drug and alcohol testing and medical examinations from July 1, 2020 to December 31, 2020. [17-333d](#)

- 5.I. Consider the adoption of Resolution No. 20-019, pledging to join transportation leaders against human trafficking. [20-160](#)

6. REGULAR CALENDAR

External Affairs Items - Chair Ortiz

- 6.A. Consider receiving the Monthly Legislative Report. [20-075](#)

Director of External Affairs and Community Relations Claudia Burgos presented the staff report.

Director Williams inquired about the status of a proposal in the Senate concerning hazard pay for front line workers. Ms. Burgos believed there had been no further discussion of the proposal since its introduction.

Public Comment:

Yvonne Williams, President and Business Agent of ATU Local 192, reported that the union and many other groups attended the webinar hosted by the Metropolitan Transportation Commission and advocated their support for federal COVID-19 relief for transit agencies, including the recovery of fare losses and the provision of personal protective equipment for transit workers. She added that ATU would continue to advocate for a COVID-19 response fund for the welfare of transit districts and workers.

MOTION: WALLACE/WILLIAMS to receive the Monthly Legislative Report. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.B Consider receiving an update on the District's actions to date in response to the Coronavirus Pandemic (COVID-19.) [20-187](#)

Executive Director of External Affairs, Marketing & Communications Beverly Greene presented the staff report.

Director Shaw asked about signage on buses and/or at the stops prioritizing transit for essential workers so they could get to their destination. She also inquired about street closures and the permanence of slow streets measures during the pandemic. General Manager Michael Hursh advised that staff would review the request for signage and report back. Ms. Greene advised that the street closures would be discussed in a report to the Board planned in May.

President Wallace felt the requirement to wear a mask on public transit was untenable when many riders could not afford to purchase one. Director Harper noted that he received a robo call from Alameda County Public Health that it was now compulsory to wear a mask, adding that operators have to wear a mask. Ms. Greene advised that the District now has enough personal protective equipment for each operator.

With regard to service, Director Harper asked if the special service would stay in place until August, to which Ms. Greene responded that it would. Vice President Ortiz asked about the enforcement of passenger thresholds in light of social distancing. Ms. Greene advised that when a bus reaches its load limit, it cannot pick up any more passengers and would only drop off passengers. She added that some runs will have a trailer bus that picks up additional passengers.

Vice President Ortiz asked what a 50% drop in sales tax revenue was equivalent to. Director of Management and Budget Chris Andrichak advised that it was approximately \$80 million for the whole year.

Director Harper asked if online purchases generate a local share of sales tax. Ms. Greene advised that she would research and report back.

Public Comment:

Joyce Willis, ATU Local 192, asked what BART and AC Transit were doing to ensure that contract paratransit providers have personal protective equipment for drivers.

MOTION: WILLIAMS/SHAW to receive an update on the District's actions to date in response to the Coronavirus Pandemic (COVID-19.) The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

Finance and Audit Items - Chair Peeples

- 6.C.** Consider receiving the semi-annual Retirement Board Update. [20-190](#)

Retirement System Manager Hugo Wildmann presented the staff report.

Vice President Ortiz commented that the current economic downturn will be reflected in the District's 2021 contributions which will most likely increase. Mr. Wildmann concurred with the comment saying that the equity investments had dropped 13% which will impact the retirement contributions starting July 1, 2021.

Director Harper urged the staff to recognize the gravity of the current situation in terms of market volatility. He added that the weak economy will continue over the next two or three years and was worried that the report lacks urgency. Mr. Wildmann advised that the investment results this year are unsatisfactory but behave expectedly for the current situation. He added that the Retirement Board continues to discuss different views to alleviate the loss.

MOTION: ORTIZ/SHAW to receive the semi-annual Retirement Board Update. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.D.** Consider adopting Resolution No. 20-023 granting continued appropriations and continued spending authority to the General Manager and delaying adoption of the FY 2020-21 Operating and Capital Budgets until September 30, 2020. [20-062a](#)

There was no presentation of the staff report.

MOTION: PEEPLES/SHAW to adopt Resolution No. 20-023 granting continued appropriations and continued spending authority to the General Manager and delaying adoption of the FY 2020-21 Operating and Capital Budgets until September 30, 2020.

The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

- 6.E.** Consider authorizing the General Manager to renew the existing contract with Bank of America for the District's comprehensive banking services for a term of three (3) years and two (2) one-year options. [20-182](#)

Director of Revenue Management Sue Lee presented the staff report.

Vice President Ortiz questioned the sole source nature of the contract to Bank of America, believing the District should enlist small, local banks to provide the services.

Director Peeples advised that he would not support the staff recommendation because he believed the bank was not a good corporate citizen.

Director Harper agreed with Vice President Ortiz and Director Peeples and felt the District should at least make an inquiry into other banks, suggesting that Chase should have been considered. In response, Ms. Lee advised that Chase had submitted a proposal under the previous solicitation for banking services, but their offer was inferior to Bank of America. Chief Financial Officer Claudia Allen advised that any effort to switch banks at this time would be a strain on the District's already limited Information Technology staff and resources.

Director Shaw spoke from her own experience, validating staff's concern about the amount of time and resources that would be required to initiate services with another bank.

MOTION: WALLACE/YOUNG to authorizing the General Manager to renew the existing contract with Bank of America for the District's comprehensive banking services for a term of three (3) years and two (2) one-year options. The motion carried by the following vote:

Ayes: Wallace, Shaw, Williams, Young

Nays: Ortiz, Harper, Peeples

- 6.F.** Consider authorizing the General Manager to approve and execute the renewal of the District's 2020-2021 Transit Operations Insurance Program.

[20-183](#)

There was no presentation of the staff report. Director Harper requested to bifurcate the Excess Workers' Compensation Insurance from the other policies. He also asked if the fiduciary liability insurance could be used to pay for the District's defense if it were named in a lawsuit against the pension board as an additional fiduciary of the pension plan. P.J. Skarlanic with Alliance Insurance advised that coverage for a defense was included.

With regard to the Excess Workers' Compensation Insurance, Director Harper pointed out that the policy only paid out in two of the last ten years and did not warrant the cost of the premium. He added that an additional factor that should be considered was a reduction in the workforce in the coming years. He believed that the insurance was not useful and, at a minimum, the District should increase its self-insured retention. Claims & Liability Manager Jean Paul Popoff advised that because of COVID-19, there a lot of unknowns, especially with a large number of staff that are working from home where the District has no control of the employee's work site or the ability to determine if an injury occurred during the scope and course of work. Other factors include proposed legislation that would make it easier to attach an injury/illness event to the scope and course of work and would lower the threshold of proof. In addition, Governor Newsom is considering an executive order that would make it easier to file a claim. Mr. Skarlanic further advised that it was impossible to predict the impact of workers' compensation claims that may fall within the self-insured retention or spill over into the excess liability coverage. He added that the driving forces behind the premium are the rate developed by the carriers and the District's payroll.

Director Peeples commented that he agreed with Director Harper with respect to the Excess Workers' Compensation insurance, but understood the concerns regarding COVID-19.

MOTION: PEEPLES/WALLACE to authorize the General Manager to approve and execute the renewal of the District's Excess Workers' Compensation Insurance (Option 2). The motion carried by the following vote:

Ayes: Peeples, Wallace, Harper, Williams, Shaw, Young, Ortiz

MOTION: PEEPLES/ORTIZ to authorize the General Manager to approve and execute the renewal of the District's 2020-2021 Transit Operations Insurance Program, excluding the Excess Workers' Compensation Insurance. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

Planning Items - Chair Shaw

- 6.G.** Consider receiving the monthly construction progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. [20-145](#)

Director of Bus Rapid Transit David Wilkins presented the staff report.

MOTION: ORTIZ/WILLIAMS to receive the monthly construction progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

Operations Items - Chair Young

- 6.H.** Consider receiving report and provide feedback on recommendations regarding the District's use of cameras on BRT platforms. [20-147](#)

General Counsel Jill Sprague presented the staff report.

Director Shaw asked about a chain of custody document and who would be responsible for overseeing it. Ms. Sprague advised that the document under development was a use policy and would reside with the General Counsel's Office who would work with privacy advocates to ensure their concerns are heard. The policy would be specific to the cameras on the BRT Platforms. Chief Information Officer Ahsan Baig advised that his area would be responsible for records retention, data management and the development of roles and responsibilities for use of the data collected.

Director Harper asked if the law still held that there was no legal right to privacy while in public, to which Ms. Sprague advised that it was; however, staff was sensitive to the public's concerns around privacy. Director Harper commented that the cameras would also aid public health in tracing contacts of people who have contracted the Coronavirus. Director Young advised that while he was sympathetic to the privacy advocates, he agreed with Director Harper.

Public Comment:

Yvonne Williams, President of ATU Local 192, commented that the union had the same privacy concerns as the general public and would like to know how the cameras might have an impact on its members. She requested that an employee privacy section be added to the policy.

MOTION: PEEPLES/ORTIZ to direct staff to meet with the privacy advocates and development a draft privacy policy for the BRT platforms for further review by the Board. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Shaw, Williams, Peeples

Nayes: Harper, Young

Board Administrative Matters - President Wallace:

- 6.I.** Consider approving the appointment of retired employee Anne Fudge [20-126](#)

to the position of Executive Coordinator, certify that the position is critically needed, and grant an exception to Board Policy 244 - Temporary Employee Staffing, to allow Ms. Fudge, who retired on March 1, 2020, to temporarily return to work in the General Counsel's Office.

There was no presentation of the staff report.

MOTION: YOUNG/PEEPLES to approve the appointment of retired employee Anne Fudge to the position of Executive Coordinator, certify that the position is critically needed, and grant an exception to Board Policy 244 - Temporary Employee Staffing, to allow Ms. Fudge, who retired on March 1, 2020, to temporarily return to work in the General Counsel's Office part-time for a period not to exceed six months. The motion carried by the following vote:

Ayes: Wallace, Ortiz, Harper, Shaw, Williams, Peeples, Young

7. CLOSED SESSION/REPORT OUT

Item 7.D. was removed from the Closed Session agenda. There was nothing to report out from closed session.

7.A. Conference with Legal Counsel – Potential Litigation

(Government Code Section 54956.9(b)) (Two Cases)

7.B. Conference with Labor Negotiators

(Government Code Section 54957.6):

Agency Designated Representative:

- General Manager Michael Hursh;

- Acting Executive Director of Human Resources Nathaniel Kramer;

Employee Organizations: ATU Local 192, AFSCME Local 3916, IBEW Local 1245,

Unrepresented Employees

7.C. Public Employee Performance Evaluation

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

7.D. Conference with Real Property Negotiators

(Government Code Section 54956.8) (Five Matters)

- Property: 971 & 973 66th Avenue, Oakland, CA
- Agency negotiator: General Manager Michael A. Hursh/Real Estate Manager Lois Rawlings
- Negotiating parties: Matt Hill for Summit CFS
- Under negotiation: Rent abatement requests from District tenants; instruction to negotiator may concern rental amounts and terms of payment.

- Property: 975 & 977-A 66th Avenue, Oakland, CA
- Agency negotiator: General Manager Michael A. Hursh/Real Estate Manager Lois Rawlings
- Negotiating parties: Temesghen Gebremichael for TTG Shipping Intl
- Under negotiation: Rent abatement requests from District tenants; instruction to negotiator may concern rental amounts and terms of payment.

- Property: 977-B & 995 66th Avenue, Oakland, CA
- Agency negotiator: General Manager Michael A. Hursh/Real Estate Manager Lois Rawlings
- Negotiating parties: Eric Shanks for Cypress Mandela
- Under negotiation: Rent abatement requests from District tenants; instruction to negotiator may concern rental amounts and terms of payment.

- Property: 37650-A Sycamore, Newark, CA
- Agency negotiator: General Manager Michael A. Hursh/Real Estate Manager Lois Rawlings
- Negotiating parties: David Tay for Piotech
- Under negotiation: Rent abatement requests from District tenants; instruction to negotiator may concern rental amounts and terms of payment.

- Property: 425 Mission Street, San Francisco, CA
- Agency negotiator: General Manager Michael A. Hursh/Real Estate Manager Lois Rawlings
- Negotiating parties: Deanna Simsek (Rep) for Greyhound Lines Int.
- Under negotiation: Rent abatement requests from District tenants; instruction to negotiator may concern rental amounts and terms of payment.

8. AGENDA PLANNING

Director Shaw requested a report on service including thoughts about supplemental service.

8.A. Review of Agenda Planning Pending List. [20-010g](#)

Director Shaw requested a report on the effects of the pandemic on service and including any thoughts about issues concerning supplemental service.

9. GENERAL MANAGER'S REPORT

9.A. General Manager's Report for April 22, 2020. [20-008g](#)

The report was provided for information only.

10. BOARD/STAFF COMMENTS

(Government Code Section 54954.2)

Members of the Board commented on meetings and events attended since the last Board meeting.

11. ADJOURNMENT

There being no further business to come before the Board of Directors, the meeting adjourned at 6:57 p.m. The next meeting of the Board is scheduled for May 13, 2020 at 5:00 p.m.

Respectfully submitted,

/s/

Linda A. Nemeroff

District Secretary