



## **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**

### **MINUTES**

#### **Board of Directors - Regular Meeting**

VIRTUAL MEETING

Zoom link <https://actransit.zoom.us/j/94215352613>

Dial in phone number (669) 900 6833 Webinar ID: 942 1535 2613

**Wednesday, September 23, 2020 at 5:00 PM**

**Phone (669) 900 6833 Webinar ID: 942 1535 2613**

**See Agenda for Instructions**

#### **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, September 23, 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.

At 4:02 p.m., the Board of Directors convened in Closed Session to discuss Items 8.A. - 8.D. as listed on the agenda. All Board members were present except Director Williams who was absent. Closed Session concluded at 4:27 p.m.

Vice President Ortiz called the Board of Directors meeting to order at 5:04 p.m. and chaired the meeting due to the fact that President Wallace was experiencing technical difficulties.

**2. ROLL CALL**

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

**3. PUBLIC COMMENT**

There was no public comment offered.

**4. MODIFICATIONS TO THE AGENDA**

Vice President Ortiz announced that the General Manager requested that Item 5.F. (towing contract) be taken off the consent calendar for a full presentation.

**5. CONSENT CALENDAR**

MOTION: WILLIAMS/PEEPLS to receive or approve the items on the Consent Calendar as indicated, with the exception of Item 5.F (towing contract) which was pulled off consent for a staff presentation. The motion carried by the following vote:

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

**5.A.** Consider approving Board of Directors minutes of September 9, 2020. [20-373](#)

MOTION: WILLIAMS/PEEPLS to approve the Board of Directors minutes of September 9, 2020. The motion carried by the following vote:

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

**5.B.** Consider receiving the Monthly Report on Investments for July, 2020. [20-342](#)

MOTION: WILLIAMS/PEEPLS to receive the Monthly Report on Investments for July, 2020. The motion carried by the following vote:

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

**5.C.** Consider review of Board Policy 422 - Disposition of Lost and Unclaimed Property with no recommended changes. [20-309](#)

MOTION: WILLIAMS/PEEPLES to receive report on the review of Board Policy 422 - Disposition of Lost and Unclaimed Property with no recommended changes. The motion carried by the following vote:

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

- 5.D.** Consider approving an amendment to the Early Morning Services (Early Bird Express) Agreement with the Bay Area Rapid Transit District (BART) to clarify and revise language regarding billing calculations and to make a one-time credit of \$339,343 to BART based on the clarified and revised language. [18-219a](#)

MOTION: WILLIAMS/PEEPLES to approve an amendment to the Early Morning Services (Early Bird Express) Agreement with the Bay Area Rapid Transit District (BART) to clarify and revise language regarding billing calculations and to make a one-time credit of \$339,343 to BART based on the clarified and revised language. The motion carried by the following vote:

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

- 5.E.** Consider approving the award of contracts for outside legal services to the firms recommended in this staff report. [20-349a](#)

*[A revised list of law firms was provided to the Board at the meeting and is incorporated into the file by reference.]*

MOTION: WILLIAMS/PEEPLES to approve the award of 24 contracts for outside legal services to the revised list of firms recommended in the staff report. The motion carried by the following vote:

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

- 5.F.** Consider authorizing the General Manager to award a contract to Atlas Towing for heavy duty towing services. [20-054a](#)

Chief Operating Officer Salvador Llamas presented the staff report, clarifying that staff was requesting approval to award a contract with a three-year base period, plus two, one-year options to Atlas Towing for heavy duty towing services. The total cost for the three-year base contract is \$617,061.20.

Director Shaw inquired about the difference in cost over the prior contract to which Mr. Llamas advised that the new contract was comparable in cost to what the District had previously paid for these services.

MOTION: SHAW/WALLACE to approve the award of a three-year contract with two one-year options to Atlas Towing for heavy duty towing services with a total cost for the three-year base contract of \$617,061.20. The motion carried by the following vote:

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

- 5.G.** Consider awarding three (3) on-call Transportation Planning contracts to DKS Associates; Kimley Horn and Associates; and Kittelson & [19-157a](#)

Associates Inc. for a five-year term.

MOTION: WILLIAMS/PEEPLS to approve the award of three (3) on-call Transportation Planning contracts to DKS Associates; Kimley Horn and Associates; and Kittelson & Associates Inc. for a five-year term. The motion carried by the following vote:

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

## **6. REGULAR CALENDAR**

### **External Affairs Items - Chair Ortiz**

- 6.A.** Consider receiving a report on the Emergency Communications and Media Plan developed to address emergency division closures and service disruptions. [Requested by Director Peeples - 9/9/20]

[20-371](#)

Communications Manager Julia Kocs presented the staff report.

Director Shaw asked if the lack of notification pertained only to the high ridership lines and as wanted to know what new elements were added to the communication plan. Ms. Kocs responded that service was cancelled on the high ridership lines in a way that was unplanned and, on a weekend, when regular resources were not available to provide notifications, so information was provided on Twitter and Facebook. She added that staff was developing collateral at-site signage kits that could be quickly deployed at bus stops to communicate cancellations, as well as ambassador outreach in addition to providing information to cities that can quickly be communicated to residents. Director Shaw suggested that a survey could provide some insight on how customers would like to be notified.

Director Peeples advised that while he does not do social media, those that do told him there was an announcement that came out on Wednesday, but there were no other posts until late Saturday or Sunday. He asked if overtime can be authorized so that someone is available to continuously post information every hour rather than days apart. General Manager Michael Hursh advised that overtime has been pre-approved in the future.

Director Harper asked why it was necessary to close an entire division. Mr. Hursh advised that staff felt it was necessary because there was a significant spike in positive COVID tests (approximately seven positive cases) over the course of a week and a deep cleaning of the division was necessary to get the situation under control. Director Harper commented that it was his understanding that aerosols were the problem and not necessarily transmission by touching doorknobs, surfaces, etc. He requested a report on whether this was the correct course of action, saying that contact tracing should be an area of focus in making a determination to shut down an entire division.

Director Harper suggested that staff also utilize the 511 system to get information to riders. He also felt the plan needed more depth and should directly state who was responsible for executing the various elements associated with the various

communication channels to riders.

**Public Comment:**

**Darrell Owens**, East Bay Transit Riders Union, commented on the lack of notification to riders, saying that there needs to be more outreach and suggested a mass text to riders. It was also suggested that an ambassador go along the line to notify people what is going on. In addition, 511 should include a notification as should news organizations.

**Darek Sagehorn**, East Bay Transit Riders Union, commented on the lack of respect for riders, noting that the plan proposed by staff required more detail in terms of who is tasked with certain activities associated with notifying passengers. He requested that the Board ask staff to provide more detail.

**Jean Walsh** agreed with the previous speaker, saying that there needed to be people on call in order to implement the plan. She also agreed with Director Harper on whether it was necessary to close the entire division for deep cleaning given the consequences it has to riders.

MOTION: WALLACE/PEEPLES to receive a report on the Emergency Communications and Media Plan developed to address emergency division closures and service disruptions. The motion carried by the following vote:

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

- 6.B.** Consider receiving the monthly legislative report and approval of legislative positions. [20-362](#)

Director of Legislative Affairs and Community Relations Claudia Burgos presented the staff report and gave an overview of staff's recommended legislative positions.

MOTION: PEEPLES/WALLACE to receive the monthly legislative report and approve legislative positions. The motion carried by the following vote:

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

- 6.C.** Consider adoption of Resolution No. 20-048 in support of Schools and Local Communities Funding Act (Proposition 15). [Requested by Vice President Ortiz - 9/9/20] [20-370](#)

There was no presentation of the staff report.

MOTION: PEEPLES/WALLACE to adopt Resolution No. 20-048 in support of Schools and Local Communities Funding Act (Proposition 15). The motion carried by the following vote:

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

- 6.D.** Consider adoption of Resolution No. 20-047 expressing support for, and declaration of, California Clean Air Day. [20-354](#)

There was no presentation of the staff report.

MOTION: HARPER/WALLACE to adopt Resolution No. 20-047 expressing support for,

and declaration of, California Clean Air Day. The motion carried by the following vote:

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

#### **Finance and Audit Items - Chair Peeples**

- 6.E.** Consider adoption of Resolution 20-045 affirming the District's participation in the Clipper START Program and authorizing the General Manager or his designee to file and execute applications with the Metropolitan Transportation Commission (MTC) for said Program. [20-293](#)

[A revised resolution was presented at the meeting for the Board's consideration.]

There was no presentation of the staff report.

MOTION: YOUNG/HARPER to adopt revised Resolution 20-045 affirming the District's participation in the Clipper START Program and authorizing the General Manager or his designee to file and execute applications with the Metropolitan Transportation Commission (MTC) for said Program. The motion carried by the following vote:

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

#### **Planning Items - Chair Shaw**

- 6.F.** Consider receiving the Quarterly Update on the Strategic Plan Progress. [20-339](#)

Director of Project Controls and System Analysis William Tonis presented the staff report.

Director Shaw asked about capital improvements and when they were scheduled to start. Mr. Tonis responded that the Strategic Plan provides long range goals and metrics, however, the five-year horizon of capital projects was contained in the Capital Improvement Program, which was brought to the Board last year. The Strategic Plan discusses the long-range goals with regard to capital priorities. General Manager Michael Hursh advised that he has asked staff to review the capital program and re-prioritize it in light of the District's finances. Director Shaw further commented on the Governor's executive order to eliminate new gas-powered personal vehicles by 2035 and what impact this might have on the District's ability to meet its goal of a 100% zero emission fleet by 2040.

Director Harper suggested that staff revisit the Strategic Plan in the next four to six months and see what might need to be modified in light of COVID-19.

MOTION: ORTIZ/PEEPLS to receive the Quarterly Update on the Strategic Plan Progress. The motion carried by the following vote:

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

- 6.G.** Consider the options outlined in the staff report concerning continued [20-366](#)

meal delivery services by East Bay Paratransit and provide additional direction if necessary.

Accessible Services Manager Mallory Nestor-Brush presented the staff report and gave an overview of the options under consideration.

Vice President Ortiz asked if food delivery was permissible under federal guidelines. Ms. Brush advised that it was.

Vice President Ortiz also asked if savings in the paratransit budget was what allowed the District's participation in the program. Ms. Brush responded that COVID presented savings to the District, but what drove the decision to participate in the program was the emergency need for drivers. General Manager Michael Hursh advised that we are saving money on paratransit because we are not providing as many rides. He added that we would save more money without food delivery, but when we started doing it, it was only supposed to be temporary. No one thought it would go on for six months, which is why he wanted the Board to weigh in.

Vice President Ortiz asked if paratransit ridership was not expected to increase through January 2021. Ms. Brush advised that she expects ridership to remain flat.

Director Shaw asked about the cost of food delivery compared to regular paratransit service. Ms. Brush advised that we were paying a lower amount than we would for pay for paratransit service.

**Public Comment:**

**Hilary Bass**, Alameda County Sheriff's Office, expressed her gratitude to AC transit for the meal delivery services by East Bay Paratransit and expressed her support and appreciation to the service model employed to bring meals to homebound people. Speaker Bass advised that the Alameda County Sheriff's Office is working to apply this model countywide.

**Sara Lamnin**, Hayward City Councilmember, expressed support and appreciation for the meal delivery service program, saying that the service relieves a burden of the public which have so many other challenges due to the Covid-19 pandemic.

**Warren Cushman** commented that while the meal delivery was a good program, East Bay Paratransit must work to fulfill its service to provide ADA-eligible people with disabilities as mandated. Speaker Cushman urged other public service partners to include members of the disabled community in developmental discussions to assure their needs are met.

**Sheela Gunn-Cushman** wanted AC Transit buses to actually have verbal announcements stating the service is for essential services only, otherwise East Bay Paratransit is not in compliance with the Americans with Disabilities Act in doing essential services, which she understands would affect the meal delivery service by East Bay Paratransit.

MOTION: YOUNG/ORTIZ to approve OPTION B (noted in the Staff Report as Option 2) to continue food delivery services through January 2021 or a time determined by the General Manager and the Board, and work with the programs to seek not only reimbursement for the services but an alternative, appropriate source of funding. The motion carried by the following vote:

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

### **Operations Items - Chair Young**

- 6.H.** Consider receiving a report on positive air flow tests and procedures to ventilate coaches during the COVID-19 response. [20-365](#)

The item was continued to the October 14, 2020 Board meeting.

### **7. PUBLIC HEARING - 6:00 PM**

- 7.A.** Hold public hearing to receive public comment on the proposed elimination of the Paper BART-to-Bus discount transfer ticket; and consider the adoption of Resolution No. 20-046 approving the elimination of the Paper BART-to-Bus discount transfer ticket, the related Title VI Equity Analysis, and directing staff to amend Board Policy 333 (Fare Policy Goals and Methodology). [20-269a](#)

Prior to the start of the public hearing, the District Secretary announced the availability of Spanish and Chinese interpreters.

Vice President Ortiz welcomed everyone to the public hearing on the proposed elimination of the Bart-to-Bus paper transfer ticket. It was further announced that notices of the hearing were published in accordance with Board Policy 110 in the Bay Area Newsgroup family of newspapers as well as in Sing Tao Daily and El Mundo publications.

Vice President Ortiz opened the hearing at 6:10 p.m. and the meeting was turned over to Title VI Administrator Sally Goodman for the presentation of the staff report.

Three persons presented testimony on the proposal. A summary of the testimony given is incorporated into the minutes by reference as Exhibit A. A total of 19 written comments were received and are incorporated into the file by reference. The public hearing closed at 6:23 p.m.

Director Shaw concluded from some of the comments that people may have misunderstood believing the hearing was about BART tickets. She further commented that she would support the proposal on the grounds that BART would require riders to have a Clipper card.

Director Peeples advised that he read the comments and most of them addressed the issue of whether a Clipper card was needed to use BART, which is not AC Transit's issue. He believed it was not effective to maintain the old transfer machines and noted that



the issues raised by people who were concerned they were being tracked through their Clipper card was not a good reason to maintain equipment that no one uses.

President Wallace advised that he was in support of the proposal because no one uses the old ticket machines anymore.

MOTION: PEEPLES/WALLACE to adopt Resolution No. 20-046 approving the elimination of the Paper BART-to-Bus discount transfer ticket, the related Title VI Equity Analysis, and directing staff to amend Board Policy 333 (Fare Policy Goals and Methodology). The motion carried by the following vote:

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

## **8. CLOSED SESSION/REPORT OUT**

General Counsel Jill Sprague reported out on the following:

MOTION: ORTIZ/PEEPLES to approve settlement in the amount of \$300,000 in the matter of Markowitz v. AC Transit, Case No. RG19-003956. The motion carried by the following vote:

AYES: Ortiz, Peeples, Harper, Shaw, Young, Wallace

ABSENT: Williams

### **8.A. Conference with Legal Counsel – Existing Litigation**

(Government Code Section 54956.9 (a))

Ian Markowitz v. AC Transit, ACSC No. RG19003956

### **8.B. Conference with Legal Counsel – Potential Litigation**

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

### **8.C. 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

### **8.D. Public Employee Performance Evaluation**

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

## **9. AGENDA PLANNING**

### **9.A. Agenda Planning Pending List for September 23, 2020.**

[20-010p](#)

Director Shaw requested a continued discussion of the Communication Plan specific to major services disruptions as a result of sudden, unexpected division closures. (Director

Harper concurred)

**10. GENERAL MANAGER'S REPORT**

**10.A.** General Manager's Report for September 23, 2020.

[20-008p](#)

The report was presented for information only.

**11. BOARD/STAFF COMMENTS**

(Government Code Section 54954.2)

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

**12. ADJOURNMENT**

Next Meeting: October 14, 2020 at 5:00 p.m.

There being no further business to come before the Board of Directors, the meeting adjourned at 6:39 p.m. The Board will be in a recess through the month of August with the next meeting regular meeting scheduled for October 14, 2020 at 5:00 p.m.

Respectfully submitted,

/s/

Linda A. Nemeroff  
District Secretary