



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

### **MINUTES**

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

AC Transit General Offices  
2nd Floor Board Room  
1600 Franklin Street, Oakland, CA 94612

**Wednesday, December 11, 2019 at 5:00 PM**  
**Closed Session - 3:30 PM (Items 8A-8H)**

#### **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**  
**DENISE C. STANDRIDGE, GENERAL COUNSEL**  
**LINDA A. NEMEROFF, DISTRICT SECRETARY**

**1. CALL TO ORDER**

The Alameda-Contra Costa Transit District Board of Directors held a regular meeting on Wednesday, December 11, 2019.

The meeting was called to order at 3:35 p.m. for the purpose of Closed Session. All Board members were present. The Board convened in Closed Session to discuss Items 8A-8H as listed on the agenda. Closed Session concluded at 4:49 p.m.

President Wallace called the Board of Directors meeting to order at 5:01 p.m.

**2. ROLL CALL**

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

**3. PRESENTATION****3.A. A FASTER Bay Area.**[19-402](#)

Stewart Cohen with FASTER Bay Area gave the presentation, saying that the proposed legislation (measure) would include elements to provide a sales tax fairness credit as well as means-based and student fares.

Vice President Ortiz asked about the funding ratio for buses and rail. Mr. Cohen advised that there would be three pots of money (two pots that would only go to bus operators, and a third pot that would be mode agnostic at the regional level for bus, ferry and rail). Of the third pot of money, he added that the only 20% may be guaranteed for buses and they hoped to name 10 years' worth of project funding with the rest to be determined later. He believed buses in the future would be more competitive than they are today.

Vice President Ortiz asked what would happen if the legislature had different ideas of how the funding should be prioritized. Mr. Cohen advised that if this happens, the campaign will be withdrawn.

Vice President Ortiz also asked if contributions from employers would be mandated, noting that a major concern is that businesses are not contributing enough to alleviate a problem which they created. Mr. Cohen advised that they were hopeful that the legislation would include such a mandate.

Vice President Ortiz commented on the movement to create a new regional transit agency and asked what role this measure might play in that effort. Mr. Cohen advised that they do not want to create a new transit agency, but rather a regional planning mechanism for the purpose of coordination.

Director Williams asked if there were any partnerships being contemplated with transportation network companies and if labor has been engaged. Mr. Cohen advised

that these conversations had yet to be had and that a meeting with the Alameda Labor Council was planned but had not yet taken place. Director Williams urged outreach to all labor councils in the Bay Area.

Director Williams inquired as to the types of meetings that would be taking place in the coming months. Mr. Cohen advised that there would be a wide range of community meetings and town halls over the next several months.

Director Peeples asked how the measure would support the sustainable communities strategy. Mr. Cohen advised that the California Air Resources Board just increased the greenhouse gas targets and figures the measure would be very important to this effort. In addition, the measure would support more city-centered housing development near transit.

Director Peeples asked what impact the measure would have on inter-regional commutes. Mr. Cohen responded that money will be invested in regional express bus, Caltrain and Capital Corridor, but it would be focused within the region.

Director Shaw pointed out that all the transportation improvements being proposed can be done today and the Metropolitan Transportation Commission is the overarching authority. Mr. Cohen advised that one thought is to give MTC more authority to do the integration and the other is to fund specific initiatives for the implementation and the planning staff to do it.

Director Shaw also felt that without changes to land use laws, it would be difficult to accomplish the goals of the proposed legislation (measure).

Director Wallace advised that he could not support the measure on the basis that it does not do enough to support affordable housing.

**Public Comment:**

**David Vartanoff** commented that money needs to be diverted from building more freeways to have more express bus service. The critical issue is to force BART to accept local bus passes as full fare travel in the area.

**4. PUBLIC COMMENT**

**Yvonne Williams**, ATU Local 192, commented on Greg Harper's purported distribution of closed session materials at an ATU rally. It was asserted that Director Harper violated Board Policies 702. Ms. Williams cited the sanctions allowed under the policy for unauthorized disclosure of confidential closed session information. It was also noted that the Union believes that Director Harper is biased and should not be allowed to vote on any contract with the union before the Board.

**Kennard Plummer**, ATU Local 192, agreed with the statements made Ms. Williams, further

citing Board Policy 702, saying the Board should impose sanctions. The Board was advised that the Union takes the situation very seriously and believes that Director Harper is conflicted with regard to negotiations with the Union. It was requested that the Board do something about it.

**Clarence Fischer** complained about the outsourced customer service call center and requested that the District bring these services in house in order to have better communication with operations concerning problems arising from service on the street.

## 5. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

## 6. CONSENT CALENDAR

### Approval of the Consent Agenda

MOTION: ORTIZ/PEEPLS to receive, approve or adopt the items on the Consent Calendar as indicated with the exception of Item 6.K. which was pulled off consent by Director Harper for comments and questions. The motion carried by the following vote:

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

**6.A.** Consider approving Board of Directors minutes of November 13, 2019. [19-393](#)

**6.B.** Consider approving Board of Directors special meeting minutes of November 20, 2019. [19-394](#)

Staff Contact: Linda Nemeroff, 891-7284

**6.C.** Consider approving Board of Directors special meeting minutes of November 25, 2019. [19-409](#)

**6.D.** Consider authorizing members of the Board of Directors to attend the following conferences and meetings during 2020: [19-292](#)

- American Public Transportation Association (APTA) Legislative Conference;
- APTA Annual Meeting and Expo;
- APTA Transit Board Members & Board Administrators Seminar;
- and
- Conference of Minority Transportation Officials (COMTO) National Meeting.

**6.E.** Consider receiving the Accessibility Advisory Committee minutes of October 8, 2019. [19-349](#)

**6.F.** Consider receiving Retirement Board Minutes of October 28, 2019. [19-391](#)

**6.G.** Consider receiving the FY 2019-20 First Quarter Employee and Non-Employee Out-of-State Travel Report. [19-383](#)

**6.H.** Consider receiving the monthly legislative report. [19-368](#)

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- 6.I.** Consider receiving the Monthly Report on Investments for October, 2019. [19-404](#)
- 6.J.** Consider receiving the bi-monthly budget update for the period of July through October for the Fiscal Year 2019-20. [19-403](#)
- 6.K.** Consider adoption of Resolution 19-039 authorizing the General Manager or his designee to submit an allocation request to the Metropolitan Transportation Commission (MTC) for Regional Measure 2 (RM2) Funds and execute any documents necessary for the purchase of high-capacity coach buses for the Dumbarton corridor. [19-396](#)
- 6.L.** Consider adoption of Resolution No. 19-037 authorizing the General Manager, or his designee, to file and execute documents with the Alameda County Transportation Commission (ACTC) and the Metropolitan Transportation Commission (MTC) for 2020 State Transportation Improvement (STIP) funds for the Replacement of Transbay Buses. [19-381](#)

This item was pulled off the Consent Calendar by Director Harper for questions and/or discussion.

Director Harper asked why nothing was said about this item when the District borrowed \$35 million for the Bus Rapid Transit Project. Director of Management and Budget Chris Andrichak advised that the District was aware of the \$15.1 million in funding for months and believed that it had communicated this information to the Board previously and was one of the reasons the District borrowed the money. Director Harper argued that he would have liked to have known about it because he felt it put the District's bus purchases at risk. Mr. Andrichak advised that staff worked the Metropolitan Transportation Commission and the Alameda County Transportation Commission, and the funding is not at risk, but the timing of it was an issue that has since been resolved. In addition, there were limited options on how the money could be used.

Director Harper advised that he would not support the item because he believed it was unethical for the District to shift money around against CTC policy unless the District notified the CTC about what it was doing. Mr. Andrichak argued that it was the District's right to use funding for the BRT Project and seek additional funds from the state to purchase Transbay buses. He added that any decision to reprogram the funds would be done in public view. Vice President Ortiz felt any decision to notify CTC was a collective decision for the entire Board to make.

MOTION: ORTIZ/WILLIAMS to adopt Resolution No. 19-037 authorizing the General Manager, or his designee, to file and execute documents with the Alameda County Transportation Commission (ACTC) and the Metropolitan Transportation Commission (MTC) for 2020 State Transportation Improvement (STIP) funds for the Replacement of

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Transbay Buses. The motion carried by the following vote:

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

**Nayes:** Harper

- 6.M.** Consider receiving the monthly report on the construction progress and operational readiness of the East Bay Bus Rapid Transit (BRT) Project. [19-405](#)
- 6.N.** Consider adoption of Resolution 19-038 approving the new classification of Assistant Buyer and the revised classifications of Buyer and Senior Buyer. [19-390](#)
- 6.O.** Consider authorizing the District to issue a Request for Proposals (RFP) for on-call outside legal services. [19-335](#)
- 6.P.** Consider approving Contract Assignment from US HealthWorks to Concentra as of February 1, 2019 for Contracts 2018-1424B and 2017-10344A. [17-333b](#)
- 6.Q.** Consider authorizing the General Manager to enter into a six-month contract extension with Concentra for drug and alcohol testing and medical examinations (Contract No. 2018-1424B) from January 1, 2020 to June 30, 2020. [17-333c](#)
- 6.R.** Consider approving the second of two one-year extension options on contract 2013-1234 with Sierra-Cedar, Inc. for PeopleSoft hosting services. [13-138b](#)

## **7. REGULAR CALENDAR**

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

- 7.A.** Consider approving amendments to Board Policy 110 - Public Hearing Process for the Board of Directors. [Requested by Vice President Ortiz - 9/25/2019] [19-369a](#)

Assistant General Counsel Jill Sprague presented the staff report.

MOTION: WILLIAMS/SHAW to approve amendments to Board Policy 110 - Public Hearing Process for the Board of Directors. The motion carried by the following vote:

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

- 7.B.** Consider receiving the draft parameters for Inter-agency Liaison Committees (ILC) and provide feedback to staff. [Requested by Vice President Ortiz - 10/9/19] [19-377](#)

Director of Service Development and Planning Robert del Rosario presented the staff report.

Discussion ensued concerning the frequency of meetings, the establishment of meeting

schedules, the duration of meetings, and the number of members. It was suggested that membership for the ILCs with cities be limited to two members from the city and two from the District, and ILCs with larger entities, like BART, have three members from each agency. It was also suggested that the parameters allow, but not require, quarterly meetings (four times a year) and that they meet a minimum of twice a year. It was also suggested that the duration of the meetings needed to be more flexible.

Vice President Ortiz anticipates that Oakland and San Leandro will request ILCs once the Bus Rapid Transit Project is finished.

Director Harper suggested that the District Secretary's Office take over the administration of the ILCs (scheduling and agendas); however, no formal direction was given.

Director Shaw commented that ILCs may not be necessary in cities where the staff and District staff communicate regularly.

MOTION: SHAW/WILLIAMS to receive the draft parameters for Inter-agency Liaison Committees (ILC) and provide feedback to staff. The motion carried by the following vote:

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

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

- 7.C.** Consider receiving a report from the District Parcel Tax Fiscal Oversight Committee on Measure VV tax proceeds for the year ended June 30, 2019. [19-389](#)

Controller Ralph Martini presented the staff report.

Vice President Ortiz inquired about a statement in the minutes indicating that a member of the Committee had asked about the District's pension liability, noting that this topic was outside the Committee's purview. General Counsel Denise Standridge advised that the question was brief and limited, and its appropriateness was not addressed by staff. District Secretary Linda Nemeroff offered that while the purview of the Committee was addressed during orientation with the three newest members last year, the entire Committee received a copy of the General Counsel's opinion concerning their purview.

#### **Public Comment:**

**Kennard Plummer** acknowledged ATU members present at the meeting for their efforts to pass Measure VV.

MOTION: PEEPLES/WILLIAMS to receive a report from the District Parcel Tax Fiscal Oversight Committee on Measure VV tax proceeds for the year ended June 30, 2019. The motion carried by the following vote:

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

**Planning Items - Chair Peeples**

- 7.D.** Consider receiving report, and provide feedback, on two proposed service change scenarios in Special Transit Service District 2, which consists of the cities of Fremont and Newark. [19-407](#)

Transportation Planner David Berman presented the staff report.

Director Peeples asked what was known about the demographic profile of the industrial areas in Fremont and Newark where a lot of service may be removed. Mr. Berman responded that these areas are highly diverse with very high incomes in general and the industrial jobs seem to differ from industrial jobs in other areas of the District in that there is more corporate shuttle activity.

Director Williams asked how the Castro Valley Flex service was performing. Mr. Berman responded that it was doing slightly better than Flex service in Fremont and Newark.

Director Shaw complimented staff on their efforts to solicit community input, but added that the public has a hard time distinguishing which service option is better. She believed that increased frequency was the best way to increase ridership. She also expressed concern about school transportation and service to Horner Junior High School, saying the stop was being moved five to six blocks. Another concern was the loss of service to the senior center, the new planned BART station which is currently experiencing a housing boom. She also commented on the financial barriers facing the area. May need to look at implementing a shuttle service in the future to help commuters.

Director Harper felt that a service change like this requires a reexamination of the Flex service and an analysis of what could have been done differently to yield a better result and how we market the service. He hoped the District would continue to look at innovative ways to provide service.

MOTION: WILLIAMS/SHAW to receive report on two proposed service change scenarios in Special Transit Service District 2, which consists of the cities of Fremont and Newark. The motion carried by the following vote:

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

- 7.E.** Consider receiving the Quarterly Update on the Strategic Plan Progress. [19-359](#)

Director of Project Controls and System Analyses Bill Tonis presented the staff report.

Director Shaw asked how much progress had been made toward aligning department goals with the Strategic Plan. General Manager Hursh advised of each department's progress as well as efforts made by the Service Quality and Enhancement Task Force.



Director Shaw also asked progress will be measured in terms of metrics and how metrics will tie into future reports. Mr. Tonis advised that there were several Key Performance Indicators that tie into the goals and initiatives of the strategic plan, for example: 1) the Quarterly Operations Performance Report aligns with the goal of service quality; and 2) infrastructure modernization is reflected in the Capital Improvement Program. There are also a host of issues reported to the Board on an ongoing basis. Director Shaw requested these issues be reported on as part of the update on the Strategic Plan. She also wanted to know if work has begun on goals scheduled to be met in 2023 and 2024.

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

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

- 7.F.** Consider approving the submittal of the Draft Short Range Transit Plan (SRTP) to the Metropolitan Transportation Commission (MTC) for review of the Plan's compliance with MTC requirements. [19-406](#)

Senior Transportation Planner Nathan Landau presented the staff report.

Vice President Ortiz commented on the population expansion in downtown Oakland. Director Shaw noted an error on page 10 of the Plan, Summary Characteristics, saying the reference to Chabot College in Special District Two should be changed to Ohlone College.

No further comments were offered.

MOTION: ORTIZ/WILLIAMS to approve the submittal of the Draft Short Range Transit Plan (SRTP) to the Metropolitan Transportation Commission (MTC) for review of the Plan's compliance with MTC requirements. The motion carried by the following vote:

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

#### **Operations Items - Chair Shaw**

- 7.G.** Consider receiving a report on current and projected usage of Project Pay. [Requested by Director Shaw - 10/9/19] [19-376](#)

Human Resources Manager Emily Cruz presented the staff report.

Vice President Ortiz expressed her support for limiting the length of time an employee can receive project pay saying that if project pay was necessary beyond a year, the District should hire a permanent employee to perform the work. General Manager Michael Hursh agreed, but noted that it did not make sense to hire permanent employees for some projects, like BRT, which would be done soon.

MOTION: WILLIAMS/SHAW to receive a report on current and projected usage of

Project Pay. The motion carried by the following vote:

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

- 7.H.** Consider approving amendments to Board Policy 468 - Protest Procedures. [Continued from the November 13, 2019 Board of Directors meeting.] [19-291a](#)

There was no presentation of the staff report.

MOTION: ORTIZ/WALLACE to approve amendments to Board Policy 468 - Protest Procedures. The motion carried by the following vote:

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

#### **Board Administrative Matters:**

- 7.I.** Consider approving the appointment of retired employee Doreen Mathews to the position of Administrative Specialist, certify that the position is critically needed, and grant an exception to Board Policy 244 - Temporary Employee Staffing, to allow Ms. Mathews, who retired on September 1, 2019, to temporarily return to work in the District Secretary's Office. [19-365](#)

There was no presentation of the staff report.

MOTION: WILLIAMS/WALLACE to approve the appointment of retired employee Doreen Mathews to the position of Administrative Specialist, certify that the position is critically needed, and grant an exception to Board Policy 244 - Temporary Employee Staffing. The motion carried by the following vote:

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

- 7.J.** Announcement of appointments to the Nominating Committee for the selection of President and Vice President for 2020 (Verbal). [19-408](#)

President Wallace announced the appointment of Vice President Ortiz, Director Peeples and Director Young to the Nominating Committee. Director Young is to serve as chair.

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

Vice President Ortiz announced that Assistant General Counsel Jill Sprague was appointed by the Board of Directors to serve as the AC Transit General Counsel, effective February 2020. The vote was unanimous. Ms. Sprague thanked the Board for the opportunity to serve as General Counsel.

General Counsel Denise Standridge reported the following:

MOTION: WALLACE/PEEPLS to approve settlement in the amount of \$120,000 in the matter of Wade v. AC Transit, WCAB Case Nos. ADJ9419308, ADJ3191625, ADJ1561460, and

ADJ7172058. The motion carried by the following vote:

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

**8.A. Conference with Real Property Negotiators**

(Govt Code Section 54956.8) (two matters):

- Property: APNs: 432-0114-035, 432-0114-034-01
- Agency negotiator: General Manager Michael Hursh
- Negotiating parties: Chris C. van Keulen, CBRE
- Under negotiation: Price, terms of payment

**8.B. Conference with Legal Counsel – Existing Litigation**

(Government Code Section 54956.9 (a))

Priscilla Wade v. AC Transit, CLAIM NO.: ACCT-009334 - ADJ9419308, DOI: 10/15/13;  
ACCT-011184 - ADJ3191625, DOI: 4/22/02 - ACCT-020324, ADJ561460, DOI: 9/10/13;  
ACCT-006558 - ADJ7172058, DOI: 3/30/08.

Quarterly Litigation Report:

- Markowitz v. AC Transit, ACSC No. RG19-003956;
- El Masnaouy v. Thomas, et al., SFCSC No. CGC-19-574522;
- Tecle v. AC Transit, et al., ACSC No. RG17-876401;
- Wilson v. AC Transit, ACSC No. RG17-849057;
- Cleveland and Zachery v. Megaro, et al., ACSC No. RG19-025903;
- Washington v. AC Transit, et al., ACSC No. RG17-881145;
- Edwards v. AC Transit, et al., ACSC No. RG17-885627;
- Blacksher v. Amalgamated Transit Union, et al., ACSC No. HG16-840726;
- Henderson v. AC Transit, et al., ACSC No. RG18-914096;
- Henderson v. AC Transit, et al., ACSC No. RG19-007545;
- McNaulty v. AC Transit, ACSC No. RG18-933966,
- Pearl v. AC Transit, ACSC No. RG19-015118; and  
claims of Galpern (18-AL00354) and Stanley (19-AL00120).

**8.C. Conference with Legal Counsel – Potential Litigation**

(Government Code Section 54956.9(b)) (two cases)

**8.D. Public Employment**

(Government Code Section 54957(c))

Title: General Counsel

**8.E. 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.F. Conference with Labor Negotiators**

(Government Code Section 54957.6)

Negotiator: Elsa Ortiz, Vice President

Unrepresented Employees: General Counsel

**8.G. Public Employee Performance Evaluation**

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

**8.H. Public Employee Appointment**

(Government Code Section 54957(b))

Title: General Counsel

**9. AGENDA PLANNING**

**9.A. Review of Agenda Planning Pending List.**

[19-020t](#)

Vice President Ortiz requested a report on the cost of having free fares as well as free fares for low income riders.

**10. GENERAL MANAGER'S REPORT**

**10.A. General Manager's Report for December 11, 2019.**

[19-068](#)

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**

There being no further business to come before the Board of Directors, the meeting adjourned at 7:15 p.m. The next meeting of the Board of Directors is scheduled for January 8, 2020 at 5:00 p.m.

Respectfully submitted,

/S/

Linda A. Nemeroff

District Secretary