



## **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, February 12, 2020 at 5:00 PM**  
**Closed Session - 4:30 PM (Items 8A-8D)**

#### **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 meeting on Wednesday, February 12, 2020, at 5:00 p.m.

The meeting was called to order at 4:32 p.m. for the purpose of Closed Session. All Board members were present with the exception of Director Williams who was absent. The Board convened in Closed Session to discuss Items 8A-8D as listed on the agenda. Closed Session recessed at 4:45 p.m.

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

**2. ROLL CALL**

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

**3. PRESENTATION****3.A.** Update on Federal legislative activities.[20-073](#)

Steve Palmer gave a presentation on federal legislative activities.

Director Peeples asked what factors were attributable in making a bus in the United States cost twice as much as a bus in Europe when the labor protections are similar, and the quality of the bus is similar. Mr. Palmer advised that Buy America had the potential to raise the cost, but efforts were being made to bring costs down.

Director Williams asked if earmarks would make a return. Mr. Palmer advised that there is an interest in the House to bring them back; however, there is not full support in the Senate to do this. He believed they would make a comeback if President Trump is re-elected for transportation needs in rural areas.

Director Williams also asked about opportunity zones and whether they have been used to fund infrastructure projects for transit Districts. Mr. Palmer was unsure, but would look into it.

The report was presented for information only.

**4. PUBLIC COMMENT**

**Bruce De Benedictis** commented that when he took over management of the Friends of the Oakland Municipal Band, he became a member of the Lake Merritt Advocates which gave him advance knowledge of events, like the Oakland Running Festival. He suggested that instead of telling riders where the next available bus is, the District provide a map showing them where it is. In addition, he commented that he sees a lot of people who can't afford to pay the full bus fare and gave the District a check to help collect some of the lost fare revenue.

**David Vartanoff** asked that the Board direct staff to provide a daily report on the District's website showing the public which buses aren't running by division. He felt it was important to see where the public wasn't being served.

**Marissa Shaw** commented about the importance of ticketing Uber, Lyft and other vehicles when they park in bus stops because it makes it difficult for people to access the bus. She also expressed that she would be willing to work with Board members and the like on transit issues affecting accessibility.

## 5. MODIFICATIONS TO THE AGENDA

At 5:26 p.m., President Wallace called agenda item 7.F. (violation of Brown Act and Board Policies) out of order. For the ease of reading, the discussion of this item is recorded as listed on the agenda.

## 6. CONSENT CALENDAR

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

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

- 6.A. Consider approving Board of Directors minutes for the Special Meeting held on January 28, 2020. [20-085](#)
- 6.B. Consider approving Retirement Board minutes of December 19, 2019. [20-086](#)
- 6.C. Consider receiving the Accessibility Advisory Committee minutes of December 10, 2019. [20-068](#)
- 6.D. Consider authorizing the District to issue a Request for Proposal (RFP) for drug and alcohol testing, commercial driver license (CDL) medical examinations and physical agility testing services of prospective/current employees. [20-046](#)

## 7. REGULAR CALENDAR

### Planning Items - Chair Shaw

- 7.A. Consider receiving the Quarterly Report on District involvement in external planning processes. [20-066](#)

Senior Transportation Planner Nathan Landau presented the staff report.

Director Shaw inquired about the timing/implementation of the Hayward Bike and Pedestrian Plan. Mr. Landau responded that he believed that it did not occur on schedule, but would verify and report back.

Director Shaw asked about the status of discussions regarding a regional fare policy. Director of Service Development and Planning Robert del Rosario advised that he is a

participant of the Technical Advisory Group for the Regional Fare Integration Study and that the consultant contract for the preparation of the study would be awarded in the next few weeks. Mr. Landau advised that the status of the study would be featured in future reports.

Director Williams and President Wallace were out of seat for the duration of the agenda item.

MOTION: ORTIZ/YOUNG to receive the Quarterly Report on District involvement in external planning processes. The motion carried by the following vote:

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

**Absent:** Wallace, Williams

- 7.B.** Consider receiving the monthly progress and operational readiness report on the East Bay Bus Rapid Transit (BRT) project.

[20-067](#)

Director of BRT David Wilkins presented the staff report.

Director Peeples asked for clarification on the projected start date of the service, noting the complexities with PG&E and the ability to supply power to the platforms and signals. Mr. Wilkins advised that substantial construction completion should be obtained by the end of March. Staff anticipates the start of service on May 10, 2020, subject to Federal Transit Administration clearance. The FTA will not authorize service to commence until the stations and signals are up and running. Staff is evaluating other options to provide temporary power. General Manager Michael Hursh advised that the District has engaged Senator Skinner to assist in its efforts to advance issues that involve PG&E.

Vice President Ortiz asked how certain staff is that service will begin in May. Mr. Hursh advised that staff is advancing toward to the May 10th start date, but there were other risk factors outside of the District's control.

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

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

### Operations Items - Chair Young

- 7.C.** Consider receiving the Quarterly Operations Performance Report for AC Transit Fixed Route Services during the Second Quarter FY20.

[20-063](#)

Training and Education Manager Michael Flocchini presented the staff report.

Discussion ensued concerning on-time performance and unscheduled operator unavailability which resulted in the Board's general disappointment in the quality of the

service being operated.

Director Harper asked about the reporting of missed trips and why missed trips were not a performance indicator. Director of Transportation Derik Calhoun responded that staff is still working to obtain accurate data from the Clever system and would review the District's Key Performance Indicators (KPI) to see if new KPIs should be added. Director Harper also expressed that he would be interested in knowing how a bus that never left the yard effects on-time performance.

With regard to unscheduled operator availability, Director Harper inquired about the root cause of the problem and whether it was systemic or the result of some other underlying scheduling problem. Mr. Calhoun advised that staff was working with the Union to address attendance issues with operators. Director Harper asked for some analysis of the issue.

Director Ortiz commented that the accuracy and reliability of the District's scheduling app was critical to on-time performance and riders knowing when their bus would arrive.

**Public Comment:**

**David Vartanoff** commented on operator unavailability, both scheduled and unscheduled, and requested that the statistics be separated by division to get a better idea of what is happening. He added that there needed to be a deeper analysis of the data.

**Jane Kramer** commented that Line 51a has had a lot of bunching the last four weeks and would like to know why and how it has been resolved.

**Yvonne Williams**, President of ATU Local 192, commented that the District had an ambitious service expansion plan and knew there were not enough operators to provide the service. She further commented that lane reductions in Oakland and other major arteries have slowed the service and made it more difficult to navigate. Operators are also over worked and experience numerous health problems and she challenged the Board to air these issues in public.

MOTION: SHAW/ORTIZ to receive the Quarterly Operations Performance Report for AC Transit Fixed Route Services during the Second Quarter FY20. The motion carried by the following vote:

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

- 7.D** Consider receiving a report on the State of the District's Bus Fleet for AC Transit Fixed Route Services.

[20-065](#)

Director Williams left the dais at 6:34 p.m. and returned at 6:37 p.m.

Director of Maintenance Cecil Blandon presented the staff report and addressed

questions concerning bus procurements, work orders and warrantees, and the assignment of fuel cell buses to the Division 2 and 4 bus divisions. Chief Operating Officer Salvador Llamas addressed questions concerning the purchase of additional hybrid-diesel buses.

**Public Comment:**

**David Vartanoff** was pleased in the reduction in miles between road calls. He further called for a more granular analysis of the data.

**Jane Kramer** commented on the City of Oakland's plan to repave city streets and suggested that the buses only operate on newly paved streets.

MOTION: ORTIZ/WILLIAMS to Appointed Consider receiving a report on the State of the District's Bus Fleet for AC Transit Fixed Route Services. The motion carried by the following vote:

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

- 7.E.** Consider adoption of Resolution 20-013 approving the new classification of Operations Control Center Manager and the revised classifications of Assistant Payroll Specialist, Payroll Specialist, and Senior Payroll Specialist. [20-079](#)

There was no presentation of the staff report.

MOTION: ORTIZ/WILLIAMS to adopt Resolution 20-013 approving the new classification of Operations Control Center Manager and the revised classifications of Assistant Payroll Specialist, Payroll Specialist, and Senior Payroll Specialist. The motion carried by the following vote:

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

**Board Administrative Matters:**

- 7.F.** 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. [20-069](#)

*[A PowerPoint presentation given by Director Harper was presented at the meeting and is incorporated into the file by reference.]*

General Counsel Jill Sprague presented the staff report, saying that the resolution arose from Director Harper's admitted disclosure of documents from closed session, which was a violation of the Brown Act and Board Policies.

Director Harper admitted that he knew what he was doing and, in his estimation, believed that what he disclosed was not part of a back-and-forth negotiation, but instead were the answers to a couple of serious operational questions concerning unscheduled operator absenteeism and missed trips. Director Harper argued that he

has repeatedly asked if absenteeism was a systemic "bad apple" problem involving a few operators that were absent a lot or whether it was something more generic. He added that he had also requested information on missed trips which had not been supplied. He further disclosed that information about these two issues came out during closed session. Director Harper went on further to argue that the legal opinion the District received made a lot of assumptions about receiving the information during a bargaining session, which he believed was not the case.

Director Harper then gave a PowerPoint presentation, saying that Government Code section 54957.6 did not allow the Board of Directors to discuss, in sessions that are closed to the public, the service problems related to fast growing unauthorized driver absenteeism and management's difficulty in controlling it. He went on further to say that section 54957.6 limited discussion in closed session to salaries, salary schedules, or compensation paid in the form of fringe benefits for represented and unrepresented employees and, for represented employees, any other matter that was within the statutory scope of representation. He added that closed sessions under this section shall be for the limited purpose of reviewing its position and instructing the local agency's designated representative. He believed that the closed session was not for this purpose. He further argued that information he obtained from the California League of Cities and an Attorney General Opinion from 1978 supported his position and that service problems should be discussed in open session. He closed by saying that he felt justified in taking the documents from closed session because it was not part of negotiations, but was information that he had been asking for in open session. He added that he would like the Board secretary or staff to take minutes during closed session so this problem would not come up again.

Outside counsel Robin Johansen confirmed that she was not at the closed session and her opinion relied on the recollection of the other members of the Board that were there as to what the discussion was about and why the labor negotiator was raising these issues with them. She went on further to say that the concept behind a closed session involving negotiations is to know what the most important thing (issue) is to the other side and how to best leverage the knowledge about the issue with the other side. She added that labor negotiations are held in closed session because an agreement would never be reached if they were done in public. She closed by saying that if staff/negotiators don't feel that they can bring information to the Board in closed session and have it remain confidential, the Board won't get the information it needs. The Board needs to maintain the confidentiality of closed session discussions.

Director Peebles commented that Director Harper is a proponent of radical openness and the airing of any disputes with the union in a public setting, which is not the opinion of the Board and staff. As to Director Harper's legal arguments, Director Peebles believed that there were open session public documents that discussed the attendance problems and some of the reasons for them, adding that the data that was presented in closed session, when it was presented and how it was presented was why it deserved confidential treatment. He also believed that the Attorney General opinion

that Director Harper relied on had been superseded and was now more reflective of current closed session practices. He closed his comments by saying that he would vote to censure Director Harper, but it wasn't personal.

Ms. Sprague advised that the 1978 Attorney General opinion was amended in 1994 to take into account statutory bargaining.

Vice President Ortiz commented that the issue before the Board concerned a Brown Act violation and if Director wanted transparency he could have asked for the information via a Public Records Act request. She further commented on the constant reminders the Board receives during closed session as to the confidentiality of information.

Director Williams asked if notes were taken during closed session, to which the District Secretary responded that a minute order was produced for all items heard during closed session, which sometimes included brief summary minutes.

**Public Comment:**

**Yvonne Williams**, ATU Local 192, thanked the Board for its consideration of the censure saying that Director Harper knew he was violating the law and board policy. She hoped that Director Harper would have more respect for the union and the workforce. She also hoped that Director Harper was not aligning himself with someone that had purportedly been removed from the bargaining table for showing animus toward ATU, intimating that said person should be fired. [Director Harper rejected the notion that someone be fired because of what he did, arguing that the public has a right to know the root cause of service problems.]

**Jane Kramer** commented to Director Peebles that she was not an inarticulate, naive, oblivious observer of social political process.

MOTION: YOUNG/WILLIAMS to adopt Resolution No. 20-015 censuring Director Greg Harper for violating the California Brown Act and Board Policies 101 and 702. The motion carried by the following vote:

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

**Nays:** Harper

**8. CLOSED SESSION/REPORT OUT**

General Counsel Jill Sprague distributed a summary of open claims and lawsuits. A copy is incorporated into the file by reference as Staff Report 20-116.

At 7:01 p.m., Ms. Sprague advised that the Board would reconvene in Closed Session to discuss Item No. 8.C. Director Harper left the meeting at 7:02 p.m. Closed Session concluded at 7:12 p.m. There was nothing to report out of Closed Session.

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



(Government Code Section 54956.9 (a))

Wilson v. AC Transit, ACSC Case No. RG17849057.

Quarterly Litigation Report

- Edwards v. AC Transit, et al., ACSC No. RG17-885627;
- Blacksher v. Amalgamated Transit Union, et al., ACSC No. HG16-840726;
- McNaulty v. AC Transit, ACSC No. RG18-933966,
- Pearl v. AC Transit, ACSC No. RG19-015118; and
- Claim of Brown, Claim No. 19-AL00271.

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

[20-010b](#)

Director Shaw requested that staff provide their reaction/comment on the Metropolitan Transportation Commission's ridership report. (Vice President Ortiz concurred).

Director Harper requested that pending items concerning wheelchair securement and Other Post Employment Benefits be agendized for an upcoming meeting.

Director Harper requested that the Planning Department revisit their prior recommendations for service changes on Line 72/72M and provide a report to the Board. (Director Young concurred)

Director Peebles requested a report on the suggestion offered by David Vartanoff to publish information on the website about missed trips by division. (Vice President Ortiz concurred)

**10. GENERAL MANAGER'S REPORT**

**10.A. General Manager's Report for February 12, 2020.**

[20-008b](#)

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.

Vice President Ortiz requested that the General Manager send a letter to the City of Emeryville confirming the Board's unanimous vote for the adoption of Resolution No. 20-010 in support of a bus only lane on the Bay Bridge.

**12. ADJOURNMENT**

There being no further business to come before the Board of Directors, the meeting adjourned at 7:12 p.m. The next meeting of the Board is scheduled for February 26, 2020 at 5:00 p.m.

Respectfully submitted,

/s/

Linda A. Nemeroff  
District Secretary