



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

MINUTES

Board of Directors - Regular Meeting

(Closed Session 4:15 PM for Agenda Items 8A-8D)

VIRTUAL MEETING

Phone (669) 900 6833

Webinar ID: 984 8717 5063

Wednesday, December 8, 2021 at 5:00 PM

<https://bit.ly/3oBV7jk>

MEMBERS OF THE BOARD OF DIRECTORS

ELSA ORTIZ, PRESIDENT (WARD 3)

JOEL YOUNG, VICE PRESIDENT (AT-LARGE)

JOVANKA BECKLES (WARD 1)

JEAN WALSH (WARD 2)

MARK WILLIAMS (WARD 4)

DIANE SHAW (WARD 5)

H. E. CHRISTIAN PEEPLES (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, December 8, 2021, at 5:00 p.m.

The meeting was called to order at 4:02 p.m. for the purpose of Closed Session. All Board members were present. The Board convened in Closed Session to discuss Items 7A-7D as listed on the agenda. Closed Session concluded at 4:46 p.m.

President Ortiz called the Board of Directors meeting to order at 5:05 p.m

2. ROLL CALL

Director Young arrived to the meeting at 5:23 p.m.

Present: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

3. PUBLIC COMMENT

[Written comment received prior to the meeting is attached hereto as Exhibit A.]

Line E

Hayden reported that a bus operator on the E-Line told him that Buses serving San Francisco-bound Transbay service would stop providing local service to riders not seeking Transbay travel due to recent service change. Hayden noted that this reported service change will affect many local riders in areas where no other local bus service is available. Hayden asked that this service change matter be reviewed and changed to allow continued local bus riding service.

Fern K. Hahn also commented on the same experience as Hayden regarding the elimination of local passenger pick-up on Transbay Bus service traveling towards San Francisco Hahn asked that this service change matter be reviewed and changed to allow continued local bus riding service.

Hazard Pay

A group of speakers provided comments while noting reasons and justifications for the Board to authorize the approval Hazard Pay, including Retroactive Hazard Pay, for all AC Transit front line workers. Many speakers who are transit workers at the District provided comments on the efforts and risks which front line workers face every day and the worries they have of spreading any infection to their families after coming home from work. Several speakers expressed frustration that discussion of this matter has carried on without action but noted their resolve to continue to press for Hazard Pay for front line workers at the Board meetings. These speakers included:

Becky Rhodes, Alameda Labor Council, who also called for the distribution of Hazard pay before the holidays.

David Lyons, former bus operator, also commenting that District front line workers face passengers in higher risk categories because, according to Kaiser Family foundation, the risk of hospitalization from Covid 19 is three times higher for black and Hispanic people and risk of

death is two times higher than for white people.

Emily Lin, who also emphasized support for hazard pay and pay raises for all transit staff. Lin noted that Transit staff deserve hazard pay plus raises. Lin commented that more than \$100 million of Federal funds has been received by the District and should be distributed as soon as possible.

Sultana Adams, D3 Bus Operator, Assistant Shop Steward, Chair of Hazard Pay coalition, who also called for the distribution of Hazard pay before the end of the year.

Dori Goldberg, People's Transit Alliance, East Bay Democratic Socialists of America (PTA-EBDSA)

Nathan, PTA-EBDSA, who also thanked the front-line transit workers for their commitment and work to keep local transit working.

Michael Burnett, D2 Operator, who also supports workers who have been left out without contracts.

Michael Lyon, Progressive Labor Party, who drew comparisons to the working conditions faced by minority workers in the meat packing industry in the Midwest (USA) to the front-line workers at AC Transit.

Steven Jefferson, who expressed concerns about the lack of transparency regarding hazard pay discussions.

Elana Kessler, PTA-EBDSA, who also expressed appreciation to front line workers for their work.

Richard Stepney, D4 Bus Operator, who also congratulated AC Transit for 60-years of service.

Joty Dhaliwal, PTA-EBDSA, who also hoped for the distribution of Hazard pay before Christmas.

James Jackson, Business Agent, ATU Local 192, who also noted the view that people only come to work at AC Transit as a steppingstone to future work elsewhere.

Eric Braziel, Vice President, Amalgamated Transit Union, Local 192 (ATU Local 192)

Connie McFarland, Bus Operator

Shamone Dansby, D3 Operator

Katy Scott-Smith, PTA-EBDSA

Maddy Grace Webbon, PTA-EBDSA

Lexi Ross, PTA-EBDSA

Elliott, PTA-EBDSA

Phyllis Jackson, D3 Service Employee

Ann Marie Ruiz, Local 265

Richard Marcantonio, Public Advocates

Dante Popple

Kathleen Dahlgren

Jaime Gardner

Medb Gill

Ashish Dixit

Lawrence Abbott

Carter

AFSCME 3916 Labor Contract

A group of speakers from the American Federation of State, County, and Municipal Employees Local 3916 (AFSCME 3916) commented on concerning elements in the 2017 labor contract

negotiations which currently affects its ability to work with AC Transit management. These speakers requested that the Board direct AC Transit management to re-enter negotiations with AFSCME 3916 to modify Article 4 of the Labor Agreement to restore rights to “meet and confer over all unilateral changes in wages, working conditions and benefits”. Alternatively, some of these speakers requested that the Board authorize a directive to AC Transit management to “meet and confer over all unilateral changes in wages, working conditions and benefits”. In addition, some speakers accused former union leaders and management of impropriety and several speakers voiced support to front-line workers in their request for hazard pay and thanked them for their hard work. These Speakers included:

Lisa Harlow, Business Agent, American Federation of State, County, and Municipal Employees Local 3916 (AFSCME 3916)

Nathan Landau, Executive Board Member, AFSCME 3616 Member, who also explained history of the contract negotiations and poor management.

Owen Goetze, AFSCME 3916 Member

Carissa Lee, AFSCME 3616 Member

Dionte Delcambre, AFSCME 3616 Member

David Berman, AFSCME 3916 Member

Tiffany Bonaparte, President, AFSCME 3916 Member

Shauna Badger, AFSCME 3916 Member

Eslyn Tripuraneni, AFSCME 3916 Member

Elizabeth Watlington, AFSCME 3916 Member

Patricia, AFSCME 3916 Member

Quella Thompson

4. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

5. CONSENT CALENDAR (AND CALL FOR PUBLIC COMMENT ON CONSENT ITEMS)

Director Peoples commented that he was glad that multiple construction projects are underway and was concerned that some may be stalled because the promised ARPA funds are being held by the federal Labor Department's and may not be available to AC Transit.

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

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peoples

5.A. Consider approving Board of Directors minutes of October 27, 2021. [21-574](#)

MOTION: WILLIAMS/PEEPLES to approve the Board of Directors minutes of October 27, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peoples

5.B. Consider approving Board of Directors minutes of November 10, 2021. [21-573](#)

MOTION: WILLIAMS/PEEPLES to approve the Board of Directors minutes of November 10, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.C.** Consider the adoption of Resolution No. 21-046 making the necessary findings and re-authorizing the AC Transit Board of Directors and all District Advisory, Oversight, and Inter-Agency Liaison Committees to hold remote teleconference meetings during a declared state of emergency, subject to the requirements of the Brown Act, through January 7, 2022. [21-053c](#)

MOTION: WILLIAMS/PEEPLES to adopt Resolution No. 21-046 making the necessary findings and re-authorizing the AC Transit Board of Directors and all District Advisory, Oversight, and Inter-Agency Liaison Committees to hold remote teleconference meetings during a declared state of emergency, subject to the requirements of the Brown Act, through January 7, 2022. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.D.** Consider review of Board Policy 145, Elections: Political and Campaign Activities with no recommended amendments. [21-521](#)

MOTION: WILLIAMS/PEEPLES to receive review of Board Policy 145, Elections: Political and Campaign Activities with no recommended amendments. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.E.** Consider receiving report on the Board Policies scheduled for review and/or amendment during Calendar Year 2022. [21-545](#)

MOTION: WILLIAMS/PEEPLES to receive report on the Board Policies scheduled for review and/or amendment during Calendar Year 2022. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.F.** Consider receiving Retirement Board minutes of November 5, 2021. [21-553](#)

MOTION: WILLIAMS/PEEPLES to receive Retirement Board minutes of November 5, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.G.** Consider receiving Retirement Board minutes of October 6, 2021. [21-540](#)

MOTION: WILLIAMS/PEEPLES to receive Retirement Board minutes of October 6, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.H.** Consider receiving Retirement Board Minutes of May 15, 2019. [21-551](#)

MOTION: WILLIAMS/PEEPLES to receive Retirement Board Minutes of May 15, 2019. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.I.** Consider receiving the Accessibility Advisory Committee minutes of October 12, 2021. [21-548](#)

MOTION: WILLIAMS/PEEPLES to receive the Accessibility Advisory Committee minutes of October 12, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.J.** Consider authorizing the General Manager to enter into an extension of the contract with MV Transportation to operate the Dumbarton Express service for the period of January 1, 2022 to June 30, 2022. [11-256L](#)

MOTION: WILLIAMS/PEEPLES to authorize the General Manager to enter into an extension of the contract with MV Transportation to operate the Dumbarton Express service for the period of January 1, 2022 to June 30, 2022. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.K.** Consider authorizing the General Manager to enter into an extension of the Dumbarton Bridge Regional Operations Consortium (DBROC) Cooperative Agreement from January 1, 2022 to June 30, 2022, in conjunction with the six-month extension of the service contract. [11-256k](#)

MOTION: WILLIAMS/PEEPLES to authorize the General Manager to enter into an extension of the Dumbarton Bridge Regional Operations Consortium (DBROC) Cooperative Agreement from January 1, 2022 to June 30, 2022, in conjunction with the six-month extension of the service contract. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.L.** Consider the adoption of Resolution No. 21-045 approving amendments to Board Policy No. 200 - Alcohol and Substance Abuse Policy. [21-544](#)

MOTION: WILLIAMS/PEEPLES to adopt Resolution No. 21-045 approving amendments to Board Policy No. 200 - Alcohol and Substance Abuse Policy. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.M.** Consider approving the award of a fixed price construction contract to GEMS Environmental Services Inc. in the amount of \$525,803 for the replacement of the single wall underground storage tank (UST) at the District's Division 2 (D2) Emeryville location. [20-467a](#)

MOTION: WILLIAMS/PEEPLES to approve the award of a fixed price construction contract to GEMS Environmental Services Inc. in the amount of \$525,803 for the

replacement of the single wall underground storage tank (UST) at the District's Division 2 (D2) Emeryville location. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.N.** Consider approving the award of a firm-fixed price construction contract to Stronger Building Services of San Leandro, California for the replacement of the roof at the District's Emeryville Division (D2) Maintenance Facility. [20-418a](#)

MOTION: WILLIAMS/PEEPLS to approve the award of a firm-fixed price construction contract to Stronger Building Services of San Leandro, California for the replacement of the roof at the District's Emeryville Division (D2) Maintenance Facility. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.O.** Consider approving minor amendments to Board Policy No. 349 - Investment Policy. [21-530](#)

MOTION: WILLIAMS/PEEPLS to approve minor amendments to Board Policy No. 349 - Investment Policy. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.P.** Consider receiving the Bi-Monthly budget update for the period of July 2021 through October 2021 of FY 2021-22. [21-546](#)

MOTION: WILLIAMS/PEEPLS to receive the Bi-Monthly budget update for the period of July 2021 through October 2021 of FY 2021-22. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.Q.** Consider receiving the Monthly Report on Investments for October 2021. [21-561](#)

MOTION: WILLIAMS/PEEPLS to receive the Monthly Report on Investments for October 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.R.** Consider authorizing the General Manager to execute addenda to extend the leases for three of the District's warehouse tenants: JAFEC USA, Inc.; Gachina Landscape Management; and Cypress Mandela Training Center, as outlined in the staff report. [21-563](#)

MOTION: WILLIAMS/PEEPLS to authorize the General Manager to execute addenda to extend the leases for three of the District's warehouse tenants: JAFEC USA, Inc.; Gachina Landscape Management; and Cypress Mandela Training Center, as outlined in the staff report. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.S.** Consider the adoption of Resolution No. 21-042 approving the new [21-500](#) classifications of Principal Planner and Transit Schedules Specialist and the revised classifications of Senior Transportation Planner, Transportation Planner, Assistant Transportation Planner, Transit Schedules Manager, and Transit Schedules Administrator.

MOTION: WILLIAMS/PEEPLS to adopt Resolution No. 21-042 approving the new classifications of Principal Planner and Transit Schedules Specialist and the revised classifications of Senior Transportation Planner, Transportation Planner, Assistant Transportation Planner, Transit Schedules Manager, and Transit Schedules Administrator. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 5.T.** Consider receiving the Monthly Legislative Report. [21-125](#)

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

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

6. REGULAR CALENDAR

Operations Items - Chair Beckles

- 6.A.** Receive a report on employee vaccination rates and discussions with labor regarding vaccination requirements; and consider whether or not to implement a vaccine mandate for all District employees, Board officers and Board members. [Continued by the Board at the October 13, 2021 Board of Directors Meeting] [21-468a](#)

[Written comment received prior to the meeting is incorporated into the file by reference.]

Executive Director of Human Resources Sebron Flenaugh presented the staff report.

Public Comment:

E. Sanchez, D2 Mechanic, noted opposition to the vaccination mandate and cited conflicting information about the effectiveness of the vaccine.

Eden Gerson, Acting Marketing Manager, AFSCME 3916, expressed concerns which the Board should consider before choosing to authorize a vaccine mandate: (1) Not every person will receive the same level of protection from the vaccine; (2) vaccination rates are lower among black and Latino populations compared to white populations so there may be a higher percentage of staff firings from minority employee groups; and (3) without a meet and confer statement, AFSCME 3916 members concerns may not be considered.

Brittany Dobbs, AFSCME 3916 member, was opposed to a vaccine mandate which terminates employees who decline vaccination. Dobbs cited that the lack of a “meet and confer” clause in the labor agreement further hampers AFSCME 3916 members from vaccine mandate discussions with management and asked the Board to direct

management to negotiate a modification to the labor contract.

Lisa Harlow, Business Agent, AFSCME 3916 member, urged the Board to meet and confer with union leadership about medical and religious exemptions despite omission of the meet and confer provision. Harlow noted that AFSCME 3916 members strongly support allowing non-vaccinated employees to work while wearing masks and be regularly tested at free Covid-19 testing sites.

Nathaniel Arnold, Safety Chairperson, ATU 192, commented that many non-vaccinated drivers who are approaching retirement have other options outside the District and that a 10 or 15 percent drop off in Bus Operator staffing will seriously impact the District's ability to serve the public. Arnold urged the Board to review the District's employee vaccination levels as it considers its vaccination mandate.

Dionte Delcambre does not support the vaccine mandate for religious reasons and views the vaccine mandate as unconstitutional. Delcambre expressed the viewpoint that the wearing of PPE, washing your hands, and having staff hold each other accountable has been effective in the workplace. Delcambre requested the Board develop a better plan to combat the spread of the virus.

Marco C commented that the choice of waiting for more scientific results before deciding to be vaccinated may conflict with a vaccine mandate. Marco C commented that putting jobs on the line for not following a vaccine mandate is inappropriate and that imposing a vaccine mandate is a political act.

Christine Rayo noted disapproval of a vaccine mandate which enforces the loss of employment for non-compliance.

Jay Hernandez, Operator, expressed opposition to the vaccination mandate and noted many points about the ineffectiveness of Covid-19 vaccines.

Quella Thompson noted that a vaccination mandate is not a solution but the restoration of Article 4 of the AFSCME 3916 labor agreement to allow Union Members to meet and confer with management on issues like the vaccine mandate is needed.

Connie opposed a vaccination mandate and believed that termination for violating this mandate is a punitive act. Connie noted that being vaccinated does not prevent employees from getting infected so regular testing should be made available, preferably at the workplace.

Safety and Freedom supports statements made by previous speakers saying that Safety and Freedom noted that a vaccination mandate without informed consent is wrong and unfair and presents an appearance of political expediency rather than a real solution.

Sultana Adams, D3 Bus Operator, Assistant Shop Steward, does not support a vaccination mandate that is forced on employees. Adams expressed disappointed that no town hall or forum with employees which would serve to better inform the facts of vaccination was held. Adams commented that without more specialized information, a vaccination mandate will force dedicated employees to choose between their own health and continued employment.

John Minot, East Bay Transit Riders Union (EBTRU), expressed support of AC Transit's plan to institute mandatory vaccinations and suggested the District allow for the use of the submission of proof of vaccination via QR Code as well.

David Berman, AFSCME 3916 member, expressed support of a vaccination mandate and use of QR Codes for verification of vaccination.

Shauna Badger, AFSCME 3916 member, expressed support of a vaccination along with concurrent Covid-19 testing and the use of QR code for improved privacy. Badger asked the Board to keep in mind that many people have young children who cannot be vaccinated, increasing the possibility of Covid-19 exposure at home, and was hopeful that a hybrid work plan would be implemented.

Nathan Landau, AFSCME 3916 Member, noted that its union's executive board and its membership supported a vaccination mandate. Landau commented that AC Transit needs to do the best for public good and, while not a 'magic bullet', there are far fewer instances of sickness and death from vaccinated people versus unvaccinated people. Landau compared speakers' comments that getting vaccinated is a choice to a drunk driver choosing to drive; both choices have consequences affecting other people.

Katy Scott-Smith noted concerns about the lack of facts for many statements presented today. Scott-Smith commented on previous speakers' views on the facts about Covid-19 vaccination efficacy and offered counterpoints and clarification to previously stated reporting. Scott-Smith noted that bus service serves the disabled community, including the immuno-compromised, who cannot get vaccinated and would otherwise have to face bus drivers who may not be vaccinated if not required to do so.

Board Discussion:

Director Peebles moved to impose a vaccination mandate onto all AC Transit employees, without the option of testing and with the minimum legally required exemptions and direct management to meet with the unions on how to implement and address the effects of the mandate. Director Peebles further commented about the impact of the virus on front line workers, adding that hazard pay is being thoroughly considered but unfortunately does nothing to protect the employees, and he urged front line workers to protect themselves by vaccinating. Director Beckles seconded the motion and opened the floor for discussion.

Director Williams asked the General Manager to clarify the communication that has been done by the District to educate employees about vaccines. General Manager Hursh explained that the District has a multi-faceted approach to debunking vaccination hesitancy: from monetary incentives and educational clinics to YouTube channel and videos. Media Affairs Manager Robert Lyles added that the District partnered with community-renowned physicians to record informational videos for AC Transit employees, delivering culturally competent content with the goal of demystifying the effects of vaccines and educating employees about their safety. He continued to mention the digital and print newsletter which informs employees about AC Transits internal initiatives that has been circulated to all divisions on a regular basis for the past two years. Mr. Lyles reiterated that internal outreach about the safety of vaccines has been quite thorough and extensive.

Director Shaw commented that although she didn't like the idea of mandates, she would support the vaccination mandate. Director Shaw added that as a vaccinated immuno-compromised rider she doesn't feel comfortable on transit knowing that

vaccination rates are low. Director Shaw further added that the District has depleted its strategies to achieve voluntary vaccination compliance so the mandate would be the next step toward safety of employees and riders.

MOTION: PEEPLES/BECKLES that AC Transit mandate vaccination of all its employees, that it be done without a testing option, and that it be done with absolutely the minimum exemptions that are legally required, and direct management to meet and confer with the unions on implementation and the effects. The motion carried by the following vote:

Ayes: Ortiz, Walsh, Beckles, Shaw, Peeples

Nays: Young, Williams

- 6.B.** Consider receiving a report on AC Transit's Zero Emission Transit Bus Technology Analysis covering a performance period from January to June 2021. [21-284a](#)

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

Public Comment:

There were no comments offered.

Board Discussion:

Director Shaw expressed pride in the work that has been done and the positive feedback that the District has received from industry peers. Director Peeples echoed his colleague's comment that a tremendous amount of important work has been done by AC Transit for the entire industry.

MOTION: ORTIZ/SHAW to receive a report on AC Transit's Zero Emission Transit Bus Technology Analysis covering a performance period from January to June 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

External Affairs Items - Chair Williams

- 6.C.** Consider receiving an overview of draft plans for the redistricting of AC Transit's five wards. [21-029c](#)

District Secretary Linda Nemeroff presented the staff report.

Public Comment:

There were no comments offered.

Board Discussion:

There was no discussion.

MOTION: PEEPLES/BECKLES to receive an overview of draft plans for the redistricting of

AC Transit's five wards. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

Finance and Audit Items - Chair Shaw

- 6.D.** Consider receiving a report from the District Parcel Tax Fiscal Oversight Committee on Measure VV/C1 tax proceeds for the year ended June 30, 2021. [21-562](#)

Chief Financial Officer Chris Andrichak presented the staff report.

Public Comment:

There were no comments offered.

Board Discussion:

Director Peeples asked if the Parcel Tax Oversight Committee reviewed information on the ability of Special District 2 fund all of its service. Mr. Andrichak reported that the Committee is provided with all of the District's revenues and expenses broken down by Special Transit Service District which includes labor and all the various service categories. Director Shaw also commented on the allocation of service hours and miles by Special Transit Service District.

MOTION: ORTIZ/PEEPLS to receive a report from the District Parcel Tax Fiscal Oversight Committee on Measure VV/C1 tax proceeds for the year ended June 30, 2021. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 6.E.** Consider receiving report regarding the District's authority to levy taxes and options for revenue generating ballot measures. [Requested by Director Peeples - 12/9/20] [21-472](#)

General Counsel Jill Sprague presented the staff report.

Public Comment:

Katy Scott-Smith, PTA-EBDSA, thanked General Counsel for its report and commented that the East Bay Democratic Socialists of America is researching a voter-initiated ballot measure for 2024, citing the need for more funding for the District. Scott-Smith noted that an AC Transit tax initiative should focus on taxing higher earners if possible and/or rideshare companies. Scott-Smith noted it would be prudent to open dialogue with city council members as soon as possible.

Board Discussion:

Director Peeples asked if the issue of citizen-initiated measures was currently pending in the California Supreme Court. Ms. Sprague reported that there were a number of appellate court decisions that hold that citizen-initiated measures only require a majority vote. She added that she will conduct more research and will report back. Director Peeples added that EBDSA needed to know about this.

President Ortiz asked if AC Transit could impose personal income taxes to which Ms. Sprague advised that sales and use taxes have to be applied equally and cannot be levied based on income. President Ortiz further inquired about the public comment regarding an Uber/Lyft tax. Ms. Sprague confirmed that this type of tax would require AC Transit to seek a legislative change. Director Peeples pointed out that the City of Berkeley has an Uber/Lyft tax and has chosen not to give anything to AC Transit.

MOTION: PEEPLES/ORTIZ to receive report on the District's authority to levy taxes and options for revenue generating ballot measures. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

- 6.F.** Consider receiving a report regarding the legality of precluding an audit firm from competing for a new contract based on the firm's immediate prior role as auditor for the District (Requested by Director Peeples - 8/11/21). [21-467](#)

General Counsel Jill Sprague presented the staff report.

Public Comment:

There were no comments offered.

Board Discussion:

Director Peeples commented that he disagreed with the legal opinion on the grounds that it did not cite any authority or cases and believed that it simply agreed with the General Counsel's opinion. He added, however, that he would not push the issue.

MOTION: PEEPLES/YOUNG to receive a report regarding the legality of precluding an audit firm from competing for a new contract based on the firm's immediate prior role as auditor for the District. The motion carried by the following vote:

Ayes: Ortiz, Young, Walsh, Beckles, Williams, Shaw, Peeples

Board Administrative Matters - President Ortiz

- 6.G.** Announcement of appointments to the Nominating Committee for the selection of President and Vice President for 2022 (Verbal). [21-526](#)

President Ortiz appointed Directors Williams, Peeples and Vice President Young to the Nominating Committee for the selection of President and Vice President for 2022. Vice President Young will serve as the Chair.

7. CLOSED SESSION/REPORT OUT

There was nothing to report out of closed session.

7.A. Conference with Legal Counsel – Existing Litigation

(Government Code Section 54956.9 (a))

McGhee v. AC Transit; WCAB Case No. ADJ8193056
Komarizadeh v. AC Transit; WCAB Case No. ADJ7500337

Quarterly Litigation Report:

Galpern v. AC Transit, U.S. District Court (No.Cal.Dist.), No. 20-cv-02572-TSH;
White v. AC Transit, U.S. District Court (No.Cal.Dist.), No. 20-cv-03804-TSH;
Dollene Jones v. AC Transit Retirement Board, et al., U.S. District Court (No.Cal.Dist.), No. 20-cv-00385-SI; Dollene Jones v. AC Transit Retirement Board, et al., ACSC No. RG20-050706;
Claim of Farmers Insurance Exchange (21-AL00077).

In addition, there is a report regarding violations at the District's Emeryville and Hayward facilities during this reporting period.

7.B. Conference with Legal Counsel – Potential Litigation (Two Cases)

(Government Code Section 54956.9(b))

7.C. Conference with Labor Negotiators

(Government Code Section 54957.6):

Agency Designated Representative:

- General Manager Michael Hursh;

- Acting Labor and Employee Relations Manager/Executive Director of Human Resources

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

Unrepresented Employees

7.D. Public Employee Performance Evaluation

(Government Code Section 54957)

Title: General Manager, General Counsel, District Secretary

8. AGENDA PLANNING

8.A. Review of the Agenda Planning Pending List.

[21-018t](#)

Director Shaw commented on career planning and professional growth and requested a presentation on the plan to be more agile in terms of staffing and growth and how the organizational structure could affect the District's future budget planning. (Ortiz concurred)

Director Shaw requested a detailed ridership report for the Line 800 routes showing the hours of operations and how the bus schedule overlaps with BART's schedule. The report should demonstrate how the ridership was affected when BART changed its schedule, other factors that may affect the ridership, and the elements in deciding when and where the 800 lines are run. (Peeples concurred)

Director Beckles requested a report outlining a strategy to engage with local cities to plan a collaborative campaign to place a revenue generating tax measure on the ballot.

(Ortiz Concurred)

Director Peebles requested a discussion at a future meeting or Board Retreat regarding legislative modifications to the Brown Act. (Beckles concurred)

9. GENERAL MANAGER'S REPORT

9.A. General Manager's Report for December 8, 2021. [21-020t](#)

The report was presented for information only.

10. BOARD/STAFF COMMENTS

(Government Code Section 54954.2)

Members of the Board commented on the events they attended since the last Board Meeting.

11. ADJOURNMENT

There being no further business to come before the Board of Directors, the meeting adjourned at 8:10 p.m. in memory of Amy Franjesevic, a 19 year employee and the leader of AC Transit's Creative Services Team. The next regular meeting of the Board is scheduled for January 12 2022, at 9:00 a.m.

Respectfully submitted,

/s/

Linda A. Nemeroff
District Secretary