



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

MINUTES

Board of Directors - Regular Meeting

CLOSED SESSION 4:15 PM for Agenda Items 7A-7D

VIRTUAL MEETING

Phone (669) 900 6833

Webinar ID: 984 8717 5063

Wednesday, September 14, 2022 at 5:00 PM

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

Full Zoom recording is available in the Audio/Video link to the right.

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)

MURPHY MCCALLEY (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, September 14, 2022, at 5:00 p.m.

The meeting was called to order at 4:17 p.m. for the purpose of Closed Session. All Board members were present except Vice President Young. The Board convened in Closed Session to discuss Items 8A-8D as listed on the agenda. Closed Session concluded at 4:26 p.m.

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

2. ROLL CALL

Vice President Young arrived at 5:56 p.m. just prior to the discussion of Item 7.C.

Present: ORTIZ, YOUNG, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

3. PRESENTATION

- 3.A.** Update on AC Transit's donation of three surplus MCI buses that are [19-230c](#)
being used to provide transportation for school students in Haiti.

Claude Joseph from Those Angels, Inc. gave the presentation and thanked AC Transit for the donation of the buses, which have expanded opportunities for field trips for school children in Haiti. Members of the Board thanked Mr. Joseph for his work on the project and his continued efforts.

There was no public comment offered. The item was presented for information only.

4. PUBLIC COMMENT

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

Sheela Gunn-Cushman commented on wayfinding matters affecting visually impaired bus riders discussed at the Accessibility Advisory Committee, including the distance between benches and bus poles, and stop signage that is inaccessible to visually impaired riders. Gunn-Cushman also expressed support of traffic enforcement cameras on buses as long as the cameras are used in a socially fair and equitable manner.

5. MODIFICATIONS TO THE AGENDA

There were no modifications to the agenda.

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

There was no public comment offered on the consent calendar.

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

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.A.** Consider approving Board of Directors minutes of August 10, 2022. [22-099](#)

MOTION: PEEPLES/McCALLEY to approve the Board of Directors minutes of August 10, 2022. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.B.** Consider approving the Joint Board of Directors/Accessibility Advisory Committee minutes of July 27, 2022. [22-503](#)

MOTION: PEEPLES/McCALLEY to approve the Joint Board of Directors/Accessibility Advisory Committee minutes of July 27, 2022. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.C.** Consider receiving report on proposed amendments to the AC Transit Conflict of Interest Code. [22-512](#)

MOTION: PEEPLES/McCALLEY to receive the report on proposed amendments to the AC Transit Conflict of Interest Code. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.D.** Consider receiving 1) the Retirement Board meeting minutes of July 13, 2022, and 2) the Special Retirement Board meeting minutes of August 2, 2022. [22-480](#)

MOTION: PEEPLES/McCALLEY to receive 1) the Retirement Board meeting minutes of July 13, 2022, and 2) the Special Retirement Board meeting minutes of August 2, 2022. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.E.** Consider review of Board Policy 607, Statue of Limitations Re: California Code of Civil Procedure §1094.5 and Resolution 17-016, with no recommended changes. [22-288](#)

MOTION: PEEPLES/McCALLEY to approve the review of Board Policy 607, Statue of Limitations Re: California Code of Civil Procedure §1094.5 and Resolution 17-016, with no recommended changes. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.F.** Consider receiving the Monthly Report on Investments for May 2022. [22-463](#)

MOTION: PEEPLES/McCALLEY to receive the Monthly Report on Investments for May 2022. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.G.** Consider approving amendments to Board Policy 324 - Revenue and Grants. [Continued from the July 27, 2022, Board of Directors Meeting] [22-405a](#)

MOTION: PEEPLES/McCALLEY to approve amendments to Board Policy 324 - Revenue and Grants. [Continued from the July 27, 2022, Board of Directors Meeting] The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.H.** Consider receiving the Bi-Monthly budget update for the period of July 2021 through June 2022 of FY 2021-22. [22-504](#)

MOTION: PEEPLES/McCALLEY to receive the Bi-Monthly budget update for the period of July 2021 through June 2022 of FY 2021-22. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.I.** Consider receiving the FY 2021-22 Fourth Quarter Employee and Non-Employee Out-of-State Travel Report. [22-464](#)

MOTION: PEEPLES/McCALLEY to receive the FY 2021-22 Fourth Quarter Employee and Non-Employee Out-of-State Travel Report. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.J.** Consider receiving the FY 2021-22 Fourth Quarter Surplus and Obsolete Materials Report. [22-462](#)

MOTION: PEEPLES/McCALLEY to receive the FY 2021-22 Fourth Quarter Surplus and Obsolete Materials Report. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.K.** Consider receiving the Quarterly Report on the Status of Active Contracts and Spending Amounts over \$250,000. [22-455](#)

MOTION: PEEPLES/McCALLEY to receive the Quarterly Report on the Status of Active Contracts and Spending Amounts over \$250,000. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.L.** Consider authorizing the General Manager to execute an amendment to the Feeder Service Funding Agreement with the Bay Area Rapid Transit District (BART) to extend the current agreement for two years, through June 30, 2023. [14-066b](#)

MOTION: PEEPLES/McCALLEY to authorize the General Manager to execute an amendment to the Feeder Service Funding Agreement with the Bay Area Rapid Transit District (BART) to extend the current agreement for two years, through June 30, 2023. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.M.** Consider authorizing the General Manager or his designee to execute an agreement for maintenance of the Richmond Parkway Transit Center Park and Ride Lot (RPTC) with Caltrans. [22-514](#)

MOTION: PEEPLES/McCALLEY to authorize the General Manager or his designee to execute an agreement for maintenance of the Richmond Parkway Transit Center Park and Ride Lot (RPTC) with Caltrans. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.N.** Consider authorizing the release of an Invitation for Bids (IFB) and/or Request for Proposals (RFP) to upgrade the hydrogen fueling infrastructure at the Oakland (D4) Division. [22-461](#)

MOTION: PEEPLES/McCALLEY to authorize the release of an Invitation for Bids (IFB) and/or Request for Proposals (RFP) to upgrade the hydrogen fueling infrastructure at the Oakland (D4) Division. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.O.** Consider authorizing the solicitation of proposals to purchase liquid nitrogen and liquid hydrogen fuel to support the continued implementation of the Zero Emission Bus (ZEB) Transition Plan. [22-465](#)

MOTION: PEEPLES/McCALLEY to authorize the solicitation of proposals to purchase liquid nitrogen and liquid hydrogen fuel to support the continued implementation of the Zero Emission Bus (ZEB) Transition Plan. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.P.** Consider authorizing a solicitation for proposals for Operations and Maintenance (O&M) services for the Emeryville (D2) and Oakland (D4) hydrogen stations to support the continued implementation of the Zero Emissions Bus (ZEB) Transition Plan. [22-467](#)

MOTION: PEEPLES/McCALLEY to authorize a solicitation for proposals for Operations and Maintenance (O&M) services for the Emeryville (D2) and Oakland (D4) hydrogen stations to support the continued implementation of the Zero Emissions Bus (ZEB) Transition Plan. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

- 6.Q.** Consider the adoption of Resolution 22-035 approving the new classifications of Director of Innovation and Technology, Innovation and Technology Supervisor, the revised Human Resources Manager, and Labor Relations Manager, and abolishing the classification specification of Director of Systems and Software Development. [22-484](#)

MOTION: PEEPLES/McCALLEY to adopt Resolution 22-035 approving the new classifications of Director of Innovation and Technology, Innovation and Technology Supervisor, the revised Human Resources Manager, and Labor Relations Manager, and abolishing the classification specification of Director of Systems and Software Development. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

7. REGULAR CALENDAR

Finance and Audit Items - Chair Shaw

- 7.A.** Consider receiving a report on updated operating financial projections. [22-505](#)

Chief Financial Officer Chris Andrichak presented the staff report and provided an overview of estimated revenue growth and projected cost scenarios as well as the plan to address projected deficits. Mr. Andrichak also reported on staff's work toward developing specific cost-control plans to address the projected deficit in upcoming years, including ways to reduce the District's contribution to the retirement plan, regional efforts to introduce new funding measures, and possibly converting capital funding to operation funding.

There were no public comments.

President Ortiz commented on the bleak financial picture in the coming years. Mr. Andrichak addressed questions regarding the retirement plan contribution and the possible conversion of capital to operation funding.

Executive Director of External Affairs, Marketing and Communications Beverly Greene addressed Director Peeples's question about a regional effort to sponsor transit recovery legislation.

Director McCalley appreciated the proactive approach and anticipation of possible deficits. Director McCalley further inquired about the service level recovery and how nimble service planning can be related to cost control. General Manager Hursh explained that the primary focus is on service reliability and that further cost control will allow further service recovery. He added that cost control has already begun in areas outside of operator hiring efforts.

Director Shaw and President Ortiz concurred that service reliability is of paramount importance.

General Manager Hursh addressed Director Walsh's question about the areas where the cost-control plan would be applied.

MOTION: ORTIZ/PEEPLS to receive a report on updated operating financial projections. The motion carried by the following vote:

Ayes: ORTIZ, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Absent: YOUNG

Operations Items - Chair Young

- 7.B.** Consider whether to entertain HR Management's (HRM) appeal of the General Manager's decision to deny HRM's protest of its non-award decision under RFP 2023-1585 and to take any other actions as may be deemed necessary.

[22-513](#)

1. The passage of a motion to deny the appeal or the failure of a motion to consider the appeal means that the General Manager's decision will become final. If no motion is made on this matter, it shall have the same effect as a denying the appeal and the General Manager's decision will become final.
2. The passage of a motion to grant the appeal means the Board will schedule a hearing date to consider the appeal for a future Board meeting and notify HRM of the hearing date.

General Counsel Jill Sprague presented the staff report and outlined the options

available to the Board as to whether or not to entertain HR Management's appeal. Counsel further laid out the grounds for the District's position concerning the protest.

There was no public comment offered.

Director McCalley asked for clarification with respect to the applicability of Disadvantaged Business Enterprise (DBE) goals in the procurement process, which were addressed by staff. General Manager Hursh further explained that because the procurement for the services was not federally funded, there was no DBE goal applicability, and despite this, several contracts were awarded to DBE firms because of staff's robust outreach. He further added that the initial evaluation was done by a blind panel who did not know the names of any of the firms.

Director Shaw shared that she was satisfied with staff's handling of the process.

The Board took no action on the matter thereby making the General Manager's decision to deny the protest final.

- 7.C.** Consider approving staff's requested amendment to Board Policy 471- [22-194b](#)
Cancellation of Scheduled Service Policy, to address an operational
issue resulting from an amendment to the policy approved by the
Board on June 22, 2022.

Director of Transportation Derik Calhoun presented the staff report.

Public Comment:

Sheela Gunn-Cushman noted that riders are still not able to receive bus line cancellation or bus travel alternative notices very effectively.

Erik Murillo commented on his recent bus riding experience and noted issues with the AC Transit App, pointing out several ways the App needs to work to better serve bus riders.

Board Discussion:

Director Walsh outlined her understanding of the policy with regard to prioritizing how service is cancelled when the need arises. While Director Walsh understood the operational need to change the policy, at issue was service reliability and how the Board becomes aware of when the policy is not being followed. Staff commented on the complexities that dispatchers and controllers face on a daily basis when trying to adhere to the policy. General Manager Hursh noted that cancelled service is reported on a quarterly basis in the Operations Performance Report. Director Walsh did not feel that the report provided enough granular information to determine how widespread the issue of cancelled service is.

Director Shaw encouraged speakers to contact customer service when the bus does not show up and asked questions regarding the frequency of service that were addressed by staff.

MOTION: YOUNG/SHAW to approve staff's amendments to Board Policy 471- Cancellation of Scheduled Service Policy. The motion carried by the following vote:

Ayes: ORTIZ, YOUNG, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

Board Administrative Matters - President Ortiz

- 7.D.** Consideration of amendments to Sections 2.11 (Selection of President/Vice President) and 8.11 (Nominating Committee) of Board Policy 101 - Board of Directors Rules for Procedure. [22-396a](#)

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

District Secretary Linda Nemeroff presented the Staff Report describing the actions and directions of the Board at the August 31, 2022, Board Retreat to amend sections 2.11 and 8.11 of Board Policy 101 concerning the selection of President and Vice President of the Board and the nominating committee. District Secretary Nemeroff described the details of each proposed amendment and the rationale for their adoption. There was no public comment offered.

MOTION: PEEPLES/YOUNG to approve amendments to Sections 2.11 (Selection of President/Vice President) and 8.11 (Nominating Committee) of Board Policy 101 - Board of Directors Rules for Procedure. The motion carried by the following vote:

Ayes: ORTIZ, YOUNG, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

- 7.E.** Discussion regarding the resumption of in-person public participation at future AC Transit Board of Directors meetings and provide direction to staff. (verbal) [22-515](#)

District Secretary Linda Nemeroff gave a verbal report describing the need for Board direction on the issue of in-person public participation at future AC Transit Board of Directors meetings. Ms. Nemeroff reminded the Board of its previous discussion on the matter and action to discuss this matter at a later date.

Ms. Nemeroff advised that upon consultation with AC Transit Safety Manager Tabby Davenport, there is agreement that in-person public participation can commence provided that measures are taken to create an environment where each attendee feels safe, including the continued enforcement of the District's indoor mask mandate at all facilities. In addition, it was suggested that Board meeting agenda include information that encourages the public to attend meetings remotely unless there is a specific need to attend in-person. An overview of how other Bay Area transit agencies are handling/will be handling future public meetings was provided along with the caveat that future changes to in-person attendance could occur due to the unpredictable nature of the pandemic.

District Secretary Nemeroff closed by specifying that the Board meeting changes described in the report addresses only the Board of Directors meetings and that the other District meeting bodies can continue to operate under the abbreviated teleconference procedures allowed under the Brown Act and continue to meet remotely if desired. An AB 361 Board resolution will still be submitted for Board Approval at the next Board meeting.

Public Comment:

Sheela Gunn-Cushman remarked that allowing the hybrid meeting model provides greater public access and participation at these meetings and supports a hybrid model permanently if not at least while the COVID-19 emergency remains active.

Board Discussion:

Director Shaw expressed support to the return of public participation at in-person Board meetings and asked if all non-Board committees would need to comply with the Board's decisions to have public in-person meetings. District Secretary Nemeroff reported that each committee is a separate legislative body and can make their own rules. However, if they wanted to adhere to AB 361, each committee would have to adopt resolutions addressing AB 361 at their meetings.

Director Beckles expressed support for a hybrid-meeting option for Board meetings allowing the public to participate in-person as well as remotely.

Director Peeples described why he supports a plan which allows in-person public participation at Board meetings by noting that personal interaction between the public and Board members as well as the Board and other committee members is important. Additionally, Director Peeples provided reasons why the public should be allowed to participate remotely as well.

District Secretary Linda Nemeroff described upcoming legislation addressing the Brown Act and future remote participation at Board meetings.

By majority consensus, direction was given to resume in-person public participation at Board meeting beginning on October 26, 2022.

- 7.F.** Discussion regarding agenda items for the annual joint meeting [22-366](#)
between the Board of Directors and Retirement Board and approve
the draft agenda.

District Secretary Linda Nemeroff presented an overview of the draft agenda for the Joint meeting of the Board of Directors and the Retirement Board scheduled for Wednesday, October 19, 2022 at 1 pm. There was no public comment offered.

Board Discussion:

Director Young commented that perhaps the discussion of the item regarding

investments with Environmental, Social, and Governance (ESG) and Private Equity should omit the Private Equity discussion unless people really wish to know more about it. Ms. Nemeroff noted that reporting on Private Equity could be placed in 'second position' for discussion and brought for discussion if time permits.

MOTION: McCALLEY/SHAW to approve the draft agenda for the annual joint meeting between the Board of Directors and Retirement Board. The motion carried by the following vote:

Ayes: ORTIZ, YOUNG, BECKLES, WALSH, McCALLEY, SHAW, PEEPLES

8. CLOSED SESSION/REPORT OUT

General Counsel Jill Sprague reported out on the following:

MOTION: PEEPLES/MCCALLEY to approve the settlement by compromise and release in the amount of \$165,000, minus permanent disability advances of \$10,440, for a total of payment of \$154,560 in the matter of Robinson v. AC Transit, WCAB Case Nos. ADJ11314302, ADJ1700685. The motion carried by the following vote:

Ayes:: Peeples, McCalley, Beckles, Walsh, Shaw, Ortiz

Absent: Young

8.A. Conference with Legal Counsel – Existing Litigation

(Government Code Section 54956.9 (a))

Robinson v. AC Transit, WCAB Case Nos. ADJ11314302, ADJ1700685

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

(Government Code Section 54956.9(b))

8.C. Conference with Labor Negotiators

(Government Code Section 54957.6):

Agency Designated Representative:

- General Manager Michael Hursh;

- Labor and Employee Relations Representative;

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 and Agenda Planning Request Forms.

[22-065o](#)

The following agenda planning requests provided in the agenda packet were accepted:

President Ortiz's request (payment terms for disadvantaged business enterprises) was also endorsed by Vice President Young and Director Peeples. Director Shaw asked that report explain the entire process a small business goes through when applying for a contract with the District.

Director Walsh's request (fare compliance on Tempo) was also endorsed by Directors Beckles and Peeples. Director McCalley asked to evaluate the possibility of a peer review and include it in the report.

10. GENERAL MANAGER'S REPORT

10.A. General Manager's Report for September 14, 2022.

[22-041o](#)

11. BOARD/STAFF COMMENTS

(Government Code Section 54954.2)

Members of the Board commented on the events they attended since the last Board Meeting. Director Walsh reported on District travel to the NACTO 2022 Designing Cities Conference held in Boston, Massachusetts.

12. ADJOURNMENT

There being no further business to come before the Board of Directors, the meeting adjourned at 6:41 p.m. The next meeting of the Board is scheduled for September 28, 2022, at 5:00 p.m.

Respectfully submitted,

/s/

Linda A. Nemeroff

Board Administrative Officer / District Secretary