TO: AC Transit Board of Directors
FROM: Linda A. Nemeroff, District Secretary
SUBJECT: Board Policy 110 – Public Hearing Process for the Board of Directors

ACTION ITEM

RECOMMENDED ACTION(S):

Consider approving amendments to Board Policy 110 – Public Hearing Process for the Board of Directors.

BACKGROUND/RATIONALE:

Board Policy 110 (formerly Board Policy 163) was adopted by the Board in January 1994 and last amended in February 2015. The policy sets forth the parameters for conducting public hearings.

In order to conform to the new Board Policy template, a “Persons Affected” section has been added to the policy as was a “Definition” section to define the term “fare media”. In addition, minor amendments include updates that codify departmental responsibilities and hearing procedures.

A summary of the major amendments to Board Policy 110 are as follows:

Section IV.A.2 – Public Hearings: Fare Media

This section was added to make it clear that a public hearing is required to discontinue a fare media. In addition, the policy explains that the creation of a new fare media requires a public hearing unless the General Counsel and Title VI Coordinator determine that a hearing is not warranted. The policy makes explicit that Board approval is required to discontinue or to introduce a new fare media even if a public hearing is not required.

Section IV.C. – Interpreter & Translation Services

This section was added to codify existing departmental responsibilities in both the securement of interpreter services and the translation of various documents and marketing materials produced for public hearings.

BUDGETARY/FISCAL IMPACT:

There is no budgetary/fiscal impact associated with this report.
ADVANTAGES/DISADVANTAGES:

The primary advantage of the proposed amendments is to have an up-to-date policy that clearly defines roles and responsibilities and is consistent with the Brown Act. There are no disadvantages associated with the recommendations outlined herein.

ALTERNATIVES ANALYSIS:

There are no alternatives to the course of action recommended in this report.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy 110 – Public Hearing Process for the Board of Directors

ATTACHMENTS:

1. Board Policy 110 with proposed Amendments

Approved by: Michael A. Hursh, General Manager
Reviewed by: Denise C. Standridge, General Counsel
           Ramakrishna Pochiraju, Executive Director of Planning and Engineering (Policy only)
           Michele Joseph, Marketing and Communications Director (Policy only)
           Sally Goodman, Title VI Coordinator (Policy only)
           Robert del Rosario, Director of Service Development and Planning (Policy only)
           Robert Lyles, Media Affairs Manager (Policy Only)
Prepared by: Linda A. Nemeroff, District Secretary
I. PURPOSE

The public hearing process is one mechanism used by the Board of Directors and the District to solicit and receive public comments about decisions affecting residents and riders. It is the intent of the Board of Directors to encourage the receipt of public comments so that information received may be considered as part of the decision making process.

II. PERSONS AFFECTED

This policy is applicable to the Board of Directors, Board Officers and any department prescribed herein as well as employees in any department that may have a direct or indirect role in any part of the public hearing process described herein.

III. DEFINITIONS

"Fare Media" means the method by which passengers pay their fare. For example: cash, paper ticket, contactless smartcard, smartphone app, etc.

IV. POLICY

A. Public Hearings

Public hearings shall be scheduled by the Board of Directors to consider the matters identified in this section. Unless waived by the Board, two public hearings shall be scheduled on significant matters (fare increases, major service changes, environmental matters) and whenever possible, shall be held on the date of and in conjunction with a regularly scheduled Board meeting. However, the Board in its discretion may determine that a public hearing be conducted by staff absent of the Board. In those situations, staff shall adhere to the requirements outlined in this policy and the Board shall review all public comment received prior to rendering a decision on the subject matter of the hearing in accordance with Section IV.BIV.D.2 of this policy. [Note: All fare and service changes are subject to Board Policy 551518, Section III. Title VI Service and Fare Equity Analysis.]

1. Fares
Fares shall include any increase in charges and fees assessed for use of District public transit services including cash fares, ticket fares, pass fares, transfer fares, or amendments to eligibility criteria for fare categories. Decreased, short-term—promotional fare adjustments of six months or less shall not be subject to public hearings. "Promotional fares" shall include modifications to fare structures which are established on a short-term basis for the specific purpose of promoting service and encouraging increased ridership.

2. Fare Media

Whenever the District discontinues a fare media, a public hearing shall be held pursuant to the process outlined in this policy. A public hearing shall be required when the District introduces a new fare media, unless it is determined by the District’s General Counsel and Title VI Coordinator that a hearing is not necessary. Regardless, Board approval is required in order to discontinue or introduce a new fare media.

2.3. Major Adjustments of Transit Service

Major Adjustments in Transit Service include:

a. A new transit route; or

b. New service on streets (excluding major arterial streets and streets designated as a truck route) not previously used by any route; or

c. Any aggregate change of 10 percent or more of the number of transit revenue miles or hours system-wide; or

d. Any aggregate change of 20 percent or more of the number of transit revenue miles or hours in one of the four planning areas of the District (West Contra Costa County, North Alameda County, Central Alameda County, South Alameda County); or

e. Any aggregate change of 25 percent or more of the number of transit revenue vehicle hours or miles of a route computed on a daily basis for the day of the week for which the change is proposed.

f. EXCEPTIONS: Exceptions to the major adjustments of transit service include:

i. A reassignment of route numbers resulting from combining existing routes, which results in the creation of a new route “number”.

ii. Standard seasonal variations, unless the variation, as compared to operations during the previous season, falls within the definitions of major adjustments of transit service listed above.

Questions concerning interpretation of this Policy are to be referred to the General Counsel.
iii. Emergency service changes, including changes in routes or service frequencies which may be necessitated due to a disaster which severely impairs public health or safety, changes in access to public streets, or the ability of District equipment to travel on public streets. Emergency service changes may be implemented immediately without a public hearing provided that a finding identifying the circumstances under which the change is being taken is made by the General Manager and a subsequent public hearing is held if the change is to remain in effect longer than 180 days.

iv. The restoration of service which had been eliminated within the past ten years due to budget constraints, provided the service runs on the same route as it had prior to its elimination, subject to minor deviations which do not exceed the major adjustment of transit service requirements above.

v. The introduction or discontinuance of short-term or temporary service which will be/has been in effect for less than twelve months.

vi. Changes to service on a route with fewer than ten total trips in a typical service day.

vii. Discontinuance of District-operated service that is replaced by a different mode or operator, providing a service with the same or better headways, fare, transfer options, span of service, and stops served.

3.4. Environmental Matters

Environmental Impact Reviews, Reports or Negative Declarations required by the California Environmental Quality Act, State Implementing Guidelines or Board Policy No. 525.

4.5. Other Public Hearings

Other Public Hearings shall be conducted as may be required by federal or state laws or regulations, including but not limited to, public hearings required prior to the submission of Federal Transit Administration grant applications. (Note: District public hearings are not required for District grant applications when said grants are part of a regional grant application process and public hearings are coordinated and conducted by the Metropolitan Commission or other regional agency or operator.)

B. Establishment and Notice of Public Hearings

1. Board Authority to Set Public Hearings

Questions concerning interpretation of this Policy are to be referred to the General Counsel.
In order to provide sufficient notice of upcoming hearings, the Board of Directors shall designate the time and place for public hearings at least 28 days in advance of the proposed hearing date, unless more notice is required by law. Unless otherwise required by law, the Board may provide for minor modifications to the 28-day advance notice requirements in those situations when a finding can be made by the District’s General Counsel that such modification will not diminish fulfilling the public notice procedures outlined below.

2. Legal Publication of Notice

Once the Board has set a public hearing, notice of the public hearing shall be prepared to include a general description of the public hearing subject matter and the date, time and location of the public hearing.

The Media Affairs Manager shall publish legal notice of the hearing once a week for two successive weeks in a newspaper of general circulation (such as the East Bay Times) within the District. Except as otherwise provided in subsection 6 of this section, the first publication shall occur not less than 14 days prior to the public hearing date. The second publication shall occur not less than 7 days prior to the public hearing but not less than 5 days after the first publication.

3. Special Provisions Regarding Environmental Matters

In the case of public hearings relating to negative declarations or environmental impact reports, expanded legal notice or public review and comment periods may apply. In such situations, the General Counsel shall review and determine additional public comment and notification periods which may be required by State or Federal law or regulation or Board Policy No. 512525.

4. Other Notices

Notices of public hearings shall be sent to city councils, boards of supervisors or school districts that oversee areas affected by the subject of the public hearing or other public agencies as determined by the General Manager.

In addition to the above legal notices, notices to enhance public awareness of and engagement in the public hearing shall be distributed. These notices may include, but are not limited to:

a. Display advertisements in newspapers oriented to specific groups or neighborhoods that may be affected by the subject of the public hearing;

b. Direct mail notices to neighborhoods that may be affected by the subject of the public hearing;

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c. Informational signs and/or fliers placed on buses and/or bus stop poles on the
affected routes as the situation may warrant; and/or

d. Press releases to area newspapers in the affected areas; and/or

e. Display advertisements in local newspapers(s) in the affected areas.

C. Interpreter & Translation Services

1. At a minimum, Spanish and Chinese interpreters will be available at all noticed public
hearings.

2. Upon request with 72 hours advance notice and subject to availability, sign language or a
foreign language interpreter for the Safe Harbor Languages provided in the Language
Assistance Plan will be present at the hearing. All interpreters for noticed public hearings
shall be secured through the District Secretary’s Office.

3. Departments requesting a public hearing shall be responsible for translating all staff
reports, presentations, notices, handouts, etc. for distribution at the hearing into Spanish
and Chinese and any other languages requested. Translated documents are to be
provided to the District Secretary’s Office for distribution to the public in accordance with
established deadlines for the submittal of staff reports.

4. Departments requesting a public hearing are responsible for coordinating with the
Marketing Department on the production of translated brochures, car cards and other
marketing materials for distribution to the public as well as display ads, web articles and
other electronic messages to riders in advance of when said information will be needed.
The Marketing Department will ensure that the information is translated into the
appropriate languages.

C.D. Conduct of Public Hearings

1. Hearing Procedures

Unless the Board determines otherwise, public hearings shall be conducted in conjunction
with a regular meeting of the Board of Directors or at a special meeting if necessary.
Proceedings shall generally include, but are not limited to, the following:

a. An announcement of the purpose of the hearing.

b. Introduction of the Directors and other Officers and Staff of the District who are
present (at the discretion of the Board President).

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c. An introduction by the Board President, the General Manager, or the General Manager's designee, of the subject matter being considered at the public hearing.

d. An announcement by the General Counsel of the ground rules for the hearing, including:

i. The need for speakers forms to be completed by each speaker so that each individual may be recognized in an orderly manner;

ii. The time limit for speakers, including those using simultaneous translation equipment, shall be limited to two (2) minutes for individuals and organizations, unless, at the discretion of the Board President or by determination of a majority of the Board, said time limit is extended or reduced. Speakers using a translator will receive twice the allotted time (Ref: GC 54954.3(b)(2)). Whenever possible, a timer shall be used to indicate when a speaker's time is about to expire and has expired. The General Counsel may advise speakers that the Board is present to listen to comments and will not respond to questions, but instead, may refer speakers to a staff person for a response;

iii. Announcement that the District Secretary may call speakers in groups of three (3) to five (5) in order to expedite the orderly movement of speakers to the podium;

 iv. Announcements that each speaker will only have one opportunity to speak on the subject of the hearing and shall not be recognized to speak again. A recognized speaker may not assign any of his/her time to another individual; and

 iv. Limitations on signage. Individuals attending the meeting, regardless of whether or not they address the Board, may not bring in signs that are attached to a holder of any kind (including but not limited to wood, metal, plastic, or rolled cardboard tubing) or which are of such heavy construction that may reasonably injure or harm others. Signs not meeting this criteria are subject to confiscation.

 e. Receipt of Public Comments.

 f. Prior to the initiation of a public hearing or prior to the close of a public hearing, the Board may elect to continue the public hearing to another meeting to receive additional comments. The date, time and place of any continued hearing shall be included in the Motion for Continuance. As soon as practical after the Board's action to continue the item, but no more than 24 hours after that action, a notice of continuance shall be posted in the District General Offices in a location which is freely accessible to the public.

 g. Following receipt of oral and/or written public comments, the public hearing shall be closed and the decision rendered at that meeting or another meeting announced by

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the Board President. If the Board chooses not to take action immediately following
the close of the public hearing, the Board President shall announce the time and date
at which the Board will next consider the decision. How soon the Board makes its
decision after the close of the public hearing is within the Board's discretion, unless a
State or Federal law or regulation or Board policy requires a decision within a specific
period of time.

2. Absence of Boardmembers at a Public Hearing

If any Boardmember(s) or a quorum of the Board is are absent from any public hearing, the
public hearing may proceed and copies of the District Secretary's summary of the hearing
(when minutes of the meeting cannot be prepared and approved in time for the meeting
when the public hearing item will be considered), approved minutes, or an audio recording
of said hearing shall be provided to the absent Boardmember(s) prior to the vote on the
decision(s) resulting from the public hearing. Each absent Boardmember shall state on the
record that he/she reviewed the District Secretary's summary of the hearing, the approved
minutes or listened to the audio tape prior to participating in the decision(s).

3. Written Comments

In addition to oral comments, written comments will be accepted prior to the close of the
public hearing. Copies of all written comments shall be provided, or read, to all
Boardmembers prior to their decision on the matter, including any Boardmember(s) who
were absent when the public hearing occurred.

4. Record of Hearing

As provided for in Section 6.20 of the Board Policy No. 101, Rules for Procedure, the
minutes of the Board of Director's meeting shall constitute the record of the public
hearing. Audio recordings of said public hearings shall be maintained in accordance with
the above Board Policy. Court reporter services shall be provided at the direction of the
Board of Directors or as requested by the District Secretary, General Manager, or General
Counsel.

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