



## **Board Policy No. 110**

### **Public Hearing Process for the Board of Directors**

**ADOPTED:** 1/94

**RECENT AMENDMENT:** 7/24/2019

**SEE ALSO:** 525, 101, 518

**SUBJECT CATEGORY:** SECTION 100, GOVERNANCE AND ADMINISTRATION

**SUBSECTION:** ADMINISTRATIVE

**CONTROL DEPARTMENT:** DISTRICT SECRETARY, GENERAL COUNSEL

#### **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.D.2 of this policy. All fare and service changes are subject to Board Policy 518, 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.

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.

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

4. Major Adjustments of Transit Service

Major Adjustments in Transit Service include the following changes if they last 12 months or more:

- a. A new transit route; or
- b. Any aggregate change of 10 percent or more of the number of transit revenue miles or hours system-wide; or
- c. 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
- d. 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.
- e. 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.
  - 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.

#### 5. Environmental Matters

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

#### 6. 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

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 in English, Spanish and Chinese 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 3 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. 525.

## 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, unless waived by the Board. 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;
- 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.

## 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 and Communications 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 digital messages to riders in advance of when said information will be needed. The Marketing and Communications Department will ensure that the information is translated into the appropriate languages.

#### **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).
- 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;

Announcement 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 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 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.

## V. AUTHORITY

- A. Upon request, the Board may waive or modify the additional notice requirements outlined in subsection IV.B.4. for administrative matters only. Justification for the waiver shall be presented to the Board at the time the hearing is set and requires an affirmative vote of not less than four Directors. A waiver may not be sought for adverse service or fare changes.
- B. The Board of Directors has the authority to amend the policy as it deems appropriate or otherwise required by law.