



## **Board Policy No. 110**

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

**ADOPTED:** 1/94

**RECENT AMENDMENT:** 1/10/24

**SEE ALSO:** 101, 525, 518, 544

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

**SUBSECTION:** ADMINISTRATIVE

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

#### **I. PURPOSE**

The public hearing process is one of many methods 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 public input so that information received may be considered as part of the decision-making process. Should this policy be in conflict with any other Board Policy, the provisions of this policy shall prevail.

#### **II. PERSONS AFFECTED**

This policy is applicable to the Board of Directors, Board Officers, employees of the District and the general public.

#### **III. DEFINITIONS**

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

**“Public Hearing”** means a formal proceeding held in order to receive comment from the public and interested parties on a proposed issue or action.

#### **IV. POLICY**

##### **A. Public Hearings**

Public hearings shall be scheduled by the Board of Directors to consider the matters identified in this section, 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 additional hearings are necessary and/or 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. A public hearing is required under the following circumstances:

1. Fare Adjustments

Fare increases shall include any increase in the price for the use of District public transit services including cash fares, ticket fares, pass fares, transfer fares, or amendments to eligibility criteria for fare categories. The resumption of a regular fare following a promotional decrease in fares does not constitute a fare increase requiring a public hearing. A public hearing for fare decrease of longer than six months may be held at the Board's discretion. Fare programs developed and implemented by outside agencies such as the Metropolitan Transportation Commission, the Alameda County Transportation Commission or local jurisdiction do not require a public hearing.

2. Fare Media Discontinuation

Whenever the District discontinues a fare media, a public hearing shall be held pursuant to the process outlined in this policy. 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 (as defined in Board Policy 544).
5. Environmental Matters (excluding categorical and statutory exemptions as defined in Board Policy 525)

Environmental Impact Reviews, Reports or Negative Declarations as required by the California Environmental Quality Act or State Implementing Guidelines.

6. Other Public Hearings

Other Public Hearings shall be conducted as may be required by federal or state laws or regulations.

**B. Setting 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 or less notice is required by law. The Board may reduce the 28-day advance notice requirements in those situations when a finding can be made in consultation with 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, the date, time and location of the public hearing, and methods to provide public comment.

The Media Affairs Manager shall publish legal notice of the hearing once a week for two successive weeks in a newspaper of general circulation in both counties within the District. Except as otherwise provided in subsection 3 of this section or as required by law, 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.

### 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 may be distributed as determined by the General Manager. These notices may include, but are not limited to:

- a. Advertisements in newspapers oriented to specific groups or neighborhoods that may be affected by the subject of the public hearing;
- b. Notices sent by direct mail, electronic mail or other communication method, including 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. For all noticed public hearings related to major service or fare changes, interpretation and translation services will be available for the primary and secondary languages as identified

in the District's Language Assistance Plan (LAP). Interpretation and translation services may be tailored to accommodate the needs of a particular community in which a hearing is being held.

2. Upon request with at least 72 hours advance notice and subject to availability, sign language or foreign language interpreters 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 the setting of 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 the setting of a public hearing are expected to coordinate with the Marketing and Communications Department a minimum of 60 to 90 days in advance of setting a hearing on the production of any 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. 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/Chief Executive Officer (or designee), or other Board Officer of the subject matter being considered at the public hearing.
- d. An announcement by the General Counsel (or designee) of the ground rules for the hearing, including:
  - i. The protocols to orderly recognize speakers:

Live public comment will be accepted during the hearing in person, through remote access, or the teleconference number listed on the public hearing notice or agenda. Zoom participants must use the “raise your hand” feature to indicate they wish to speak and use the unmute option when prompted to speak. Participants who call in will be identified by the last four digits of their phone number and must dial \*9 to “raise their hand” and \*6 to unmute themselves to speak. In-person attendees must complete a speakers form and provide it to the District Secretary. The District Secretary will call each speaker when it is their turn to speak.

- ii. Announcement that the District Secretary may call speakers in groups of three to five in order to expedite the orderly movement of speakers;
  - iii. The time limit for speakers, including those using simultaneous translation equipment, shall be limited to two 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 modified; however, each speaker shall be given at least one minute. Speakers using an interpreter 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;
  - iv. 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 remaining time to another individual; and
  - v. 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 these criteria are subject to confiscation.
- e. Receipt of Public Comments.
- i. 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 on the District’s website and at the District General Offices in a location which is freely accessible to the public.
  - ii. 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 otherwise required by state or federal law or regulation or Board policy that 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 the Board shall review a recording of the public testimony and the written comments received for the hearing prior to rendering a decision on the matter. Each absent Boardmember shall state on the record that they have reviewed the recording and written comments 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 to all Boardmembers prior to their decision on the matter, including any Boardmember(s) who was 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. Recordings of said public hearings shall be maintained in accordance with Board Policy.

## 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 major service changes or fare changes.
- B. The Board of Directors has the authority to amend the policy as it deems appropriate or otherwise required by law.