

Board Policy No. 5 Public Notice and Participation

Summary

This policy defines the public participation processes and public notice and hearing requirements that support public comment and input to the North County Transit District (“NCTD”) Board of Directors (“Board”) in reaching policy decisions.

The Ralph M. Brown Act (Government Code § 54950 et. seq. (“Brown Act”)) – Agenda, Public Comment Requirements, and NCTD Procedures:

1. The Ralph M. Brown Act – The Brown Act, as stated in Chapter 9, Part 1, Division 2, Title 5 of the Government Code, commencing with § 54950, sets out California's open meetings law and regulates meetings of local public agencies. All meetings of the Board, including standing and ad hoc committee meetings, shall be conducted in the manner prescribed by the Brown Act.
2. Agendas – The Brown Act includes requirements for posting of agendas, distribution of agenda materials, access, meeting locations, and public input. Agendas will be posted on NCTD's website and at NCTD's administration building, in accordance with the requirements set forth in *Board Policy No. 4, Rules of Procedure*.
3. Public Comment, Generally – Pursuant to the Brown Act, NCTD agendas for regular meetings will allow members of the public to address NCTD on any item of interest to the public within the purview of NCTD. Members of the public will also be allowed to address NCTD before or during NCTD's consideration of any agenda item to be considered at a regular or a special meeting of NCTD.

A request from the public to discuss an agenda item at a Board Meeting must be filed with the Clerk of the Board on a “Request to Speak” form before consideration of the item commences. A “Request to Speak” form must also be completed by any person, or group of persons, desiring to address the Board on a non-agendized matter, and submitted to the Clerk before the meeting is called to order. The forms will be available at the meeting.

Speakers turning in “Request to Speak” forms after discussion begins on an item that is not subject to a Public Hearing will be heard at the end of the meeting under agenda item “Remaining Public Communications.”

Public Decorum - On August 30, 2022, Governor Newsom signed into law Senate Bill 1100 (SB 1100), which amends the Ralph M. Brown Act (Brown Act) to provide clarification regarding the authority of the Board of Directors related to the public decorum of speakers and the protection and safety of public officials. SB 1100 aims to protect the public and public officials from threats and to ensure that public access is not impeded by disruptive behavior.

SB 1100 adds Section 54957.95 to the Government Code and expressly authorizes the governing body to warn the public speaker of their disruptive behavior and have them removed from the meeting if they do not comply. SB 1100 defines disruptive behavior as behavior that “actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting”. This includes behavior that (1) violates one of the governing

Board Policy No. 5 – Public Notice and Participation

body's regulations addressing the conduct of open meetings, or (2) a reasonable observer would perceive as a threat to use force by that member of the public.

In accordance with SB1100, the Board of Directors has the authority to remove a disruptive member of the public from an open meeting in order to maintain order during the meeting. SB 1100 will go into effect January 1, 2023.

Public Hearings

NCTD conducts public hearings as part of its process to adopt an annual budget, adopt new or modify ordinances, and changes to fares or transit services. Notice of a public hearing will be posted and published, as further set forth below, to afford the public the opportunity to provide comments at the meetings or to submit comments in writing. "Request to Speak" forms should be submitted by persons desiring to speak during a public hearing, but are not required.

Public Input Process and Time Limits

Each person desiring to address the Board on a non-agendized item shall state the subject they wish to discuss. Each person addressing the Board on any matter, whether listed on the agenda or not, shall state who they are representing if they represent an organization or other persons.

Speaker's remarks are limited to three (3) minutes if they are speaking on an item not listed on the agenda. If the speaker is speaking on an item listed on the agenda, they may be donated three minutes by another speaker for a maximum of six (6) minutes. The Board may grant additional time to speak on an item. In such case, the same time limit shall apply to all speakers on that item.

All remarks shall be addressed to the Board as a whole and not to any Board Member specifically. No questions shall be asked of a Board Member or a member of the staff without obtaining permission of the presiding officer.

After a motion has been made, no member of the public shall address the Board from the audience on the matter under consideration without first securing permission to do so by a majority vote of the Board.

Process for Conducting Public Hearings

When required by law, public hearings will be conducted by NCTD at the date, time, and location previously noticed, and shall be held in accordance with the schedule on the agenda or as soon thereafter as practical. A public hearing is required for the adoption of NCTD's annual budget and for fare and service changes, which additional procedures are set out below. These public hearings generally require a thirty (30) day notice. Public hearings for other matters shall otherwise be conducted as required by law.

Prior to all Board public hearings, copies of the Board's agenda, with attachments, inclusive of any staff report, shall be available at the office of the Clerk of the Board at least seventy-two (72) hours prior to the commencement of the public hearing, provided, however, the Board may allow in its discretion the filing of supplemental reports which shall be made public at the commencement of the public hearing in accordance with the Brown Act. The public hearing will

Board Policy No. 5 – Public Notice and Participation

allow for all interested parties to be heard prior to Board consideration of the proposal. The Board will also consider any written comments which were forwarded to the Board on the hearing item.

1. Public Hearings Procedure

Unless otherwise required by law, the order of the public hearing shall be as follows:

a. Open the Public Hearing

The presiding officer shall open the public hearing as scheduled on the agenda.

- i. Presentation of Staff Report
- ii. Questions from the Board
- iii. Public Testimony. The presiding officer shall call for public testimony of people in favor/in opposition.

The presiding officer may, dependent upon the necessity for ensuring adequate presentation of testimony and evidence to provide a fair hearing, set longer time limits than otherwise allowed. The decision of the presiding officer may be appealed to the full Board.

b. Closure of Public Hearings

When neither the public nor District staff have further evidence to produce, or the presiding officer nor majority of the Board believes sufficient evidence has been presented, the presiding officer shall order the public hearing closed. Once closed, no further evidence, either oral or in writing, will be accepted by the Board, provided, however, that the presiding officer, where it appears that good cause exists to hear further evidence concerning the matter which is the subject of the public hearing, may reopen the public hearing.

c. Board Action

The Board has the authority to either approve, deny, or modify the proposal that is before the Board or, based on public comments, direct staff to research any comments for Board consideration at another meeting.

Public Hearing Notice Requirements

1. General

Notice of public hearing shall be published in the following local newspapers with circulation in the North County:

- a. The regional publication of The San Diego Union-Tribune
- b. Publication in a Spanish language newspaper with circulation in the North County.

Notice shall be published within the time limits required by law and include the following:

- a. The date, time, and location of the public hearing.
- b. A statement that the intent of the public hearing is to provide an opportunity for interested persons or agencies to be heard with respect to the effects of the proposed changes/matters to be considered at the public hearing.

Board Policy No. 5 – Public Notice and Participation

- c. A statement that comments can be offered verbally or in writing, establishing the date and time of the public hearing as the deadline for written submissions, and providing a mailing address and facsimile number.
- d. A statement informing any interested parties of the location where a copy of the proposed change would be available for inspection.
- e. A statement that NCTD does not discriminate on the basis of disability in the admission or access to, or in treatment or employment in, its services, programs, and activities. It shall include the contact person designated to coordinate compliance with the Americans with Disabilities Act and how said person may be contacted seventy-two (72) hours in advance of the public meeting to provide disability accommodations if requested. It shall also include a statement that agenda materials will be provided in accessible formats upon request.
- f. A statement that NCTD does not discriminate on the basis of race, color, or national origin in the level and quality of transportation services and transit-related benefits in accordance with Title VI of the Civil Rights Act of 1964.

Items Subject to Public Hearing:

- a. Fares: Public hearings on fare changes are conducted by SANDAG. Policies regarding those changes are contained SANDAG Regional Fare Policy and Comprehensive Fare Ordinance (SANDAG Policy No. 29) and applicable provisions of the SANDAG Public Participation/Involvement Policy (SANDAG Policy No. 25) as they may be amended from time to time, as related to fare changes.
- b. Major service changes: A public hearing shall be held by the NCTD to seek public comment in considering proposed major service changes.
- c. Other: A service change proposal may be submitted for public hearing at the request of the Board or at the discretion of the Executive Director, even if it does not meet one or more of the criteria listed above.

Items Subject to Placement on the Board Agenda:

- a. The Board shall consider all proposed minor service changes and new routes or services as a regular item placed on a Board agenda. No public hearing is required prior to consideration and/or approval of minor service changes and new routes or services.

Notification On-Board Revenue Vehicles:

- a. Minor service changes and/or new routes and services: An informational flyer called a “Take One” shall be developed and include a detailed description of the proposed changes. The “Take One” will advise passengers of the board meeting date where these changes will be considered and invite them to make written or verbal comment at that meeting, or to provide written comment prior to the meeting for inclusion and consideration. The “Take One” shall be made available to the public on all routes one month prior to the relevant board meeting and shall be printed in both English and Spanish.
- b. Major service changes: In addition to the published Notice of Public Hearing, an informational flyer called a “Take One” shall be developed and will include a detailed description of the information contained in the public hearing notice.

Board Policy No. 5 – Public Notice and Participation

- The “Take One” shall be made available to the public on vehicles on all routes one month prior to the public hearing date.
- The “Take One” shall be printed in both English and Spanish.

Review and comment from Board Committees:

- a. NCTD's MSPBD Committee, a Board-appointment committee which advises the Board on service planning issues, shall review and comment on “major service change” proposals prior to the Board’s public hearing.
- b. NCTD's Performance, Administration, and Finance (PAF) Committee, a Board-appointed committee that advises the Board on financial issues, shall review and comment on fare increase proposals.

Final Notification of Changes to the Public:

- a. Following Board approval of a fare increase or service change, a “Take One” shall be placed aboard all vehicles one week prior to the effective date of the change to inform the public of the implementation of the change. The “Take Ones” shall be printed in English and Spanish.

2. Special Information for Fare Increases or Major Service Changes

For any fare increase or “major service change,” as defined under *Board Policy No. 30, Threshold for a Major Service Change*, notice shall be published at least thirty (30) days in advance of the public hearing. The public notice shall include:

- a. As applicable, the route numbers of the services that would be affected with the proposed major service change and the proposed effective date of the change.
- b. The date, time, and location of the public hearing.
- c. A statement that the intent of the public hearing is to provide an opportunity for interested persons or agencies to be heard with respect to the effects of the proposed changes/matters to be considered at the public hearing.
- d. A statement that comments can be offered verbally or in writing, establishing the date and time of the public hearing as the deadline for written submissions, and providing a mailing address and facsimile number.
- e. A statement informing any interested parties of the location where a copy of the proposed change would be available for inspection.
- f. A statement that NCTD does not discriminate on the basis of disability in the admission or access to, or in treatment or employment in, its services, programs, and activities. It shall include the contact person designated to coordinate compliance with the Americans with Disabilities Act and how said person may be contacted seventy-two (72) hours in advance of the public meeting to provide disability accommodations if requested. It shall also include a statement that agenda materials will be provided in accessible formats upon request.
- g. A statement that NCTD does not discriminate on the basis of race, color, or national origin in the level and quality of transportation services and transit-related benefits in accordance with Title VI of the Civil Rights Act of 1964.

Board Policy No. 5 – Public Notice and Participation

Public Comment to Ensure Compliance with Title VI, Limited-English Proficiency, and Environmental Justice Requirements

1. FTA Title VI Circular 4702.1B requires NCTD to promote inclusive public participation to ensure riders, particularly the minority and LEP populations, have an opportunity to voice their opinions on major service and fare changes. To this end, NCTD shall:
 - Develop and maintain a “Community Contacts List” that consists of the emails and contact information to coordinate with community organizations, employers, advocacy groups, and other groups that we would communicate with and provide information to for distribution to traditionally underserved population segments (FTA C 4702.1B Chapter III-5(8)(c)).
 - For Major Service Changes, NCTD staff will conduct public meetings in the community, at times as suggested (6:00 PM or 7:00 PM) to maximize participation. This will include a meeting(s) at locations near the impacted communities, or easily accessible via transit (FTA C 4702.1B Chapter III-5(8)(a)).
2. The 2020 Language Assistance Plan (LAP), developed based on SANDAG’s Four Factor Analysis, describes how NCTD shall identify and meet the needs of the population with limited English proficiency in the NCTD service area.
3. NCTD makes environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its services, policies, and activities on minority populations and/or low-income populations. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations requires that disproportionately high and adverse human health or environmental effects on minority and low-income populations be identified and addressed in order to achieve environmental justice. Environmental justice at NCTD includes incorporating environmental justice and non-discrimination principles into transportation planning and decision-making processes. Environmental justice requires equitably providing to all residents, regardless of age, race, color, national origin, income, or physical ability, opportunities to work, shop, study, be healthy, and play. NCTD believes it is important to understand the impacts of transportation investments on our most vulnerable communities in order to better plan for the future. Promoting social equity and environmental justice in providing services and undertaking planning efforts requires involvement from a wide variety of communities and stakeholders. NCTD considers the following goals of environmental justice throughout transportation planning and service delivery, and through all public outreach and participation efforts:
 - To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations,
 - To ensure the full and fair participation by all potentially affected communities in the transit decision-making process; and
 - To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Board Policy No. 5 – Public Notice and Participation

Public Comment and Participation Regarding Transit Improvements

Government Code § 14085 requires project development agencies receiving state or federal funds for the purposes of project planning, design, rights-of-way, construction, acquisition, or improvement of exclusive public mass transit guide ways, such as NCTD, to prepare policies and procedures for project management, including public outreach and participation. Several federal and state laws and regulations require that project development agencies conduct public participation programs to ensure that the public is involved and that concerns are addressed.

1. Procedures

- a. For all major transit capital improvement projects, NCTD shall conduct a program designed to ensure that the general public is informed of progress, safety, and community impacts during the construction phase and is provided opportunities to express concerns.
- b. NCTD shall hold public meetings at key stages of project implementation and advertise them to all members of the affected community.
- c. NCTD shall solicit input from representatives of special user groups of the local population (e.g., senior and disabled riders) during design and construction in order to ensure that the capital facilities are usable by as many people as possible.
- d. NCTD shall work to minimize both actual and perceived disruption during the construction phase by disseminating informational, educational, and “public relations” materials and by utilizing other traditional public relations tools.
- e. NCTD shall continue to cooperatively work with established community groups, such as planning groups and neighborhood associations.
- f. NCTD should be prepared to meet citizens’ concerns as they arise, on an individual basis, in order to satisfy them to the degree practical.
- g. For projects managed/implemented by SANDAG, SANDAG shall be responsible for public outreach and involvement, in accordance with its own policies.

Special Public Notice and Participation Requirements for Fare and Service Changes

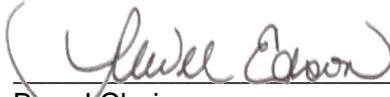
Definitions:

1. “Major Service Change”: Under *NCTD Board Policy No. 30, Threshold for a Major Service Change*, a major service change is any proposed changes to existing routes, whereby route miles or revenue miles are changed in excess of twenty-five (25) percent of their current configurations, measured as happening at one time, or cumulatively within a single year. Change in number of daily trips that exceeds twenty-five (25) percent is also considered a major service change. Finally, elimination or addition of a route qualifies as a major service change. Exemptions to the “Major Service Change” definition are included in NCTD Board Policy No. 30, Threshold for a Major Service Change.
2. “Minor service change” is defined as: All proposed changes to existing routes, whereby route miles or revenue miles are changed in excess of ten (10) percent but less than twenty-five (25) percent of their current configurations, measured as happening at one time, or within a single year.

Board Policy No. 5 – Public Notice and Participation

3. "New route or service" is defined as: All new routes or services featuring the presence of new route numbers, new route alignments, new service types, or new service configurations for areas with existing service.
4. Routine schedule adjustments to improve service reliability where there is no overall change in service levels or trips operated, or where the schedule adjustments alter departure or arrival times on individual trips by ten (10) minutes or less is not considered a service change within the definitions above.

Approvals



Board Chair 10/20/2022
Date



Executive Director 10/20/2022
Date



General Counsel 10/20/2022
Date

Board Policy No. 5 – Public Notice and Participation

DATE	REVISION NO.	RESOLUTION No.	COMMENT
10/18/2012	ADOPTED	12-10	
11/21/2013	1	13-07	2013 REVISION
10/16/2014	2	14-04	2014 REVISION
11/19/2015	3	15-08	2015 REVISION
10/20/2016	4	16-10	2016 REVISION
10/19/2017	5	17-10	2017 REVISION
07/19/2018	6	18-07	2018 REVISION
10/17/2019	7	19-06	2019 REVISION
10/20/2022	8	22-17	2022 REVISION