

Minutes  
INTERCITY TRANSIT AUTHORITY  
Regular Meeting  
Held Remotely  
May 20, 2020

**CALL TO ORDER**

Chair Warner called the May 20, 2020, meeting of the Intercity Transit Authority to order at 5:30 p.m. This meeting was held remotely keeping in compliance with the Governor's guidance to "Stay Home and Stay Healthy" and in keeping with the Governor's Proclamation 20.28.2 Open Public Meetings Act.

**Members Present:** Chair and Citizen Representative Ryan Warner; Vice Chair and City of Lacey Councilmember Carolyn Cox; City of Tumwater Councilmember Debbie Sullivan; City of Olympia Councilmember Clark Gilman; Thurston County Commissioner Tye Menser; Citizen Representative Don Melnick; Citizen Representative Sue Pierce; and Labor Representative David Sharwark.

**Members Excused:** City of Yelm Councilmember Molly Carmody.

**Staff Present:** Ann Freeman-Manzanares; Jason Aguero; Emily Bergkamp; Pat Messmer; Eric Phillips; Heather Stafford-Smith; Daniel Van Horn; Jonathon Yee; Nicky Upson; Steve Krueger; Ally McPherson.

**Others Present:** Legal Counsel, Jeff Myers; Community Advisory Committee member, Ursula Euler.

**APPROVAL OF AGENDA**

**It was M/S/A by Citizen Representatives Melnick and Pierce to approve the agenda.**

**PUBLIC COMMENT**

*Public comment was available through email to [pmessmer@intercitytransit.com](mailto:pmessmer@intercitytransit.com) and the commenting period closed at 12:00 p.m. on May 20, 2020.*

**No public comment was received.**

**NEW BUSINESS**

**A. Public Hearings During the COVID-19 Emergency.** Legal Counsel, Jeff Myers, explained the process on how to proceed with public hearings during the COVID-19 emergency.

In considering actions that require public hearings, the Authority inquired how public hearings should be conducted during the COVID-19 emergency. The requirements differ during the time that Proclamation 20-28 is in effect, which

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suspends portions of the Open Public Meetings Act and which prohibits agencies from holding in-person meetings unless the meetings provide an option for the public to attend at a minimum through telephonic access and may also include an option for other electronic, internet or means of remote access that provide the ability of all persons attending the meeting to hear each other at the same time.

In providing for public hearings, the purpose of such hearings is to allow comment by the public on issues of concern after being provided notice and an opportunity to be heard. Such a process generally allows consideration of public comments submitted in writing or orally.

**Hearings while Proclamation 20-28 is in effect:** Under Proclamation 20-28, a public hearing could be held at the type of remote meeting required by the Governor by allowing the public to call or obtain remote access through electronic means so long as the all attendees could hear each other at the same time and the public attendees could orally communicate their comments to the Authority. This could be accomplished by allowing the public to access the meeting on a telephone conference line or access via virtual meeting software, such as GoToMeeting, Zoom, WebEx or other web-based meeting platforms. Such software is specifically contemplated by Proclamation 20-28. Under the proclamation, it will not be a violation of the OPMA for an agency to require the public to use a conference call-in or remote access login number or to comply with other similar conditions of remote attendance during the time the proclamation is in effect.

**Hearings after expiration of Proclamation 20-28:** After the expiration of Proclamation 20-28, which currently is in force through May 31, 2020, the agency would be required to have a physical location where the public could attend public meetings. Intercity Transit's By-Laws and the Open Public Meetings Act allow attendance at meetings provided the public has the ability to listen and attend in real time. If such access is provided through telephonic or remote access to the meeting, there is no violation of the Open Public Meetings Act. See 2017 AGO No. 4.

The Attorney General's Opinion in 2017, 2017 AGO No. 4, stated that under the OPMA, an agency could lawfully conduct its regular meetings by properly-noticed telephone conference call if the conference call is broadcast over a speakerphone or similar technology at a set location where the public can attend and listen to the proceedings without difficulty, and that technology permits the public to testify.

The Attorney General's guidance on the OPMA agrees that public hearings can be conducted in this fashion, provided all attendees can hear each other during the proceedings. The AG's Guidance document states:

*While the OPMA does not require public comment (see Question # 5), if the agency permits oral public comment at a meeting for other reasons, its remote participation arrangement will*

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*also need to have a means for each member of the public who is speaking to hear each other, not just to hear the members of the governing body who are speaking.*

Thus, those attending in person, those calling in or accessing the meeting remotely must be able to hear the comments of other participants. This can be accomplished if those attending in person are given remote access to the meeting via remote software provided for commenters. This would require a computer remotely connected to each of the Authority members and a platform by which other members of the public could join in, allowing all persons to hear the proceedings.

If a remote access is provided at Intercity Transit's offices in such a manner, each person physically attending could make their comments to the Authority in turn by coming to the podium designated for this purpose, where they would be captured by webcam and remotely connected to the Authority members attending remotely. The comments would be able to be heard by all attending the remote meeting via conference call or remote meeting software. I also recommend that it be shown on a screen at Intercity Transit's offices so that members of the public could observe when not speaking.

Such a public hearing should take precautions to safeguard public health. Social distancing of all persons at the meeting should be required. Commenters should not touch the computer station while providing their remarks. If they do, the station should be sanitized prior to use by additional commenters. The public should be encouraged to wear face masks while attending the meeting.

- B. Amendment to ITA Bylaws.** Legal Counsel, Jeff Myers, presented for consideration the adoption of Resolution 03-2020, amending the Intercity Transit Authority Bylaws.

This amendment responds to Proclamation 20-28 in which the Governor suspended provisions of the OPMA and prohibited meetings unless conducted by telephonic or other remote means. The Governor's proclamation required that any meeting conducted by a governing body during the effective period of the proclamation would provide, at a minimum, for the ability of all persons attending the meeting to hear each other at the same time.

In January 2015, Intercity Transit adopted Section 5.14 of the Bylaws which permits members to attend meetings remotely. The Bylaws provide that if the Chair or Vice Chair attends meetings concurrently by remote means, they cannot preside over the meeting, but the next most senior member of the Authority would preside over the meeting as acting Chair.

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Section 5.14 makes no provisions concerning how the public would participate in remotely conducted meetings or hearings. **Therefore, Section 5.14 of the Intercity Transit shall be amended as follows:**

**Attending Meetings Remotely.** While adhering to the Open Public Meetings Act, RCW 42.30, Authority members may attend regular, special meetings and executive sessions via teleconference, if they are unable to attend in person. This requires that all those attending the meeting in person must be able to clearly hear the members who are attending remotely.

Member's requiring remote attendance shall provide staff with at least 2 days' notice to allow for reasonable accommodation, unless otherwise approved by the Authority.

The Chair and Vice Chair may attend remotely; however, they will not be able to preside over the meeting remotely, unless the meeting is conducted entirely by remote means. In the event that a majority of members attend by remote means, the Chair or Vice Chair may preside over the meeting remotely. Otherwise, in the event the Chair and Vice Chair must attend the meeting remotely concurrently, the voting member physically present having served on the Authority the longest shall serve as acting Chair.

In the event that the Authority meets with a majority of members attending remotely by telephone, teleconference or other remote means, the public shall be provided an opportunity to attend by telephonic, teleconference or other electronic means, in addition to any other opportunity to attend required by law. If the Authority holds a public hearing where a majority of members attend remotely, the public shall also be provided an opportunity to be heard by remote means (telephone, teleconference, or other electronic means), in addition to any other opportunity to be heard as may be required by law.

Remote attendance shall constitute attendance for quorum purposes and voting. Prior to the start of any meeting in which a member is attending remotely, the presiding Member will announce the guidelines for how members attending remotely will be included in making motions, amendments, etc.

**Section 2.** All other provisions of the bylaws shall remain unchanged.

Cox asked that prior to the start of a remote meeting, that staff make it a practice to say exactly what software is being used for the remote/virtual meeting and how to access it.

**It was M/S/A by Councilmember Sullivan and Citizen Representative Melnick to adopt Resolution 03-2020 amending Section 5.14 of the Bylaws to provide for the**

**conduct of remotely attended meetings and public participation at meetings and hearings conducted by remote means.**

Citizen Representative Melnick asked if he could make a statement prior to beginning the next agenda item, as it relates to the subject.

Melnick referred to RCW 38.52.020, and his interpretation of the state law on the disaster declaration was that the Governor, who is an "executive" and all other administrative leaders who are executives, such as Freeman-Manzanares, are empowered to "declare" that a disaster has occurred and act accordingly. He questions why the Authority would have to formally declare that a disaster had occurred. In fact, for the COVID-19 health emergency, Freeman-Manzanares already so determined and acted accordingly. Melnick is concerned that Freeman-Manzanares or her successor might hesitate to declare a disaster and not take remedial action for a future disaster, for example after a massive earthquake. In the event of such a disaster it might be difficult to convene a quorum of the Authority members, and thereby cause delays in the GM responding.

- C. COVID-19 Emergency Declaration and Service Level Discussion.** Legal Counsel, Jeff Myers, presented for consideration the adoption of Resolution 02-2020 proclaiming an emergency.

The Authority is responsible for establishing and monitoring the policies of Intercity Transit, its budget and its service levels. Under our existing Bylaws, the General Manager is given broad authority to carry out the executive and administrative functions of the agency, implementing these policies and overseeing operation of the transit agency. The General Manager has significant discretion to act, particularly in emergency situations, whether declared or undeclared, to make necessary operational decisions consistent with existing resolutions of the Authority. The Authority retains control over budgetary matters and has the power to direct, countermand or reverse decisions of the General Manager. This relationship is not unlike that of a Board of Directors and Chief Executive Officer, who is responsible for operational decisions and reports to the Board consistent with the entity's By-Laws.

In the wake of the Governor's proclamations concerning the COVID-19 emergency, the General Manager took steps to protect and safeguard public health, safety and welfare, including the health, safety and welfare of Transit passengers and employees. These measures have resulted in temporary alterations of service during this emergency. Service will be restored to Authority approved policy levels when both external and internal conditions allow.

Myers said when Freeman-Manzanares first approached him and as the scope of the crisis became apparent as the Governor was in the process of shutting down the

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state in order to protect people's health, it became apparent the impact on transit and she was concerned about being able to take action as necessary. In looking at the existing bylaws and the law, the GM is given administrative authority to operate the transit system much in the manner of a CEO has authority to operate a company, subject to the Board of Directors. Myers believes, and agrees with Melnick, that unless there is a contrary direction from the Authority, that Freeman-Manzanares has significant discretion to address operational issues in response to an emergency such as the Amtrak situation or a weather-related emergency. The scope of the COVID-19 emergency and the economic consequences are unlike anything we've seen that is more limited in time and it is much more like an earthquake of a catastrophic scale that has impacts we haven't yet addressed. In looking at Proclamation 02-2020, Myers doesn't believe that any of the actions the GM has taken or is proposing are contingent in any way on its passing. What the effect of this does is it gives emergency authority and sets forth the emergency contracting authority that you have in statute so you have even more flexibility in order to respond without having to go through some of the same contracting procedures and formalities. This allows management the authority to act in as a broad of fashion with as much discretion as possible so there are no tripwires that someone can question later.

In addition, this allows the Authority the ability to have input into the process to talk about what actions have been taken, and what actions are necessary so we can respond to this emergency, and the GM can certainly do that.

Menser said he was looking for clarity that certain policy level changes are the privy of the Board, and he doesn't have a preference what form that takes, whether stated in bylaws or a separate resolution, or by this emergency declaration. Menser suggested adding a subsection "D" to Section 2 - Emergency Powers to state: *"Extraordinary emergency actions taken pursuant to this resolution with a significant effect on either the Intercity Transit budget or policy level of service shall be brought to the Board for review and/or ratification no later than the next regularly scheduled Board meeting."*

Menser said this would allow the GM to do everything and anything to respond to a crisis. He wants recognition that something of a major scope would then come before the Board.

Melnick asked if there is a way to address having the GM retain emergency powers as opposed to a specific resolution so the next time there is a major emergency the Board won't have to go through this again. He believes the GM should have the authority to sole declare an emergency if/when it occurs. Myers said the law does not forbid the CEO of a political subdivision from proclaiming the emergency, and the GM of Intercity Transit has broad authority to act in an emergency.

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Gilman agrees with Menser's proposed amendment to the resolution. There is a balance the Board is trying to achieve of having a Board awareness and oversight of operational changes while allowing the GM flexibility to respond to an emergency. The Board holds the responsibility and it's important the Board be consulted, even if it's done retroactively to affirm the decisions made in a crisis.

Pierce agrees with Menser's suggested amendment to the resolution. However, she is of the understanding that Resolution 02-2020 is specific to the COVID-19 emergency, and she believes Melnick is saying he is looking at a more broad recommendation for emergencies that may happen in the future.

Melnick said adopting this resolution will set a precedence meaning the Authority has to hereafter be the party that declares the emergency. The title of this resolution is "Proclaiming an Emergency and Directing the GM to Take Appropriate Steps." He would be comfortable if the whole resolution were to change, affirming the decisions the GM took. He thinks there will future disasters bigger than this, and it's not going to be possible for the GM has to get approval from the Authority to respond to an emergency. Is there some way to change a policy that makes it clearer that the GM has this authority and they have the obligation to inform and confer with the Board?

Cox said there is some wisdom to having the Authority, at least retroactively, affirm the actions that were taken by the GM, particularly with the nature of a huge disruption in the way the agency does things. She wants to see the Board more actively involved without interfering with the GM's ability to get the job done.

Sullivan understands Melnick's point of view. And she knows that IT is involved with regional emergency planning and response. If an emergency were to occur, the GM has authority to respond and the Board would be able to adopt a declaration of that sort after the fact. She doesn't want to tie the GM's hands to be able to make decisions on the fly and she hasn't disagreed with any of the changes made by the GM thus far.

Melnick suggested changing the title on the resolution to make clear we're affirming what's already happened and the Board concurs with it, as opposed to directing retroactively that the GM take appropriate steps.

Pierce said she and the other Board members have faith in Freeman-Manzanares' decision-making abilities, and Pierce has faith in the decision-making powers that go into selecting the GM; however, the Board doesn't know who the future GM may be at a later date, and she thinks it wouldn't hurt for there to be a perception of a precedent or even precedent by this Board or future Boards to be able to take a hold of that and use it as the need arises.

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Menser asked if adopting this resolution limits the GM's authority in the future. Myers stated that he does not believe it does, and that the language in the introduction says it directs the GM to continue to take necessary steps. He points to this as an affirmation that the GM had the authority to take appropriate steps in response to the emergency. As the CEO, the GM has the authority whether it's a declared state of emergency or an undeclared event.

**It was M/S/A by Commissioner Menser and Councilmember Cox to amend the draft Resolution 02-2020 by adding a subsection "D" under Section 2 - Emergency Powers to state, "Extraordinary emergency actions taken pursuant to this resolution with a significant effect on either the Intercity Transit budget or policy level of service shall be brought to the Board for review and/or ratification no later than the next regularly scheduled Board meeting."**

Menser noted a correction to subsection "C" under Section 2 - Emergency Powers. He believes it should read, "The Board authorizes the Intercity Transit Authority General Manager to ....."

**It was M/S/A by Citizen Representative Melnick and Commissioner Menser to amend subsection C under Section 2 changing the word "authorizing" to "authorizes."**

**It was M/S/A by Citizen Representative Melnick and Councilmember Cox to adopt Resolution 02-2020, as amended, Declaring an Emergency and Directing the General Manager to continue to take necessary and appropriate steps in response to the emergency.**

Freeman-Manzanares provided details of the emergency situation and ideas for moving forward. She said the COVID-19 public health emergency provided many challenges and she anticipates it will continue to do so. Because Washington State was ground zero in the U. S., we didn't have a lot of information to work with, so with all of this uncertainty and many conversations among staff, we moved forward attempting to provide the safest working conditions for our employees and the safest travel experience for the passengers.

The nature and the transmission of the disease continues to unfold, and we are continually looking for guidance from the CDC, state and local public health officials, labor and industries, other transit systems and essential businesses.

Our staff are front line serving the community seven days a week, and this is decision-making real-time. And in this instance, it is potentially deadly.

Freeman-Manzanares noted that Intercity Transit's most fundamental challenge today is the availability of Operator staffing.



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- Although availability changes daily, the current best estimate is approximately 45% of Operators are available to drive on a regular basis.
- That means that 55% of the Operators needed to run Policy Level Service are unavailable to us for a variety of COVID-19 and non-COVID-19 reasons.
- A number of the individuals are considered in a vulnerable category based on age or an underlying health condition.
- Or a family member is in a vulnerable category and they need to quarantine in order to care for that individual.
- There are individuals on leave to attend to childcare issues either due to school or childcare facility closures.
- There are number of individuals who are out long-term due to surgery or injury.
- We have with attrition some natural and perhaps some brought on by COVID-19.
- We have staff who are retiring and some who may be retiring earlier because of the virus.
- Some staff may choose not to continue working in this profession due to its essential, frontline nature.
- We have had staff come back from leave, others go out on leave, making the number of available Operators a moving target.
- Another complication is we are not hiring or training Operators at this time due to the COVID situation.
- For example, pre-COVID-19 it took 258 Operators to run our policy level of service.
- We estimate that at this point we will reliably have approximately 115 Operators to work with on some combination of fixed-route, DAL and potentially some Advanced Reservation to serve those who have early or late essential trip needs.

**Staff is attempting to effectively navigate what level of service makes sense.**

- What can we sustain from a staffing perspective?
- We are likely talking in the 30% range of our pre-COVID service. This conversation and the calculations are evolving.
- The span and frequency of service will be considerably less than our policy level of service.
- It is a tremendous effort to put together a new bid.

**We are tentatively looking towards the end of June.**

- This may or may not coincide with Phase 3 of the Governor's phased approach which is when it moves from "limited non-essential travel within proximity of your home" - Phase 2, to "Resuming non-essential travel," - Phase 3, and we move from "Gathering with no more than five people outside your household per week" to allowing gatherings of no more than 50 people.
- We do not know how long we will have to run this limited offering of service.

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- There is the potential we will not have a stable and available work force through the end of the year or even into 2021.

Our Advanced Reservation System has provided over 18,000 trips thus far. We still have capacity. As employers open up, that might change so while we are shooting for the end of June to reintroduce fixed route service, we are attempting to pull things together as quickly as possible in case we find that we can no longer handle those essential trips through our Advanced Reservation system.

- We need several weeks to provide refresher training for our operators.
- We are installing a Plexiglas shield around the drivers' compartment to further enhance their safety and add a layer of protection against the virus. Maintenance staff designed the shields with assistance from Operators who were all invited to test and provided feedback.
- We don't know what demand will look like when we return to fix route, but if mid-March to mid-April was any example, we can assume that social distancing recommendations likely will not be achieved.
- We attempted to limit passenger loads to achieve social distancing and it just wasn't effective, and we ended up leaving people standing beside the road unable to make their trips.
- We're talking to the community about wearing masks. It's a requirement for our Operators to wear masks. It is a confined space and if we are interested in maintaining service, we need to protect the Operators and we need to protect each other so we don't share this contagious virus.
- We continue to purchase face coverings for ourselves and we have a supply for passengers.
- We're working through the supply chain issues, and that will very likely continue to be challenging.
- We are working with non-profits to insure those in the community have masks that need them.
- We have enhanced cleaning protocols. Cleaning and sanitizing with hospital grade cleaners, and electro-static sprayers.
- We have and continue to procure hand sanitizer, touchless dispensers, wipes and gloves, but none of these items are easy to come by at this point.
- We received federal funding from the CARES Act which has allowed us to address expenses related to COVID and anticipated economic impacts.

Warner shared that the Department of Transportation put together a spreadsheet on the service level of transit agencies during the COVID-19 and there's a wide variety of how the different transit systems have been impacted. Anyone wishing access to the document should contact Warner.

## COMMITTEE REPORTS

### A. **Transportation Policy Board.** Melnick said at the May 13 meeting:

- Executive Director, Marc Daily recognized Holly Gilbert, who will retire on June 1<sup>st</sup>, for her 30+ years of service.
- The TPB amended their bylaws to allow for remote participation by members upon prior notice to the Executive Director.
- The Board approved a time change for the June 10, 2020, meeting to 8 a.m. This will be an extended meeting to consider recommendations about the Regional Transportation Plan and the Federal Funding Package, likely ending at 10:30 a.m. or 11 a.m.
- The Board discussed strategies and considerations on how to recruit for two Business Representative openings. They directed staff to begin a "soft" recruitment, including outreach to the Chambers of Commerce and Thurston Economic Development Council.
- Paul Brewster briefed the Board on the process for the Call for Projects, available funding and provided details on each application. However, there are more projects dollar-wise than there are available funds. The Board will consider a funding recommendation to Council at the June meeting.

## GENERAL MANAGER'S REPORT

Freeman-Manzanares gave a shout-out to staff for making all of this work in the middle of this uncertainty. Staff has been working hard, doing things outside the norm, and being incredibly creative.

Projects continue to move forward, and staff is evaluating what projects need to move forward and what could and should wait.

- The Pattison Street Expansion is moving along at a fast clip. We anticipate going to the Design Review Board on June 25, 2020, and we believe we will be in the ground by late August.
- As of today, we have had 21 fraudulent unemployment claims made for employees. We talked with all of the employees, and they reported their claim online on ESD's fraud reporting website, and some have filed police reports.
- The annual Local Roadeo has been canceled.
- The State Transportation Conference and Roadeo is canceled.
- For financial and safety reasons we are not looking at travel for the remainder of the year.

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- We've asked staff members who can perform their essential duties offsite to continue to do so.
- Senior Management Team is going over the budget and work plan and that will be presented to the Authority in the not too distant future about what needs to move forward and what can wait.

## AUTHORITY ISSUES

Gilman said the City of Olympia is working with the Olympian Downtown Alliance on a downtown project looking at synergies on reopening downtown and also considering street closures temporarily for pedestrian mall type spaces, and he hopes Intercity Transit is at the table as they move forward with planning and considering both temporary street closures and what organizations and businesses might do collaboratively to open back up.

Gilman reiterated the request earlier to allow access to the media to the Intercity Transit video portion of the Authority meetings.

Melnick said he is very impressed with how Freeman-Manzanares and staff have handled the COVID-19 health emergency.

Pierce said Sound Transit is going back to charging fares and part of the reason is there were riders with no definite destination, and they were clogging the system, and there were riders who were making inappropriate use of the facilities on the Link. Pierce said IT has managed to get past these types of issues by recognizing they couldn't get a handle on the social distancing, and thus went to the Advanced Reservation System for essential trips only. Kudos to Freeman-Manzanares and staff for making that decision.

Pierce said she received the Passenger Transport publication put out by APTA, and there was an article from Ben Franklin Transit in Washington State about their version of on-demand service, partially expanded because of the COVID situation, and she is glad to see another transit agency made news and is doing interesting things.

Pierce said Thursday, May 21, 2020, is Sound the Horn day, supporting public transportation workers, and at 12 noon, give a shout-out by sounding a horn.

Sullivan participated in a video interview for TC Media. Here is the link:

<https://www.youtube.com/watch?v=0qm11bt6USY>.

Cox said there has been a diagnosed case of the virus in the Lacey Police Department, and the City is doing everything possible to double-down on safety precautions for the police force, which includes extensive sanitizing. The individual is recuperating at home. Some businesses are starting to open up in Lacey, for example taking some of

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the parking lot restrictions off of the parks, but the public needs to “go before you go” because public restrooms are still closed. Road projects continue, and it will be painful to drive down College Street for a while longer.

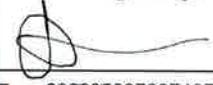
Freeman-Manzanaras shared photos that are available on IT’s social media:

- Intercity Transit requires employees to wear masks and she shared those masks that don the IT logo as well as the KN-95 mask; and staff are allowed to wear their own appropriate masks.
- Photo of the Plexiglas driver barrier on the bus designed by Maintenance and Operators. Some Operators thought it was too confining if it came up against the seat, but it does have a position with a magnet on the lower right corner and will also open and connect to the first stanchion, which allows the Operator to work in the entire front area of the bus safely.
- Youth Education is taking the opportunity with schools being closed to shoot videos and the photo is for Pedestrian Safety using a T-Rex character.
- Photo of two new Dial-A-Lift vehicles just delivered. There are a total of 14 new vehicles in which seven are propane.

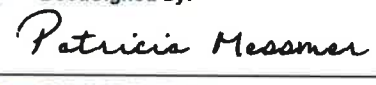
**ADJOURNMENT**

**With no further business to come before the Authority, Chair Warner adjourned the meeting at 6:57 p.m.**

**INTERCITY TRANSIT AUTHORITY**

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**Ryan Warner, Chair**

**ATTEST**

DocuSigned by:  
  
6891545751554D7...  
**Pat Messmer**  
**Clerk to the Authority**

**Date Approved: June 3, 2020**

Prepared by Pat Messmer, Clerk of the Board/  
Executive Assistant, Intercity Transit

