

Date: \_\_\_\_\_ April 8, 2008

Committee Meeting Date: \_\_\_\_\_ April 17, 2008

Board Meeting Date: \_\_\_\_\_ N/A

**BOARD MEMORANDUM**

**DISCUSSION ITEM**

**TO:** Administration & Finance Committee  
Santa Clara Valley Transportation Authority  
Board of Directors

**THROUGH:** Michael T. Burns  
General Manager

**FROM:** Jim Lawson  
Senior Policy Advisor

**SUBJECT:** Open Governance Proposal

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**FOR DISCUSSION**

**BACKGROUND:**

At the March 6, 2008 Santa Clara Valley Transportation Authority's (VTA) Board of Directors meeting, the Board received the following suggestions from the public regarding Open Governance. Director Reed requested staff discuss these suggestions at an Administration and Finance Committee meeting.

1. Notices for all VTA-sponsored meetings must be advertised on all VTA buses and light rail vehicles. The notices should be posted at least ten days in advance.
2. Closed session agenda items occurring at VTA Board and Committee meetings should be taped and records made public when their reason for secrecy no longer exists.
3. VTA Board members, staff and management emails should be made public unless there is a specific reason that releasing them would harm the public interest. This is already being done at the City of Palo Alto, which has all emails from City Council members, staff and management publicly available.

**DISCUSSION:**

Ensuring that the public has the opportunity to participate in public meetings is a high priority for VTA. The Board has instituted a robust public information program that exceeds the requirements of the Open Government Legislation (Brown Act). Staff continues to evaluate our progress in this area and where the effectiveness and cost of suggestions is warranted will implement additional measures.

Following is a preliminary analysis of the suggestions presented to the Board.

1. *Notices for all VTA-sponsored meetings must be advertised on all VTA buses and light rail vehicles. The notices should be posted at least ten days in advance.*

Currently, all VTA board and committee meetings are posted on VTA's website. Agendas for these meetings are posted at least one week prior to the meeting. In addition, notices for VTA Board meetings are also posted through the following:

- Notices are advertised in three local papers, *The San Jose Mercury News*, *El Observador* and *Thoi Bao* each month at a cost of over \$21,000 a year.
- Notices are posted at the Downtown Customer Service Center.
- A list of meetings and locations are listed in Take-One, VTA's monthly on-board newsletter.
- At the beginning of each calendar year, the dates for all VTA Board meetings for the year are published in the *San Jose Mercury News*, *El Observador* and *Thoi Bao*.

Special one-time public/community meetings and hearings are also advertised through local community papers, bus and light rail car cards, flyers on bus and light rail vehicles and, at times, broadcast to reach as large a public audience as possible.

While staff agrees that placing notices on VTA bus and light rail vehicles for all meetings would further our outreach efforts, implementation would present several challenges and additional costs to VTA. One method for placing notices on VTA bus and light rail (revenue) vehicles is using car cards. VTA contracts with an outside vendor to place and maintain all internal and external advertising on revenue vehicles. This includes car cards and external bus boards. Under the terms of the contract, VTA is allocated 15% of the eligible advertising space for its own use. VTA uses this space for rider information, public safety and promotional activities. Due to the high volume of rider information and promotional activities, VTA is frequently at or exceeding the 15% usage maximum. Therefore if the Board desires to place additional meeting notices using car cards, VTA would amend its contract with the vendor to open additional space. Any change to advertising space would result in a decrease of annual revenues through the advertising contract.

Additionally, it generally takes six to eight weeks to design, produce and place car cards. This creates a very tight timeline for placing and removing the materials and is the reason this communication method has been reserved for postings that remain for a minimum of a month or more. Car cards are placed and removed by the vendor as part of the advertising contract. Placing and removing such a high number of car cards on all VTA vehicles in a timely manner is a large undertaking and the vendor would need to dedicate a staff person to the task. This additional work is beyond the scope of the contract and the vendor would likely require an amendment to pay for the additional staff time.

Staff recommends we continue to expend our limited resources on newspaper placement and using VTA's website. This method also supports our ongoing green sustainability efforts.

As an alternative, the Board might consider creating a VTA pocket calendar that includes tentative meeting dates and directs customers to VTA's website and customer service number for more detailed information. The calendar could also provide details on the purpose of each meeting. This would be a cost-effective way of increasing outreach while also ensuring that the information is timely and accurate. Additionally, staff could design an annual car card that lists the dates for VTA board meetings for the year, however VTA would still be subject to the 15% advertising space requirement.

2. *Closed session agenda items occurring at VTA Board and Committee meetings should be taped and records made public when their reason for secrecy no longer exists.*

VTA routinely tape records Board and committee meetings. It does not tape record the closed session portions of Board or standing committee meetings but does maintain a record of decisions made in closed session.

Government Code section 54957.2 permits a local agency, by ordinance or resolution, to designate a clerk or other officer or employee to keep and enter in a minute book a record of topics discussed and decisions made in closed session. The minute book is not a public record and is required to be kept in confidence. For a number of years, General Counsel has prepared and maintained such closed session records.

Section 54957.2 also provides that the minute book may consist of a recording of the closed session. The recording can be made only with the knowledge and consent of all of the participants in the closed session [62 Ops. Cal. Atty. Gen. 292 (1979).]

The purpose of Closed Session is to ensure that the information remains confidential to protect the best interests of the public and the organization. Once an action is taken on a Closed Session item, a report is provided to the public as required by law. Disclosure of confidential information acquired in a closed session is generally prohibited. (Government Code section 54963.)

If information from a closed session became public prior to the appropriate time, it could jeopardize VTA's negotiating position or invade privacy rights. Therefore, release of information from a closed session must be carefully monitored, and may not, in many circumstances, be appropriate even after a matter has been concluded.

In light of these considerations, the taping of closed sessions of the Board does not appear to be justified due to the expense involved, the risk of improper release of confidential information, and the fact that a record is currently maintained of closed session decisions.

3. *VTA Board members, staff and management emails should be made public unless there is a specific reason that releasing them would harm the public interest. This is already being done at the City of Palo Alto, which has all emails from City Council members, staff and management publicly available.*

Currently, VTA documents, including emails, are available at the public's request in accordance with the Public Records Act. VTA is pleased to comply with any request for documentation and does so on a regular basis. Additionally, VTA posts all email correspondence with Board

members on its website, including questions on agenda items and the responses. The only exception is for privileged or confidential communications.

Staff contacted the City of Palo Alto on its posting of emails from Board members, staff and management. According to Palo Alto staff, the representation made to the Board was inaccurate. The City of Palo Alto does post emails that contain specific questions from council members regarding agenda items and the corresponding response. However, it does not post all emails from staff and management on Palo Alto's website.

Given these factors, staff does not believe the additional effort and expense of placing all staff and management emails on VTA's website is warranted, given that email correspondence between VTA and its Board members is currently placed on VTA's website.

**ALTERNATIVES:**

The Board could direct staff to implement one or more of the proposals, some modified version or none.

**FISCAL IMPACT:**

Using advertising space for public notices would be the most costly to implement. VTA would need to alter the transit-advertising contract with the vendor. While the revenue impacts are unknown at this time, VTA currently receives approximately \$1.5 million annually for transit advertising. Additionally, printing the necessary number of car cards would cost approximately \$10,600 per year. If VTA were to post notices using either flyers or car cards, VTA will need to either pay the vendor for the additional services or hire additional staff. Implementing the suggestion would reduce revenue and increase cost.

Recording Closed Session meetings would have an additional impact on staff resources. Posting questions and responses between the Board and staff regarding agenda items would require further analysis.

Prepared by: Scott Haywood, Policy & Community Relations Manager