



Date: _____ April 10, 2007
 Committee Meeting Date: _____ April 19, 2007
 Board Meeting Date: _____ May 3, 2007
 ACTION X DISCUSSION _____ INFO _____

BOARD MEMORANDUM

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

THROUGH: Michael T. Burns
 General Manager

FROM: Jim Lawson
 Government Affairs Manager

SUBJECT: Open Government Initiatives from Director Reed

RECOMMENDATION:

Revise the format of Board Memorandums to clearly indicate those items of a policy nature.

Revise the format of Board memos to clearly indicate the parties, including subcontractors, to all contracts other than competitively bid contracts.

Add the following to **Sec. 2-70, Incompatible uncompensated activities**, of the VTA Administrative Code:

“(c) Board members or their staff shall not attempt to influence contract awards.

“(d) During any procurement process, Board Members or their staff shall not communicate with VTA staff regarding the procurement.”

Revise Chapter 9 of the Administrative Code to reflect current California law concerning the availability of information to the public as detailed below.

Direct the General Counsel to report public records requests that result in controversy with the requestor to the Administration & Finance Committee or the whole Board via email if there is insufficient time.

BACKGROUND:

During the March 1, 2007 Board of Directors' Meeting, at the request of Director Reed, the Board discussed four open government initiatives outlined in his letter of February 13, 2007, (See Attachment A). After discussion, the Board requested staff to return with recommendations reflecting the intention of Director Reed and the comments received from members of the Board. This memo describes the items discussed, the current methods VTA uses to address these issues and staff recommendations for any changes or additions to current practice.

DISCUSSION:

- 1. Require staff recommendations on policy matters be published and made available to the Board or committees not less than 10 days before the meeting.***

VTA provides public notice on all policy matters well before the suggested ten days notice requested. Items of a policy nature are usually reviewed by advisory committees to the Board at least one month prior to the Board meeting action. Advisory Committee meeting agendas are provided to the public and all Board Members. The usual practice is to then refer these items to the Board Standing Committees. Seven days' advance notice of these meetings is given. Final action on policy matters is then taken by the entire Board at the following monthly Board meeting. All materials considered at these meetings are distributed to the public and all Board Members seven days before the meeting.

In those rare instances where a policy matter is not considered by an advisory committee it would still be considered by a Standing Committee. This provides a minimum of three weeks notice to the public and Board Members.

If for some unforeseen reason a policy related issue does not go to any committee prior to being placed on the monthly Board agenda, there would be a minimum of seven days notice to the public and members of the Board. The seven days notice is a VTA administrative practice and exceeds the requirements of the Brown Act.

Given our structure, providing ten days notice prior to a Standing Committee and/or Board of Directors meeting would result in an increased delay to what is currently a lengthy approval process. This is detailed in Attachment B.

Recommendation: Direct staff to revise the format of Board Memos to clearly indicate items of a policy nature.

2. *Items potentially requiring Board members to abstain from voting under Government Code section 84308 be specially noted on the agenda.*

Agenda items potentially requiring abstention under Government Code section 84308 can be specifically noted on the agenda item. Board memos will continue to contain a list of firms involved and the names of principles associated with those firms.

Staff will prepare a separate 84308 Report that aggregates agenda items involving contracts and the parties/participants connected with them and email this report to each Board Member at the time the Standing Committee agendas are posted. This transmittal will establish the “date of knowledge” for purposes of determining the start of the 30 day period during which the Board member has the option to return contributions in excess of \$250 received from parties or participants, and so preserve the Board members right to vote on the matter.

Recommendation: To assist Board members to determine whether to return a campaign contribution or refrain from voting on the matter, direct staff to revise the format of Board memos to clearly indicate the parties, including subcontractors, to all contracts other than competitively bid contracts.

3. *Adopt process integrity guidelines for Request for Proposals to a) prohibit interference in the evaluation process by members of the Board, b) require results of evaluations of all vendors and proposers be included in staff reports; and c) require bids and documents related to the bid be made public.*

a) prohibit interference in the evaluation process by members of the Board,

Article VII of Chapter 1 of the VTA Administrative Code, entitled *Code of Ethics*, sets forth standards of ethical conduct for VTA Board members, officers, employees and contractors, including standards designed to avoid interference, or the perception of interference, in the procurement process.

Recommendation: To address the specific concern raised, staff recommends the addition of the following two subsections to **Sec. 2-70, Incompatible uncompensated activities**, of the Administrative Code:

“(c) Board members or their staff shall not attempt to influence contract awards.

“(d) During any procurement process, Board Members or their staff shall not communicate with VTA staff regarding the procurement.”

b) require results of evaluations of all vendors and proposers be included in staff reports;

VTA currently handles vendor and proposer evaluations in the following manner, depending upon the category of the procurement:

- i. When price is a factor in the evaluation, the Board memo lists the composite score of the vendors submitting. The staff report includes the selection criteria for this procurement.
- ii. When architects and engineers are selected under Brooks Act (Federal) requirements, and therefore price is not a factor, staff negotiates with the top-ranking vendor. If negotiation with the top ranked vendor is unsuccessful, staff then negotiates with the next ranked vendor. The agenda item details the selection criteria. Further information is then made available on request.
- iii. When a Request for Qualifications (RFQ) is issued, this results in a list of qualified firms VTA may contract with to provide professional services. The list is determined using a “qualified/not qualified” evaluation process. The Board memo lists all firms that submitted and lists the firms that were determined to be qualified for inclusion in the list of potential providers of the specific services. The agenda item provides the selection criteria used for judging the ability of the firms to provide the required services. This system is used for attorneys, engineers, architects and consultants.

Recommendation: Staff recommends the addition of language on all Board memos concerning RFPs and RFQs to show the top rated firm and the composite ranking scores of all short listed firms. As was clarified at the Board meeting, Board members may vote to award contracts utilizing the sealed bid process regardless of when, and in what amount, campaign contributions were received.

c) require proposals and documents related to the proposals be made public.

Concerning the issue of making information available to the public, staff recommends adding the following language to Chapter 9, **Purchasing and Contracting**, of the Administrative Code:

“Sec 9-3. Public Review

The purchasing agent shall make available for public review the contents of all proposals, except for proprietary matter, upon award to the successful proposer, or, if award is subject to further negotiation of terms, upon completion of negotiations.”

This language complies with current California law, which authorizes public agencies to avoid disclosure of contents of proposals during the process of negotiation, to prevent adversely impacting the agency’s negotiating position by revealing the details of competing proposals and is consistent with federal law, which prohibits disclosure of bid or proposal information prior to actual award of contract by the federal government.

Recommendation: Direct staff to revise Chapter 9 of the Administrative Code to reflect current California law concerning the availability of information to the public as detailed above.

4. *The Administration and Finance Committee should hear complaints or issues relative to responses to Public Records Act requests and all such correspondence should be part of the agenda packet for the committee meetings.*

Public Records Act requests are received at different departments throughout the VTA. We receive approximately fifteen per year. The current process requires that they be forwarded to the Board Secretary's Office and logged in. They are then forwarded to the General Counsel's Office for evaluation and compliance as appropriate. The General Counsel, in Section X of her Monthly Activity Report, states what Public Records Act requests have been received and the status of the request at the time of the Report. Staff recommends retaining this process. In addition, the General Counsel will make a special report to the Administration and Finance Committee in those instances where there is any controversy. If there is not sufficient time to notify the A& F Committee, the General Counsel will send notification via email to the entire Board. To date we have had no complaints or litigation in this regard.

Recommendation: Direct the General Counsel to report public records requests that result in controversy with the requestor to the Administration & Finance Committee or the whole Board via email if there is insufficient time.

ALTERNATIVES:

The Board may chose not to direct the changes to the Administrative Code, Board memo format and reports by the General Counsel as recommended above and continue existing policy. The Board may direct staff to institute the 10-day notification for policy issues discussed above with the understanding that key policy decisions may be subject to significant delay.

FISCAL IMPACT:

There is no significant fiscal impact with the staff recommendations as presented.

VTA
RECEIVED*Chuck Reed*
MAYOR

February 13, 2007

2007 FEB 14 P 2:35

SECRETARY

VTA Board of Directors
 Santa Clara Valley Transportation Authority
 Board of Directors and Board Committees
 Office of the Board Secretary
 3331 North First Street, Building B-2
 San Jose, CA 95134-1927

Dear Board Secretary:

I would like to request that the following discussion be placed on the agenda of our next meeting on March 1:

Direct staff to review and return with recommendations for the Board to consider for the implementation of the following open government initiatives:

1. Require staff recommendations on policy matters be published and made available to the Board or committees not less than 10 days before the meeting.
2. Items potentially requiring abstention under Government Code section 84308 be specially noted on the agenda
3. Adopt process integrity guidelines for Request for Proposals to a) prohibit interference in the evaluation process by members of the Board, b) require results of evaluations of all vendors and proposers be included in staff reports; and c) require bids and documents related to the bid be made public.
4. The Administration and Finance Committee should hear complaints or issues relative to responses to Public Records Act Requests and all such correspondence should be part of the agenda packet for the committee meetings.

Sincerely,

Chuck Reed
 Mayor

Cc: Councilmember Nora Campos
 Councilmember Dave Cortese
 Councilmember Sam Liccardo
 Councilmember Madison Nguyen

ATTACHMENT B

TEN DAYS PUBLISHING OPTIONS ON POLICY-RELATED DOCUMENTS

The Board Secretary's Office prepares and distributes a total of 1,766 individual meeting packets each month including Advisory Committees, Standing Committees, Board Meetings, Board workshops, and Policy Advisory Board (PAB) meetings, ad hoc committees, etc.

To ensure that each one of these meetings is properly noticed in compliance with California state law, the VTA Administrative Code, and the VTA Board of Directors Rules of Procedure, a detailed annual calendar is developed to govern and control staff report and agenda preparation and distribution.

The VTA Board of Directors Rules of Procedure related to noticing Board meetings provides in Section 4.7., Meeting Notices, that:

“The Secretary shall mail notice of every regular meeting and every special meeting that is called at least one week prior to the date set for the meeting, to each person who has filed with the Secretary a written request for notice as provided in section 54954.1 of the Government Code. The notice shall be mailed at least one week prior to the date set for the meeting.”

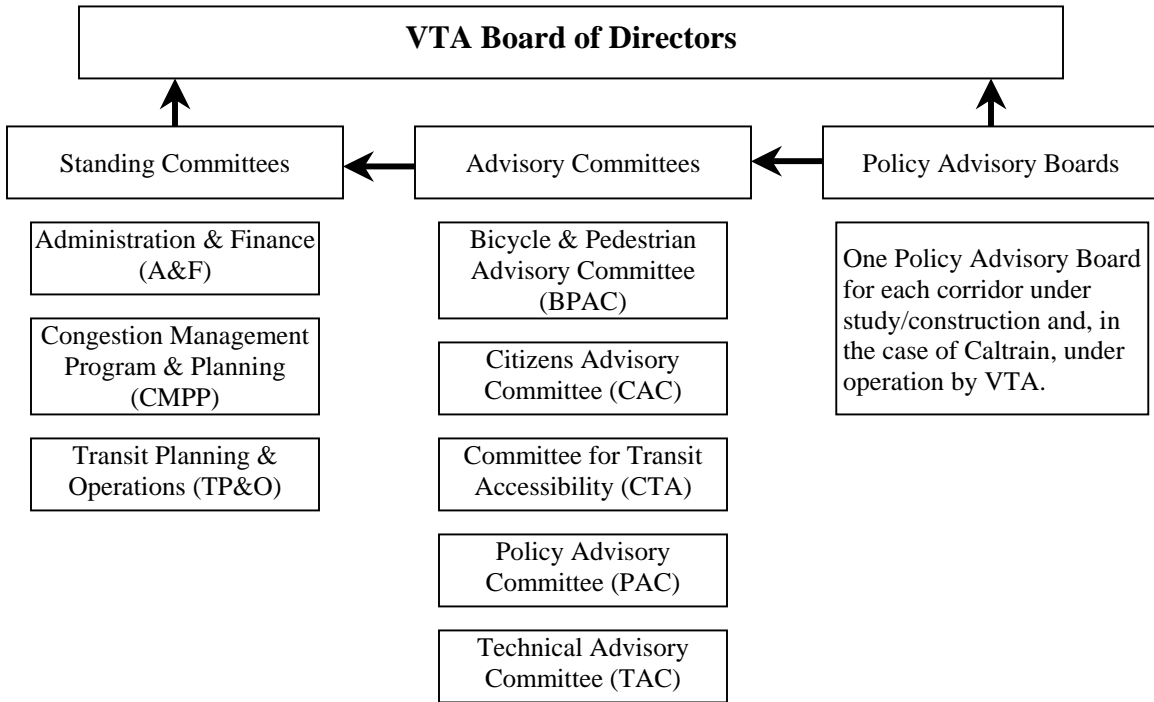
Similarly, the bylaws for Advisory Committees provide that the Secretary shall mail notice of regular and special meeting of the committee at least one week prior to the date set for the meeting.

Current administrative practice provides seven days (one week) notice of all Board meetings, Standing Committee meetings, Advisory Committee meetings, ad hoc committee meetings, Project Advisory Committee meetings, etc. In addition, under current practice, all members of the VTA Board are provided with all agenda packets including agendas, minutes, and staff recommendations for all standing committee and minutes and agendas of all advisory committee meetings.

VTA's committee structure is an essential part of the Board of Directors' decision-making process. The Standing Committees review policy issues and make recommendations to the full Board on policy decisions. The Advisory Committees advise the Board of Directors on policy issues referred to the committee by either the Board or General Manager, typically making recommendations to the Standing Committees.

For the scheduling of agenda items to be relevant and meaningful, these meetings must be scheduled in sequence. Standing Committees must follow Advisory Committee meetings, and Board meetings must follow Standing Committee meetings. Table 1 illustrates the VTA Board and various committees.

Table 1. Flow Chart of VTA Board & Committees



Staff has evaluated the following three options to determine the feasibility of meeting the intent of the ten-day notice request:

- A. Provide 10 days notice for Board meetings, Standing Committee meetings, Advisory Committee meetings, ad hoc committee meetings, Project Advisory Committee meetings, and Policy Advisory Board meetings;
- B. Provide 10 days notice for Board and Standing Committee meetings only;
- C. Provide 10 days notice for Board meetings only.

Option A: Provide 10 days notice of all Board meetings, Standing Committee meetings, Advisory Committee meetings, etc.

Table 2 on the next page displays the calendar for Board meetings and Standing Committees. (Separate calendars have been developed for Advisory Committee meetings and other committees and policy advisory boards that are not included here.)

Table 2. Board Memorandum Calendar 2007

2007 BOARD MEMO CALENDAR FOR BOARD STANDING COMMITTEES AND BOARD MEETINGS											
	Standing Board Memos	Board Committee Agenda Review (Sr. Mgmt.)	Standing Agendas Close	Standing	Committee Meeting Dates			Board Memo (Re-writes & non-comte items)	Board Agenda Closes	Board	Board Meeting
					TPO 3:30 pm (Wed)	CMPP 10:30 am (Thurs)	A&F 12:00 pm (Thurs)				
	DUE BY NOON	1:30 P.M.	REWRITES DUE BY NOON	PRINT & MAIL				DUE BY NOON	DUE BY NOON	PRINT & MAIL	5:30 PM
December	6-Dec	11-Dec	12-Dec	13- Dec 14-Dec	20-Dec	21-Dec	21-Dec	22-Dec	22-Dec	27-Dec 28-Dec	4-Jan
January	3-Jan	8-Jan	9-Jan	10-Jan 11-Jan	17-Jan	18-Jan	18-Jan	19-Jan	19-Jan	24-Jan 25-Jan	1-Feb
February	31-Jan	5-Feb	6-Feb	7-Feb 8-Feb	14-Feb	15-Feb	15-Feb	16-Feb	16-Feb	21-Feb 22-Feb	1-Mar
March	28-Feb	5-Mar	6-Mar	7-Mar 8-Mar	21-Mar	15-Mar	15-Mar	16-Mar	16-Mar	21-Mar 22-Mar	5-Apr
April	4-Apr	9-Apr	10-Apr	11-Apr 12-Apr	18-Apr	19-Apr	19-Apr	20-Apr	20-Apr	25-Apr 26-Apr	3-May
May	2-May	7-May	8-May	9-May 10-May	16-May	17-May	17-May	18-May	18-May	23-May 24-May	7-Jun
June	N/A	N/A	N/A	N/A	No Meeting	No Meeting	No Meeting	4-Jun	6-Jun	7-Jun 8-Jun	Special Mtg. 21-Jun 12:00 p.m.
July	3-Jul	9-Jul	10-Jul	11-Jul 12-Jul	No Meeting	No Meeting	17-Jul *COW 12:00 p.m.	20-Jul	20-Jul	25-Jul 26-Jul	2-Aug
August	1-Aug	6-Aug	7-Aug	8-Aug 9-Aug	15-Aug	16-Aug	16-Aug	17-Aug	17-Aug	22-Aug 23-Aug	30-Aug
September	5-Sep	10-Sep	11-Sep	12-Sep 13-Sep	19-Sep	20-Sep	20-Sep	21-Sep	21-Sep	26-Sep 27-Sep	4-Oct
October	3-Oct	5-Oct	10-Oct	10-Oct 11-Oct	17-Oct	18-Oct	18-Oct	19-Oct	19-Oct	24-Oct 25-Oct	1-Nov
November	31-Oct	5-Nov	6-Nov	7-Nov 8-Nov	14-Nov	15-Nov	15-Nov	16-Nov	16-Nov	19-Nov 20-Nov	6 Dec @ 9am
December	5-Dec	10-Dec	11-Dec	12-Dec 13-Dec	19-Dec	20-Dec	20-Dec	21-Dec	21-Dec	26-Dec 27-Dec	3-Jan

*COW - Board of Directors' Committee of the Whole

Table 2 shows there is insufficient time available to provide ten days notice within any given month for Board and committee meetings. Staff cannot schedule three ten-day notice periods within a given month. In order to provide ten days notice for all Board meetings, Standing Committee meetings, and Advisory Committee meetings, Board action would have to be delayed on all policy matters for a period of one month following the month in which Standing Committee action is taken. This would further delay what is already a lengthy and rigorous process of review. It would be possible to delay Board meetings until a later date in the same month; unfortunately, the delay of these meetings then impacts the next month's committee schedule.

Option A is not recommended because it cannot be accomplished without delaying timely consideration of Board policy matters.

Option B: Provide 10 days notice of all Board and Standing Committee meetings.

Table 3 below demonstrates that this option is not feasible under the current meeting schedule. Current procedure provides seven days notice of all Board and Standing Committee meetings. Under the current meeting schedule, ten days notice could not be provided for Standing Committee meetings unless all Standing Committees (three per month) were delayed for three days. This delay would then decrease the time available after these meetings for proper noticing of the Board meetings that follow. As a result, even though ten-day notice could be given for the Standing Committee meetings, Board action on policy matters would have to be delayed one month for all but three meetings a year if ten days were required for noticing Board Meetings.

**TABLE 3. Meeting Notice for Board Meeting Schedule
If Standing Committee Meetings are delayed three days**

Committee Meeting Dates Delayed 3 days	Rewrites Due & Board Agenda close	Print Packet	Mail Packet	Board Meeting Date	# Days Notice
26 Dec	27-Dec	28-Dec	29-Dec	4-Jan	6*
22 Jan	23-Jan	24-Jan	25-Jan	1-Feb	7*
19 Feb	20-Feb	21-Feb	22-Feb	1-Mar	7*
19 Mar	20-Mar	21-Mar	22-Mar	5-Apr	14
23 Apr	24-Apr	25-Apr	26-Apr	3-May	7*
21 May	22-May	23-May	24-May	7-Jun	14
NA	11-Jun	12-Jun	13-Jun	21-Jun	8*
23 Jul (COW)	24-Jul	25-Jul	26-Jul	2-Aug	7*
16 Aug	17-Aug	20-Aug	21-Aug	30-Aug	9*
24 Sep	25-Sep	26-Sep	27-Sep	4-Oct	7*
22 Oct	23-Oct	24-Oct	25-Oct	1-Nov	7*
19 Nov	20-Nov	21-Nov	22-Nov	6-Dec	14

Option B is not recommended because this option cannot be accomplished without delaying timely consideration of Board policy matters.

Option C: Provide 10 days notice of Board meetings only.

Table 4 provides documentation that this cannot be done under the current meeting schedule. Under this meeting schedule, for nine of the meetings in 2007, action on policy matters would have to be delayed for one month (see asterisked dates on Table 4).

TABLE 4. Meeting Notice for Current Board Meeting Schedule

Current Standing Committee Meeting Dates	Rewrites due/ Board Agenda Close	Print Packet	Mail Packet	Board Meeting Date	# Days
21 Dec	22-Dec	27-Dec	28-Dec	4-Jan	7*
18 Jan	19-Jan	24-Jan	25-Jan	1-Feb	7*
15 Feb	16-Feb	21-Feb	22-Feb	1-Mar	7*
15 Mar	16-Mar	21-Mar	22-Mar	5-Apr	14
19 Apr	20-Apr	25-Apr	26-Apr	3-May	7*
17 May	18-May	23-May	24-May	7-Jun	14
NA	6-Jun	7-Jun	8-Jun	21-Jun	13
19 Jul (COW)	20-Jul	25-Jul	26-Jul	2-Aug	7*
16 Aug	17-Aug	22-Aug	23-Aug	30-Aug	7*
20 Sep	21-Sep	26-Sep	27-Sep	4-Oct	7*
18 Oct	19-Oct	24-Oct	25-Oct	1-Nov	7*
15 Nov	16-Nov	19-Nov	20-Nov	6-Dec	16
20 Dec	21-Dec	26-Dec	27-Dec	3-Jan	7*

Option C is not recommended because it cannot be accomplished without delaying timely consideration of Board policy matters.