



Date: July 25, 2007
 Committee Meeting Date: May 17, 2007
 Board Meeting Date: August 2, 2007

BOARD MEMORANDUM

ACTION X DISCUSSION INFO

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

THROUGH: Michael T. Burns
 General Manager

FROM: Jim Lawson
 Government Affairs Manager

SUBJECT: Amendments to the Policy Advisory Committee Bylaws
 Proposed By the Policy Advisory Committee

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

RECOMMENDED ACTION:

Consider the following amendments to the Policy Advisory Committee (PAC) bylaws proposed by the PAC:

- (1) Amend the quorum requirement from “presence of 9 members” (majority of total authorized membership) to “presence of a majority of filled membership positions.”
- (2) Change the votes required to pass an item from “majority of total authorized membership” to “majority of quorum.”

Also, advise staff which, if any, of these proposed or other modifications to the PAC bylaws the Board wants submitted for formal adoption at a subsequent meeting.

BACKGROUND:

At the June 7, 2007 Board of Directors Meeting the Board, after discussion, deferred this item to the August 30, 2007 meeting. Because of an extremely full agenda for the August 30th meeting, the item is agendized for consideration at the August 2, 2007 meeting.

The Board engaged in extended discussion of the proposed changes at the June 7th meeting. Director Cortese volunteered to work with PAC Chair Moylan to attempt to find areas of agreement. A verbal report on these efforts from Director Cortese is anticipated at the meeting.

The PAC is a sixteen-member committee representing the member agencies that comprise VTA. It consists of one elected official from each of the county's 15 cities and one County Supervisor and advises the VTA Board of Directors on policy issues. Its mission is to ensure that all jurisdictions within the county have input to the development of VTA's policies. The PAC bylaws provide for each appointing authority to appoint an alternate member, to serve when the PAC member cannot attend. The bylaws also govern meeting procedures.

All advisory committee bylaws must be consistent with the VTA Administrative Code. A majority of a committee's authorized membership is required to amend committee bylaws. The VTA Board of Directors must approve all modifications to advisory committee bylaws.

At its January 5, 2005 meeting, the VTA Board considered amendments to the PAC bylaws requested by PAC and staff. Included were expanding PAC's duties and responsibilities to include advising the Board on development of the countywide transportation plan (Valley Transportation Plan), the Short-Range Transit Plan (SRTP), the annual or biennial budget, and tariff and service modifications. The Board also considered having the PAC Chairperson present an oral report at the monthly VTA Board meeting to provide direct, personal communication from the PAC and to promote the timely exchange of information between the two bodies.

During consideration of the proposed amendments, the VTA Board expressed concern with Section 5.4 of the PAC bylaws that allowed for a majority of a quorum, rather than a majority of the total membership, to pass an item. This provision had been approved in December 2002 in response to PAC, which requested the change in an attempt to address low attendance.

In light of its intention to increase the PAC's role and responsibilities in advising the Board, the Board felt it was not appropriate, assuming any matter was voted on when only nine PAC members (a quorum) were present, for the matter to carry on a 5-4 vote. The Board noted that the VTA enabling act requires all acts of the Board to be approved by a majority of the entire VTA Board, and expressed its preference for all advisory committees to have the same requirement.

At its March 30, 2005 meeting, the Board adopted the PAC bylaw modifications proposed by the Committee and staff at the January 5, 2005 meeting. It also voted to change the PAC voting requirements to require a majority of total membership to pass an item. The PAC Chairperson informed the Board during his oral report at the meeting, that the PAC did not support this change. All advisory committees except Committee for Transit Accessibility require a majority of total membership to pass an item.

DISCUSSION:

At its April 12, 2007 meeting, the PAC voted to request changes to two provisions of its bylaws: (1) the quorum requirement; and (2) the number of affirmative votes required to pass an item, which are now presented for Board consideration. PAC Chairperson Chris Moylan has addressed a letter to the Board of Directors outlining the PAC's position on these issues (see Attachment A). Specifically, the PAC voted to:

- Amend section 5.4 of the bylaws to change the definition of quorum from majority of total authorized membership to majority of filled positions, member or alternate. This eliminates from the total count a position to which a Member Agency has not made any appointment. For example, if out of the 16 total membership positions 14 Member Agencies have made appointments, the quorum would be 8 (a majority of the filled positions).
- Amend section 5.4 of the bylaws to reduce the number of affirmative votes required to pass an item from majority of total authorized membership to majority of quorum. Using the previous example, 5 affirmative votes would be required to pass an item (a majority of the quorum of 8).

Staff does not recommend these changes given the Board’s present position on this issue. Both Santa Clara County and VTA have specific quorum and majority vote requirements. Moreover, the public has a reasonable expectation that member agencies will appoint representatives and that appointees will attend PAC meetings.

Staff presented the following rationale to PAC at its April 2007 meeting:

- The core issue is **attendance**. Given that the PAC bylaws provide for alternates, PAC has 32 elected officials available to represent 16 seats at each meeting, of which only 9 are required for the committee to conduct official business. Therefore, there should only be rare occasions when a quorum is not present. Modification of the voting requirement ignores the point that individual appointees have a fiduciary responsibility to attend meetings.
- It is the responsibility of each Member Agency to appoint its PAC member and alternate in a timely manner and ensure that one of them attends regularly. Member Agencies indicate their opinion of the relative importance of PAC and its purpose to the VTA Board by how they ensure the consistent attendance of their representative.
- PAC members need to be encouraged and provided every opportunity to regularly attend meetings. Recent efforts by Chairperson Moylan to contact Member Agency mayors or city managers to encourage them to make appointments and to emphasize the need for and value of regular attendance by their representatives has proven to be very effective. Currently, appointments have been made to 15 of the 16 membership positions.
- During the last three years, there have been only a few instances where a quorum was not present during a PAC meeting:

PAC Meetings	<u>2006</u>	<u>2005</u>	<u>2004</u>
Number of meetings held	11	11	10
Number without quorum	2	0	1
Percentage without quorum	18%	0%	10%
Percentage with quorum	82%	100%	90%

During the meeting, Chairperson Moylan noted the above table does not indicate whether a quorum was present at the beginning or end of the meeting, or for the entire the meeting. Frequently, a quorum was present during the first part of the meeting, but was lost as members left during the latter part of the meeting. Because many members leave before 6:00 PM to attend the Santa Clara County Cities Association meeting, staff structures the agendas so items requiring approval are scheduled for consideration at the beginning of the agenda, when it is more likely a quorum will be present.

- PAC was established to provide all local jurisdictions within the county the opportunity to have input on the development of VTA policies. With the current voting requirements, the support of a majority of the jurisdictions within the county is required to pass an item. If the PAC voting requirements were changed as proposed, it would be possible for an item to pass with less than nine affirmative votes. For example, if there are 15 filled positions, and a bare quorum (8) is present, an item could carry on a 5-3 vote.
- The revised voting provision would be inconsistent with the VTA enabling act, which requires all acts of the Board to be approved by a majority of the entire VTA Board.
- It would not be consistent with the other advisory committees, which require a majority of total membership required to pass an item.
- Even though a quorum may not be present or the PAC does not take formal action on an item, the committee can still provide meaningful input. While participation from representatives from all localities is optimum, it is important to note that on those infrequent occasions when a quorum has not been present, PAC nevertheless has provided a great deal of policy direction in the absence of formal action. Recent examples where a quorum was not present but the committee still provided staff and the Board with significant policy direction include:

¾ **Community Bus Implementation:** After staff presented a recommended implementation plan to PAC at its August 2006 meeting, Committee members requested staff reconsider the plan and develop a more community-based implementation plan and strategy. Following their direction, staff incorporated PAC's input into the final recommendation to the Board, which was adopted. The first new community bus routes are scheduled to begin in July 2007.

¾ **Caltrain Capital Needs Study Subcommittee:** Comprised of seven members of the PAC, the subcommittee developed weighted criteria for evaluating potential Caltrain improvement projects. Based on the criteria, members developed a list of Caltrain projects. Although it did not have a quorum, PAC, at its January 2007 meeting, reviewed the criteria as well as the list and offered valuable feedback, which was taken into consideration for the final list presented to the Board at its February 2007 meeting. The scoring criteria and prioritized project list will be a valuable tool for staff and the Board in evaluating future Caltrain investments.

While these items still require Board approval, PAC's advice helped shape staff's final recommendations to the Board.

To facilitate and promote PAC attendance, staff suggested to the Committee that two steps be undertaken. First, that staff investigate ways to alleviate any structural issues inhibiting consistent PAC attendance, such as looking into alternate PAC meeting times. And second, remind each municipality earlier in the process of the need to make its PAC appointments and also follow-up on outstanding appointments. However, PAC, at its April 2007, directed staff not to investigate alternate meeting times, since the Committee had previously determined that the current meeting time best met the needs of the majority of PAC members and was in conflict with only one Member Agency. PAC did not specifically address the second recommendation.

If the Board accepts any of the changes recommended by PAC, or recommends other changes, staff will require a short time to prepare the bylaw amendment language, determine whether the Administrative Code needs to be amended, and if so, prepare draft those amendments. Therefore, it is anticipates that any PAC bylaw or Administrative Code amendments would be submitted for formal Board adoption at the June or August meeting.

ALTERNATIVES:

The Board may choose to accept, reject or modify the amendments requested by the Policy Advisory Committee.

At the Administration & Finance Committee, Chairperson Kerr requested that the Board also consider allowing cities to opt out of the PAC on a temporary basis so that cities with vacant seats do not count as part of the quorum requirement.

FISCAL IMPACT:

There is no fiscal impact associated with amending the PAC bylaws or the VTA Administrative Code.

Prepared by: Stephen Flynn, Sr. Management Analyst
Reviewed by: Suzanne Gifford, General Counsel

ATTACHMENT A

April 22, 2007

Board of Directors
Valley Transportation Authority
3331 North First Street
San Jose, CA 95134

Dear Board members,

As per the Board's direction at its February meeting, this formal letter has been generated on behalf of the Policy Advisory Committee, which took up the issue of possible changes to the PAC bylaws at its meeting of April 12th. The PAC passed two motions on this topic, each by an 11-0 vote.

1. The PAC requests that the Board reverse its decision of March 30, 2005, which amended the PAC bylaws so as to require a majority of the hypothetical full membership of the Committee to vote in favor of any motion in order for that motion to pass.
2. The PAC requests that the Board amend the bylaws so that a quorum is defined as a majority of the existing membership of the Committee, rather than a majority of the hypothetical full membership.

The PAC did not recommend any specific language at this time, but if the Board should grant either or both of these requests, we would be happy to draft revised language and submit it for Board approval if that would be useful.

As you recall, this issue resurfaced in November when a motion at a PAC meeting was declared failed after receiving 8 yes votes, zero no votes, and one abstention, while the actual membership of the Committee at the time was 14 out of a possible 16. Coincidentally, the HayGroup organizational and financial assessment was released last month, including the recommendation (Executive Report, page 19) that "It is imperative that the Board engage its Standing and Advisory Committees to provide input into policy decisions." Both of these requests are intended to enable and facilitate the PAC's ability to provide that input and thus to make the Committee more useful to you in your deliberations.

During the PAC Chair report at your February meeting, it was suggested by staff that changing the PAC bylaws might require a change to enabling legislation, or might require identical changes to all advisory committees, or some other such onerous effort. Should that be the case, it would be easy to grant request #1, because the 2005 amendment included no such changes and would therefore have been invalid at the time. The PAC is proceeding under the assumption that the previous bylaws modification was, in fact,

properly done. Each of the two requests will now be discussed in order to provide a bit more of the background and tenor of the PAC discussions.

Request #1. Under the current bylaws, the PAC is able to make recommendations to the Board only when they are virtually unanimous, in which case the issues are generally so clear that the PAC's input is unlikely to be necessary. As elected officials, you share with PAC members the experience from your own jurisdictions that recommendations from advisory boards and commissions are most useful on controversial issues, because the minutes include the rationales for both sides of a split vote. Because the groups are merely advisory, decisionmakers are free to adopt the majority's recommendation, the minority's recommendation, or any other action they so choose. It is therefore reasonable for those advisory bodies to have less stringent vote-passing criteria than do the decision-making bodies. The PAC was able to make the important recommendations that the Sustainability Plan include a criterion for time competitiveness with driving, and that the Community Bus program not be defined as running normal routes with minibuses, only because both were unanimous. The PAC could provide more useful policy input if it were relieved of the burden of near-unanimity to pass a motion. Right now, the Board is guaranteed to get no official recommendation from the PAC on any controversial topic.

The PAC is sensitive, however, to the circumstances that led to the 7-5 split decision to amend the PAC bylaws in 2005. The PAC would be happy to have the Board amend the Limitations on Authority section of the bylaws so as to preclude PAC members from publicly characterizing any PAC recommendation as representative of the jurisdictions in Santa Clara County unless the recommendation had been supported by a majority of the hypothetical full membership of the PAC. This would achieve what we believe to have been the intent of the Board in 2005, without hamstringing the PAC's ability to make purely advisory recommendations to the Board.

Request #2. As the attached attendance record shows, the PAC has failed to achieve a quorum for at least part of the majority of its last 15 meetings, as a quorum is currently defined. In three of those meetings, a quorum was never achieved. As the table shows, if the protocol described in Request #2 had been in place, every one of those meetings would have had a quorum, and all but two for the entire meeting. The median attendance over the last 16 months has been 75% of the actual membership. The issue is not attendance; it is vacancies. The hypothetical full membership requirement has not induced jurisdictions to replace members who cease to attend or to fill vacancies; it has served only to prevent the PAC from conducting its business. The most meaningful recommendations that have come from the PAC this past year were the criteria for ranking Caltrain projects. They were done at the subcommittee level, with no meaningful modifications at the PAC level due to a declared lack of quorum in December of 2006.

As elected officials ourselves, we understand that it is not always feasible to fill vacancies promptly. It is counterproductive to deny ourselves policy input from an advisory body simply because that body is operating at less than full membership. None of us restrict our own input that way in our own jurisdictions. The PAC submits that it is not in the Board's interest to do so here either.

One could summarize the basis for our requests as succinctly as one of our former Chairs did at the April meeting: “It’s not working.” We all, Board and PAC members alike, ran for elective office in order to make a difference. At the moment, it is very difficult for the PAC to make a difference even on an advisory basis. If the Board is able to grant our two requests, we are confident that the PAC will be more effective, and that the Board will see real value as a result.

Sincerely,

Christopher R. Moylan
Chair, Policy Advisory Committee

16-Month Policy Advisory Committee Attendance

P = member present, AP = alternate present, I=incomplete (present for only part, if known), A = absent, V = vacant

Jurisdiction	Jan 2006	Feb 2006	Mar 2006	Apr 2006	May 2006	June 2006	Aug 2006	Sept 2006	Oct 2006	Nov 2006	Dec 2006	Jan 2007	Feb 2007	Mar 2007	Apr 2007
Campbell	P	AP	P	P	A	A	P	P	A	API	A	AP	P	P	P
Cupertino	P	P	A	P	PI	A	A	PI	P	P	P	P	AP	PI	PI
Gilroy	P	P	AP	P	P	P	A	P	AP	PI	P	A	P	AP	A
Los Altos	P	A	A	A	PI	A	V*	PI	P	A	A	P	P	AP	P
Los Altos Hills	V	V	V	V	V	V	V	V	V	V	V	V	V	V	V
Los Gatos	P	P	P	P	P	P	A	P	P	P	P	P	P	P	P
Milpitas	P	A	P	A	A	A	V*	V*	V*	V*	V*	V*	V*	V*	V*
Monte Sereno	P	P	P	P	PI	PI	P	P	P	PI	P	P	P	PI	A
Morgan Hill	AP	A	A	A	A	V*	P	P	P	A	A	AP	AP	AP	P
Mountain View	V	P	P	PI	P	P	P	P	P	A	P	V	P	A	P
Palo Alto	P	P	P	P	P	P	PI	P	P	P	P	A	P	A	PI
San Jose	A	P	P	A	PI	A	P	P	P	P	A	V	V	V	PI
Santa Clara	P	P	P	AP	PI	P	API	A	P	A	A	A	P	A	PI
Saratoga	P	P	P	P	P	A	P	PI	P	P	API	P	P	P	PI
Sunnyvale	AP	AP	P	P	P	P	P	PI	P	P	P	P	P	P	P
County	A	A	A	A	V*	V*	V*	P	A	A	A	A	P	PI	PI
Present	12	11	11	9-10	8-11	6-7	7-9	10-13	12	6-9	7-8	8	13	7-10	8-12
Membership	14	15	15	15	14	13	12	14	14	14	14	12	13	13	14
% Attendance	86	73	73	67	79	54	75	93	86	64	57	67	100	77	86
VTA Quorum?	Yes	Yes	Yes	Yes	Part	No	Part	Yes	Yes	Part	No	No	Yes	Part	Part
Traditional Q?	Yes	Yes	Yes	Yes	Yes	Part	Yes	Yes	Yes	Part	Part	Yes	Yes	Yes	Yes

Bylaws section 5.7: “If a member is absent from four Committee meetings in any twelve-month period, the position shall automatically be vacated.” These vacancies have been recorded as absences in PAC minutes. For the purposes of this table, such vacancies are considered to have been filled once the member returns, with the running count of absences reset to zero (otherwise there would be more such vacancies listed here).