

Date: \_\_\_\_\_ November 20, 2007

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

Board Meeting Date: \_\_\_\_\_ December 13, 2007

**BOARD MEMORANDUM**

ACTION ITEM

**TO:** Santa Clara Valley Transportation Authority  
Board of Directors

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

**SUBJECT:** Amendment of VTA Administrative Code to Allow Ex-Officio Board Members  
to Attend Closed Sessions

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**Policy-Related Action: Yes**

**Government Code Section 84308 Applies: No**

**RECOMMENDATION:**

Adopt a Resolution amending Section 2-15 of the Santa Clara Valley Transportation Authority (VTA) Administrative Code to allow Ex-Officio Board Members to attend and participate in the Closed Session portions of VTA Board of Directors meetings.

**BACKGROUND:**

Section 2-15 of the VTA Administrative Code, added by resolution on May 6, 1999, defines the roles, responsibilities and limitations of Ex-Officio Directors. It specifies that Metropolitan Transportation (MTC) Commissioners who reside in Santa Clara County, and who are not Board members or alternates, shall be invited to serve as Ex-Officio members of the Board of Directors. It also specifies that these Ex-Officio members shall be invited to all Board meetings but their presence is not counted for purposes of establishing a quorum, they have no voting rights, and they cannot serve on Board standing committees.

Because Santa Clara County appointments to the MTC are not made or recommended by VTA, the change was initiated to establish a closer working relationship with and foster better understanding of VTA by the MTC Commissioners from Santa Clara County.

Since implementation, this process has worked well for VTA, helping to establish a collegial working relationship between VTA Board members and MTC Commissioners. For the past several years, Ex-Officio Directors have attended closed sessions. Recently, the VTA General Counsel has opined that such attendance is not within the purview of the Ex-Officio members. The County Counsel has opined the opposite, that a closed session is a VTA Board Meeting and that attendance of the Ex-Officio members is appropriate as long as the limitations as described in Section 2-15 are maintained. The VTA Administrative Code does not specifically address the issue of Ex-Officio Directors attending Closed Sessions — it neither specifically allows nor prohibits the practice.

## **DISCUSSION:**

Historically, MTC Commissioners are elected officials in Santa Clara County who fill a variety of positions on regional boards and commissions. Some of these positions are based upon their role as MTC Commissioners, but many more are based upon their position as elected officials within Santa Clara County coupled with a strong interest in and ability to contribute to transportation and congestion management related positions.

For example, a current VTA Ex-Officio Director, in addition to serving as an MTC Commissioner, serves concurrently as a Caltrain Director and as the Chair of the Silicon Valley Rapid Transit Corridor Project. Another MTC Commissioner serves as a Director of Capitol Corridor Commuter Rail and as a board member of both the I-680 Smart Lane Joint Powers Board and the Dumbarton Rail Policy Advisory Board. These roles are typical of the positions held by MTC Commissioners.

These various boards and commissions have an impact on the VTA. For example, decisions made at the Caltrain Board Meetings have serious consequences to the services available to the citizens of Santa Clara County. In addition, they have financial implications to VTA that must be considered in light of all the various responsibilities VTA must meet. Having this member intimately connected with the ongoing activities and issues of VTA, both those discussed in the public forum as well those in Closed Session, is clearly in VTA's best interest. This also holds true for the Commissioner's role at MTC. Decisions made at MTC have a major impact on VTA. These decisions involve funding levels, service delivery, project viability and policy related impacts. MTC, as the conduit for state and federal transportation funding, has a significant impact on the activities and future direction of VTA. It is clearly in VTA's best interest that the MTC Commissioners charged with the responsibility of representing Santa Clara County have a close working relationship with and an in depth knowledge of all issues affecting VTA, including those discussed during Closed Sessions.

Accordingly, I recommend that the Administrative Code be amended as shown in Attachment A to define the ability of Ex-Officio Directors to attend all Closed Sessions.

## **ALTERNATIVES:**

The Board could choose to not modify the Administrative Code to clarify whether Ex-Officio Directors are allowed to attend all Closed Sessions or it could choose to modify the Administrative Code to specifically prohibit them from attending.

## **FISCAL IMPACT:**

There is no fiscal impact.

Prepared by: Jim Lawson, Government Affairs Manager

**SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY**

**ADMINISTRATIVE CODE**

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
ADMINISTRATIVE CODE**

**Chapter 2**

**BOARD OF DIRECTORS**

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**Article II**

**Members**

**Sec. 2-15. Ex-Officio Directors**

Metropolitan Transportation Commissioners who reside in Santa Clara County, and who are not members or alternate members of the Board of Directors by virtue of Public Utilities Code Section 100060, shall be invited to serve as Ex-Officio members of the Board of Directors. Upon acceptance as Ex-Officio Board members, they shall be invited to, and they may regularly attend, Board meetings, **including Closed Sessions**, but their presence shall not be counted for purposes of establishing a quorum, they shall have no voting rights, and they shall not serve on the standing committees of the Board. *(Added. Resolution 99.05.11, §1, 5/6/99.)*

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Resolution No. \_\_\_\_\_

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)  
AMENDING THE VTA ADMINISTRATIVE CODE TO PERMIT EX-OFFICIO BOARD  
MEMBERS TO ATTEND AND PARTICIPATE IN CLOSED SESSION PORTIONS OF  
VTA BOARD OF DIRECTOR MEETINGS**

WHEREAS, the current VTA Administrative Code does not specifically allow nor prohibit Ex Officio Directors attending the Closed Session portions of Board of Director meetings; and

WHEREAS, Santa Clara County appointments to the Metropolitan Transportation (MTC) are not made or recommended by VTA and the VTA Administrative Code was previously revised to provide that the MTC Commissioners that reside in Santa Clara County and who are not Board members or alternates can serve as Ex-Officio members of the Board of Directors; and

WHEREAS, this modification was made to establish a closer working relationship with and foster better understanding of VTA by the MTC Commissioners from Santa Clara County; and

WHEREAS, the MTC Commissioners are elected officials in Santa Clara County who fill a variety of positions on regional boards and commissions that have a significant impact on the VTA; and

WHEREAS, it is in VTA's best interest that the MTC Commissioner responsible for representing Santa Clara County has a close working relationship with and an in depth knowledge of all issues affecting VTA, including those discussed during Closed Sessions.

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Transportation Authority:

Section 2-15 of the Administrative Code is amended to permit Ex-Officio Board Members to attend and participate in the Closed Session portions of VTA Board of Director meetings, as set forth in Attachment A hereto.

**PASSED AND ADOPTED** by the Santa Clara Valley Transportation Authority (VTA) Board of Directors on December 13, 2007.

**AYES:**

**NOES:**

**ABSENT:**

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Dean J. Chu, Chairperson  
Board of Directors

**Attest:**

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Maria Marinos, Secretary  
Board of Directors

**APPROVED AS TO FORM:**

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Counsel