

Transportation Committee

For the Metropolitan Council meeting of January 23, 2013

ADVISORY INFORMATION

Date Prepared: January 15, 2013

Subject: Accept Title VI policies on Major Service Change, Disparate Impact, and Disproportionate Burden for Public Review

Proposed Action:

That the Metropolitan Council accept the proposed policies to define draft Major Service Change, Disparate Impact, and Disproportionate Burden for the purpose of public review and input prior to final adoption.

Summary of Committee Discussion / Questions:

Cyndi Harper, Manager of Route Planning, presented the proposed draft policies.

Council Member Brimeyer asked if there was a Title VI process when Northstar fares were reduced. Ms. Harper replied that any fare change requires a fare equity analysis. Since the demonstration period for the temporary fare change expires later this year, an analysis is underway.

Chair Elkins stated that the Council is also doing a comprehensive analysis of fare structure, which will include an extensive public and stakeholder input process. Ms. Harper noted that, once the committee has a final proposal, then staff will do a fare equity analysis to review the potential for disparate impact or disproportionate burden.

Council Member Brimeyer asked if there was a Title VI process prior to the Committee's approval of the Central Corridor Transit Service Plan last year. Ms. Harper confirmed that one service equity analysis was done before the Concept Plan was presented to the Committee and was the subject of an extensive public input process. A second review was conducted after the plan was modified to make sure the revisions did not have any discriminatory impacts.

Council Member Brimeyer asked about the process if a service or fare change has a disparate impact. Ms. Harper said that additional review is required if a fare or equity analysis shows potential for disparate impact. This may include a more specific analysis to determine what is creating the issue that needs to be addressed through mitigation or by identifying other changes that still meet the purpose but have less disparate impact. Ultimately, a service or fare change that has a disparate impact may be implemented if there is a legitimate business purpose and no mitigation or alternatives exist that also accomplish the same project goals.

Council Member Duinick asked whether the proposed policy recommendations were presented at the meetings with social advocacy organizations and what feedback was received from these groups? Ms. Harper answered that a presentation similar to the one shown to the Committee was presented to these groups. The presentation explained Title VI, to whom it applies and recent changes in the Federal circular. Staff focused on the need for policies defining major service changes and the threshold for disparate impact, including review of current Council policy and procedure, and walked through an example of how to apply the "four-fifth's rule." This led to a good discussion not only about the specific charge of developing policies but also to a more general discussion of Title VI and how it relates to Council transportation planning activities. Staff expects similar discussions at the public hearings.

Council Member Munt had three comments:

- The Council is committed to equality. Since this work is being done, it would be beneficial for Committee members to be informed how the benefits and burdens of a project are being distributed before voting. Ms. Harper replied that any service or fare equity analysis work will be presented to the Committee as part of the process to approve a concept plan. For example, staff is currently working on a service equity analysis for proposed service changes in the west suburbs, including Minnetonka, that will be presented to the Committee next month. The report will be ready before the Committee is asked to approve the concept plan for public review and input.
- Slide 5 needs to be simplified so that it is easy for the public to understand. Ms. Harper agreed and will revise the presentation.
- What are the consequences of inequality in our decision-making and policy-making? Ms. Harper clarified that Title VI compliance is tied to the Council's federal funding, which could be jeopardized if we are not in compliance. This is an extreme example and, in fact, FTA staff often uses our Title VI work as a national example.

Council Member Commers asked about the Council's relationship with opt-outs and how Title VI analyses and findings are affected. For example, if MVTA implemented a service plan that demonstrated disparate impact, what is our role? Ms. Harper explained that MVTA is required to have a major service change policy and disparate impact threshold that includes public engagement and is approved by the MVTA Board. MVTA has indicated that they plan to propose policies similar to the Council's for regional consistency. The Council does have some oversight responsibilities. Since the FTA considers MVTA to be a subrecipient of the Council, we are responsible for the Title VI compliance. If they implemented a major service change without conducting an equity analysis as required by the FTA, the Office of Diversity and Equal Opportunity would handle this issue. Ultimately, if one of the Council's subrecipients is out of compliance then so is the Council.

The item was moved by Council Member Commers and was seconded by Council Member Munt. It passed unanimously.

Transportation Committee

Meeting date: January 14, 2013,

For the Council Meeting of January 23, 2013

ADVISORY INFORMATION

Date:	January 7, 2013
Subject:	Accept Title VI Policies on Major Service Change, Disparate Impact and Disproportionate Burden for Public Review
District(s), Member(s):	All
Policy/Legal Reference:	Policy 1-3 Transportation Planning and Transit Services Policy; Policy 1-3a Transportation Service Changes and Restructuring Procedure; Policy 1-3b Public Involvement in the Transportation Planning Process Procedure; Policy 2-1 Accountability to the Public Policy; Policy 2-1a Public Participation Procedure; Policy 2-1b Public Hearings Procedure
Staff Prepared/Presented:	Brian Lamb, General Manager 612-349-7510 John Levin, Director Service Development, 612-349-7789 Adam Harrington, Assistant Director Route & System Planning, 612-349-7797 Cyndi Harper, Manager Route Planning, 612-349-7723
Division/Department:	Metro Transit

Proposed Action

That the Metropolitan Council accept the proposed policies to define draft Major Service Change, Disparate Impact, and Disproportionate Burden for the purpose of public review and input prior to final adoption.

Background

Federal Transit Administration (FTA) Title VI Circular 4702.1B requires that certain transit providers must establish policies defining the threshold for major service changes and the determination of disparate impact/disproportionate burden applied to Title VI equity analyses. In our region, this requirement applies to the Metropolitan Council, including services provided by Metro Transit and Metropolitan Transportation Services, and to Minnesota Valley Transit Authority (MVTA) and possibly SouthWest Transit.

The FTA requires that the public be engaged in the decision-making process to develop these policies and that the policies be approved by the board or other governing entity.

The Council currently has a major service change procedure (1-3a), which determines when a public hearing is required, but the public was not formally engaged in developing this policy and the policy does not explicitly apply to Title VI considerations. Similarly, we have been using a threshold to determine if the potential for disparate impact/disproportionate burden exists when performing Title VI Monitoring Studies and Service and Fare Equity reviews, but the public was not formally engaged in developing this standard, nor was it adopted by the Council.

Staff has reviewed the policies of several other transit agencies around the country and in December staff met with representatives from several social advocacy organizations to seek input on how these policies should be defined. Staff has worked with MVTA and SouthWest Transit to develop a common set of proposed policies. The intent is that the Metropolitan

Council, MVTA Board and Southwest Metro Transit Commission will individually approve the same or similar policies based on public feedback as appropriate for each provider.

Overview

Major Service Change Policy

The proposed definition of a major service change is modified from the existing definition to respond to FTA requirements and reflect review of other agencies' policies and input from stakeholders. The new FTA circular requires the definition to include both the addition and reduction of service. The threshold for a major service change remains at 25 percent of service, but is adjusted to refer to service hours instead of miles and is augmented with a minimum service change of 3,500 annual hours. The threshold of 3,500 in-service hours was selected because it represents the service level of one bus operating five days a week over a 16 hours span of service. In addition, a service day criterion was established to separate the impact of weekday, Saturday and Sunday changes. To ensure that the spirit of the policy outlining major service changes is maintained, the definition is adjusted to refer to cumulative changes over a 12 month period.

Disparate Impact/Disproportionate Burden Policy

The proposed use of the "four-fifth's" rule as Council policy matches practice that has been in use since 2009.

Rationale

Council policy 2-1b states that informational materials for public hearings must be approved by the Council and available to the public at least 10 days prior to the first hearing.

Next Steps

Five public hearings will be held between February 6-13, 2013. Public comments will be accepted through February 24, 2013. Revised policies will be brought to the Council for approval in March.

Funding

The outreach and public meetings will be funded through existing operating budgets.

Known Support / Opposition

None known at this time.

Public Hearings to set Major Service Change, Disparate Impact and Disproportionate Burden Title VI Policies

Wednesday, February 6

6-7:30 p.m.

Southwest Station
13500 Technology Drive
Eden Prairie, MN 55344

Thursday, February 7

6 p.m.-7:30 p.m.

Dakota County Library - Burnhaven Branch
1101 W County Road 42
Burnsville, MN 55306

Saturday, February 9

12:30-2 p.m.

Hennepin County Library - Augsburg Park Branch
7100 Nicollet Avenue
Richfield, MN 55423

Tuesday, February 12

11 a.m.-12:30 p.m.

Minneapolis Urban League
2100 Plymouth Avenue
Minneapolis, MN 55411

Wednesday, February 13

6 p.m.-7:30 p.m.

East Side YMCA
875 Arcade Street
Saint Paul, MN 55106

DRAFT
Metropolitan Council Major Service Change Policy
Effective March 2013

The Federal Transit Administration (FTA) requires that all transit providers in an urbanized area of more than 200,000 and operating at least 50 peak vehicles must establish a policy defining the threshold for major service change. The public must be engaged in the decision-making process to develop these policies, which must be approved by the policy board or other governing entity. This policy is then incorporated into the agency's Title VI program and will determine when a service equity analysis is required.

All increases or decreases in fixed route service meeting the threshold require a Title VI Equity Analysis prior to implementation. The equity analysis must be presented to the Metropolitan Council and a record included in the agency's Title VI Program.

Major service changes meet at least one of the following criteria:

- a) For an existing route or set of routes, one or more net increases or decreases within a 12 month period of more than a 25% change in the daily in-service hours and 3,500 annual in-service hours
- b) For a new route in a new coverage area, a net increase of more than 3,500 annual in-service hours
- c) Restructuring of transit service throughout a sector or sub-area of the region as defined by Metro Transit
- d) Elimination of a transit route without alternate service or a fixed route replacement

The following service changes are exempt:

- a) Seasonal service changes
- b) Route number or branch letter designation
- c) Any change or discontinuation of a demonstration route within the first 24 months of operation
- d) Changes on special service routes such as State Fair, sporting events and special events
- e) Route changes caused by an emergency. Emergencies include, but are not limited to, major construction, labor strikes and inadequate fuel supplies
- f) Any service change that does not meet the conditions of a major service change as defined above

DRAFT
Metropolitan Council Disparate Impact and Disproportionate Burden Policy
Effective March 2013

The Federal Transit Administration (FTA) requires that all transit providers in an urbanized area of more than 200,000 who receive federal funding and operate at least 50 peak vehicles must develop a policy for measuring disparate impact and disproportionate burden. A threshold must be established to determine when 1) adverse impacts are borne disproportionately by minority or low-income populations and 2) benefits are not equitably shared by minority or low-income populations.

The public must be engaged in the decision-making process to develop this policy, which must be approved by the policy board or other governing entity. This policy is then incorporated into the agency's Title VI program. It is used to determine if a proposed fare change, major service change or triennial monitoring review of system-wide standards and policies shows evidence of potential for disparate impact or disproportionate burden.

The Metropolitan Council proposes to use the "four-fifths" rule to determine evidence of disparate impact or disproportionate burden. This standard is also used in the Equal Employment Opportunity Commission's *Uniform Guidelines on Employee Selection*. The "four-fifths" rule states that there could be evidence of disparate impact or disproportionate burden if:

- Benefits are being provided to minority or low-income populations at a rate less than 80% (four-fifths) than the benefits being provided to non-minority or non-low-income populations
- Adverse effects are being borne by non-minority or non-low-income populations at a rate less than 80% (four-fifths) than the adverse effects being borne by minority or low-income populations

If a potential disparate impact for minority populations is found, the FTA requires recipients to analyze alternatives. A provider may modify the proposed change to avoid, minimize or mitigate potential disparate impacts. A transit provider may proceed with the proposed change if there is substantial legitimate justification and no legitimate alternatives exist with a less disparate impact that still accomplish the provider's legitimate program goals.

If potential disproportionate burden on low-income populations is found, the FTA requires recipients to take steps to avoid, minimize or mitigate impacts where practicable.