

## Transportation Committee

Meeting date: June 10, 2013

For the Metropolitan Council meeting of June 26, 2013

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**Subject:** Approve Title VI Policies on Major Service Change, Disparate Impact and Disproportionate Burden

District(s), Member(s): All

**Policy/Legal Reference:** 49 CFR part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964"; Policy 1-3 Transportation Planning and Transit Services Policy; Policy 2-1 Accountability to the Public Policy

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**Division/Department:** Metro Transit/Service Development

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### Proposed Action

That the Metropolitan Council approve the proposed Title VI policies defining a Major Service Change and determining the threshold for Disparate Impact and Disproportionate Burden.

### Background

Federal Transit Administration (FTA) Title VI Circular 4702.1B requires that transit providers located in urbanized zones of 200,000 or more in population and operating 50 or more fixed route vehicles in peak service must establish policies defining a major service change and disparate impact/disproportionate burden. 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 major service change policy will determine which proposed service changes require a service equity review. The disparate impact/disproportionate burden policy will establish the threshold to determine whether proposed service or fare changes have a discriminatory effect on minority (disparate impact) or low-income (disproportionate burden) populations.

The Council currently has a definition of a major service change in 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.

### Public Outreach Process

In December 2012 staff met with representatives from eight organizations focusing on environmental and social justice issues to seek input on how these policies should be defined.

In addition, staff reviewed how other transit providers nationally define a major service change and disparate impact threshold. Draft policies were posted to the metrotransit.org website and representatives from the eight social justice groups each received a copy of the policies in advance of the public hearings.

Five public hearings were held in February:

Wednesday, February 6, 2013 6:00p.m.-7:30 p.m.  
SouthWest Station, Eden Prairie  
0 attendees

Thursday, February 7, 2013, 6:00 p.m.-7:30 p.m.  
Burnhaven Library, Burnsville (joint with MVTA)  
2 attendees

Saturday, February 9, 2013, 12:30 p.m.-2:00 p.m.  
Augsburg Library, Richfield  
1 attendee

Tuesday, February 12, 2013, 11:00 a.m.-12:30 p.m.  
Minneapolis Urban League, Minneapolis  
2 attendees

Wednesday, February 13, 2013, 6:00 p.m.-7:30 p.m.  
East Side YMCA, St. Paul  
0 attendees

The hearings were promoted in *Connect* and on the Met Council, Metro Transit and MVTA websites. Notices were posted in twelve newspapers, including the *State Register*, *Star Tribune*, and *Pioneer Press*. In addition, a press release was issued to local newspapers. Comments were accepted by testifying at a public hearing, via e-mail, fax and US Mail, TTY, and by leaving comments on the Council's Public Comment Line. The public comment period closed on February 25, ten days after the last public hearing.

Comments were received from seven individuals, although some comments did not specifically relate to the Title VI policies for major service changes and disparate impact/disproportionate burden proposed by Metro Transit. One individual in particular requested staff to recommend a more stringent disparate impact/disproportionate burden threshold, stating that the Council actions should never contribute to inequalities in our society.

## **Recommendation**

### Major Service Change Policy

The proposed definition of a major service change has been modified from the existing definition to respond to FTA requirements and reflect review of other agencies' policies and input from stakeholders. It includes increases in service and new routes in new areas of coverage. The threshold for a major service change remains at 25 percent of service, but is adjusted to refer to service hours instead of miles to more directly reflect operating costs; the threshold is augmented with a minimum service change of 3,500 annual hours. 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.

The recommended policies are attached.

#### **Rationale**

Adoption of these policies will help bring the Council in compliance with FTA Circular 4702.1B.

#### **Next Steps**

A description of the public engagement process for setting these policies will be included in our next Title VI Program, along with a copy of the Transportation Committee meeting minutes demonstrating the committee's consideration, awareness and approval of these policies.

Council procedure 1-3a will also be updated.

#### **Known Support / Opposition**

None known at this time.

## **RECOMMENDED Metropolitan Council**

### **Title VI Program Major Service Change Policy**

**Effective June 2013**

All increases or decreases in fixed route service meeting the threshold require a Title VI Service Equity Analysis prior to implementation. The equity analysis must be approved by 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(s), one or more service changes resulting in at least a 25% change in the daily in-service hours within a 12 month period (minimum of 3,500 annual in-service hours)
- b) A new route in a new coverage area (minimum 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 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

## **RECOMMENDED Metropolitan Council**

### **Title VI Disparate Impact and Disproportionate Burden Policy**

**Effective June 2013**

The Metropolitan Council will use the "four-fifths" rule as the threshold 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 "four-fifths" rule measures 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 "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.