

**Board Report**

File #: 2022-0828, **File Type:** Policy**Agenda Number:** 10.

**PLANNING AND PROGRAMMING COMMITTEE
FEBRUARY 15, 2023
EXECUTIVE MANAGEMENT COMMITTEE
FEBRUARY 16, 2023****SUBJECT: MEASURE M 3% LOCAL CONTRIBUTION GUIDELINES REVISIONS****ACTION: APPROVE RECOMMENDATIONS****RECOMMENDATION**

ADOPT revised Measure M Guidelines, Section VIII - 3% Local Contribution to Major Transit Projects (Attachment A).

ISSUE

In August 2022, the Board directed Metro staff to release the draft revised Measure M Guidelines, Section VIII - 3% Local Contribution to Major Transit Projects (Guidelines) for a 60-day public comment period (File# 2022-0445). Several comments were received that resulted in minor changes to the Guidelines. Staff is seeking Board approval of the revised Guidelines.

BACKGROUND

The Measure M Ordinance (Ordinance) requires local jurisdictions to pay three percent (3%) of the total cost of new major rail projects. The Measure M Guidelines adopted by the Board in 2017 (File# 2017-0280) guide Metro's implementation of this requirement. Noting a discrepancy, in April 2022, the Board requested that staff revise the Guidelines to be consistent with the Ordinance, modify two aspects of the calculation, and clarify and provide additional flexibility on sources available to jurisdictions to satisfy the 3% contribution (File# 2022-0258). Metro made the draft Guideline revisions available for public comment and now recommends that the Board adopt the final revised Guidelines.

DISCUSSION

Metro released the draft Guideline revisions for public review on August 26, 2022. Some revisions reflect procedural changes from the 2017 Guidelines. These include modifying the contribution allocation approach, excluding First/Last Mile (FLM) expenses incurred by jurisdictions from the total project cost, and providing credit for FLM expenses in situations when Metro is withholding local return funds. Other minor revisions clarified existing procedures for applying the 3% contribution

requirement to phased projects and allowing subregional investments as in-kind contributions. Metro advertised the public comment opportunity via mass email, The Source article, and an announcement at the Metro Technical Advisory Committee. Comments were accepted until October 26, 2022 (with one comment arriving on October 27th that was accepted).

Six comment letters were received, including five from local cities and one from a Council of Governments. The comments and responses have been summarized in Attachment B. Most commenters expressed a general concern that the 3% contribution requirement will have a burdensome long-term financial impact on their city. While the cost to jurisdictions is significant, the rationale for the contribution is that local communities with a rail station receive a direct benefit due to the increased access to high quality transit service that is above and beyond the project's benefit to the County as a whole. The benefit is expected to outweigh the cost. Metro is committed to continuing to work with jurisdictions to find creative and flexible solutions to satisfy the requirement. Metro considered all comments carefully, and several specific issues arose.

Regarding the eligible funding sources available to satisfy the 3% contribution, commenters requested additional discussion about in-kind contributions and subregional investments. Metro recommends creating additional guidance and procedures apart from the Guidelines for evaluating these broad categories of contributions. This will allow Metro and jurisdictions the most flexibility when considering whether a proposed contribution adds value to the Metro project. Metro has drafted a detailed procedure and plans to solicit feedback from jurisdictions following internal approvals. This procedure could be used to evaluate a range of possible in-kind contributions, including several specific projects that cities proposed in their comments. However, conducting such an evaluation within the Guidelines could be misleading since an eligible contribution for one project (e.g., parking) may not provide the same or any value to another project. In addition, Metro guidance in this area may apply to projects outside of Measure M. In-kind contributions must reduce the overall cost of the project, with examples such as exercising franchise agreements for utility relocations and expedited third party processes for completing work within the public right-of-way being effective ways to contribute but also produce both overall schedule and cost savings.

Also on eligible funding sources, one commenter suggested that in-kind contributions be added to FLM investments as an option for cities to receive credit in scenarios where Metro withholds up to 15 years of local return. This approach is allowable under the Ordinance and would yield contributions that directly offset Metro capital project costs. One risk is that it could increase administrative costs, compared with accepting a cash contribution, for Metro staff to oversee the successful performance of in-kind contributions. However, Metro expects those costs to be minimal. And under some scenarios, e.g., where a City prefers not to implement FLM projects, credit for in-kind contributions could positively affect Metro project finances. For these reasons, plus the benefit to jurisdictions gaining additional flexibility to meet their required contributions, Metro recommends allowing this flexibility, as reflected in the final revised Guidelines.

Separately, several commenters requested additional detail on Metro's timeline and process for implementing the 3% contribution requirement. These elements remain unchanged and are already included in Metro's publicly available Measure M Administrative Procedures. Briefly, Metro conducts outreach with potentially affected jurisdictions prior to producing a project cost estimate based on 30% design. This cost becomes the basis for calculating the 3% contribution, which is then allocated

to jurisdictions based on the track mileage formula in the Ordinance. Metro will notify the jurisdiction, then the Metro Board, of the estimated contribution and will then work with the jurisdiction to execute a 3% contribution agreement prior to issuing a notice to proceed for the construction phase of the project.

Several minor changes resulted from comments as noted in the attached summary table, mainly to clarify phrasing.

Metro staff will continue working closely with cities and the county to implement the 3% contribution requirement and will finalize and publish the revised Guidelines following Board approval.

DETERMINATION OF SAFETY IMPACT

The proposed approval will not have any adverse safety impacts on employees or patrons.

FINANCIAL IMPACT

Approving the recommendations will have no impact on the FY 2022-23 Budget.

EQUITY PLATFORM

The substantive changes resulting from this action include expanding credit for FLM improvements and excluding FLM costs from the “total project cost”. These changes will result in a financial benefit and increased flexibility for jurisdictions with a 3% contribution, including some with Equity Focus Communities. The remainder of the revisions to the Guidelines clarify existing practices and enhance consistency of current policy with the Measure M Ordinance, and therefore have no impact on equity opportunities. The 3% local contribution is one of the financial resources supporting Metro’s major rail transit projects program in the Measure M Expenditure Plan. These projects will benefit communities by adding new high-quality reliable transit services, many of which will increase mobility, connectivity, and access to opportunities for historically underserved and transit-dependent communities. Metro will continue to conduct outreach and provide technical assistance on the 3% contribution requirement to affected jurisdictions, including assisting with identifying viable financing strategies. Staff will also analyze how each project might impact equity and Equity Focused Communities. These analyses will be included in future Board items (e.g. notifying the Board of the 3% contribution amount by jurisdiction based on 30% design) on a project-by-project basis.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendation supports the following strategic plan goals identified in Vision 2028: Goal 1: Provide high-quality mobility options that enable people to spend less time traveling, Goal 3: Enhance communities and lives through mobility and access to opportunity and Goal 5: Provide responsive, accountable, and trustworthy governance within the Metro organization.

ALTERNATIVES CONSIDERED

The Board could elect not to adopt the final revised Guidelines. This is not recommended as the

proposed revisions resulted from Board direction and will ensure consistency between Metro's published guidance and the Measure M Ordinance.

NEXT STEPS

The final revised Guidelines will be posted on the Metro website, and Metro will continue to engage with affected jurisdictions on the 3% contribution requirement.

ATTACHMENTS

Attachment A - Measure M 3% Local Contribution Guidelines Final Revisions

Attachment B - Summary of Public Comments Received

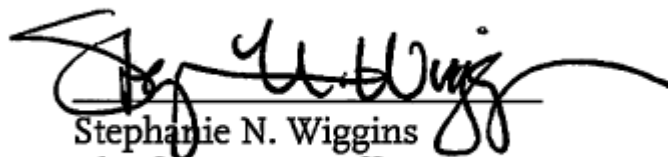
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