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FESIA A. DAVENPORT
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To: Supervisor Hilda L. Solis, Chair
Supervisor Holly J. Mitchell
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Kathryn Barger

From: Fesia A. Davenport
Chief Executive Officer

MEASURE J SET-ASIDE METHODOLOGY

Background

On July 21, 2020, the Board of Supervisors (Board) adopted a motion directing, among other things, that an ordinance be drafted amending the County's Charter establishing a baseline minimum threshold of at least 10 percent of our locally generated unrestricted revenues in the general fund (Net County Cost) to be allocated on an annual basis during the County's budget process. These funds were to be used for direct community investments and alternatives to incarceration efforts. One week later, the Office of the County Counsel presented the proposed ordinance to the Board and the Board adopted a resolution calling for a special election to place the proposed ordinance before voters during a special election to be held in November 2020. On July 28, 2020, the Board adopted the ordinance, as proposed, and directed that the November 3, 2020 special election be consolidated with the general election held on the same day. The proposed charter amendment would appear on the ballot as "Measure J." On November 3, 2020, County voters approved Measure J which becomes effective on July 1, 2021, and gives the County three years to build up to the full 10 percent, also known as the Measure J set-aside.

On March 16, 2021, the Chief Executive Office (CEO) issued a memo to your Board announcing that my office would be recommending a first year down payment of $100 million for Measure J as we build up to the full set aside amount to be phased in over three years. The memo also indicated a projected estimated set-aside amount of $300 million. The $300 million is both an estimate and a projection of what the set-aside amount might be if the County's revenues and obligations remained static between now and 2024—which is unlikely to occur. This memo is to address any questions as to the interpretation of Measure J ordinance language and the methodology used to determine the projected and estimated set-aside amount.

Locally Generated Revenues and Net County Costs: The Connection

State law prescribes how counties are to prepare their budgets and requires that they are balanced when the budget is adopted.[1] Like all budgets, the County's budget includes a revenue component that is balanced with a cost [2] component. If costs and revenue don't equal, the budget is not balanced. The method for balancing the County's budget occurs each year during the budget process. During the budget process, the County estimates how much revenue will be available to pay County costs during the course of the fiscal year, including those costs the County is required to pay for, and budget requests made by County officials.

This brings us to the Net County Cost or NCC. The term NCC has been in use for many years. It is not defined in the law, but is defined in the glossary of the County's annual budget books as "the amount of operations financed by general purpose revenues, such as property taxes." Some of these costs are required, often as a result of federal and/or State laws, as well as legal settlements, contractual obligations, maintenance of effort requirements, debt service payments and Board budgetary policy. Because there are no other revenue sources from which to pay these costs, the County must use locally generated revenues to cover these costs.

The related term "locally generated revenue" has also been in use in County budgeting parlance for over 20 years. It is not defined in the law, but is commonly understood to include sources like general taxes from local sources. Spending locally generated revenues is generally under the control and discretion of the Board. However, because the budget must be balanced, we must use locally generated revenues when there are no other funding sources from which to pay Net County Cost. As explained above, some of these costs are required and, therefore, the locally generated revenue used to cover them is restricted in that the revenue must be used to pay these costs.

Although sometimes the terms "locally generated revenues" and "NCC" are used interchangeably because they are equal in value, they are really two separate components of the County's budget. One component (locally generated revenues) reflects the revenue side of the budget ledger, and the other (NCC) reflects the

[1] The County must comply with procedures set forth in the County Budget Act.

[2] "Cost" is sometimes referred to as "appropriation" or "expenditure."

appropriation (or cost) side of the budget ledger. Essentially, locally generated revenues and NCC are two separate, but indelibly linked components of the County's budget—two sides of the same coin.

To summarize, this section of the memo:

- Defines "locally generated revenues" and "Net County Cost";
- Explains how locally generated revenues must be used to pay Net County Cost;
- Shows that Net County Cost are either required or not; and
- Demonstrates how a portion of the locally generated revenues are restricted because they must be used to fund costs that are required and for which there is no other funding source.

Measure J Budget Set-Aside Determination

Measure J added a new component to the County's annual budgeting process. The measure requires the County:

> . . . [T]o allocate, in compliance with all laws and regulations, the County's locally generated unrestricted revenues in the general fund as follows:
>
> Set aside a baseline minimum threshold of at least ten percent (10%) of the County's *locally generated unrestricted revenues in the general fund (Net County Cost)*, as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on annual basis after input from the public and County departments at a public hearing...

The Measure J language modifies the long-standing County budget term "locally generated revenue" by combining it with the word "unrestricted," and creating the new budget term "*locally generated unrestricted revenues*." The addition of the word "unrestricted" is an acknowledgment that a portion of the County's locally generated revenue must be used to pay certain County expenses as outlined above—and is therefore restricted. Adding the well-known term "Net County Cost" after "*locally generated unrestricted revenues*" further supports this conclusion since some Net County Cost are required – meaning that the revenue used to pay them are restricted.

In addition, Measure J requires that the amount of locally generated unrestricted revenues be "*determined annually in the budget process or as otherwise set forth in the County Code or regulations*." As such, Measure J requires the County to *determine* the amount of locally generated revenues that are unrestricted. If the amount of the set-aside was equal to simply 10 percent of all "locally generated revenue" (i.e., 10 percent x the amount of locally generated revenue = set-aside) or equal to 10 percent of all Net County Cost (i.e., 10 percent x the amount of Net County Cost = set-aside), then the calculation would be a formulaic exercise without any determination of the amounts that are restricted and, therefore, which amounts are unrestricted. But this is not what Measure J requires. Rather, Measure J requires a determination in order to arrive at the amount of those locally generated revenues that are unrestricted and then apply the 10 percent to calculate the amount of the set-aside (i.e., the amount of locally generated revenue minus the amount of required Net County Cost = the unrestricted portion of locally generated revenue x 10 percent = set-aside).

Any Measure J interpretation that ignores the terms "*unrestricted*" and "*as determined annually in the budget process or as otherwise set forth in the County Code or regulations*" renders these terms meaningless, which is inconsistent with general rules used to interpret statutes (including charter amendments). Generally, these rules require that every word be given meaning and further require that any interpretation avoid leaving any word(s) or phrases redundant or irrelevant.

Finally, the public deliberations of the proposed Measure J charter amendment that occurred before Measure J was placed on the ballot reflect multiple discussions of the restrictions and obligations placed on the County's locally generated revenue. This acknowledgement of the distinction between restricted and unrestricted locally generated revenues demonstrates an intent to exclude from the 10 percent set-aside those locally generated revenues that are restricted.

To summarize this section of the memo:

- Explains that Measure J created a new County budget term–"locally generated *unrestricted* revenues"–a term that acknowledges that a portion of the County's locally generated revenue must be restricted;
- Shows how pairing the new budget term with "Net County Cost" makes a portion of the County's locally generated revenue restricted since that portion must be used to pay required costs;
- Demonstrates that by simply applying 10 percent to the amount of locally generated revenue or to the amount of Net County Cost ignores Measures J's requirement that the County "determine" the portion of the locally generated revenue which is unrestricted; and
- Notes that the public deliberations regarding Measure J contemplated a portion of the County's locally generated revenue being restricted.

This office is cognizant that Measure J is a priority for your Board and is therefore a priority of this office. The CEO team is deeply appreciative of the importance of Measure J and recognizes that it represents a paradigm shift in policy relating to justice reform – more specifically the "Care First, Jails Last" initiative adopted by your Board. We will reach the full set-aside amount for Measure J (an amount which is unknown at this time) over the three year phase-in period. In addition, while moving this work forward in a very intentional way, we will continue to balance other priorities of your Board such as continuing the fight against homelessness, conducting fair and efficient elections, continuing investments in affordable housing, continuing our public health response to the pandemic and supporting the economic recovery of individuals, families, and small businesses devastated by COVID-19. Finally, and while managing the priorities mentioned above, my office will implement our duty to ensure that the County's budget is balanced in a way that positions us to continue to carry out our basic safety net functions.

Should you have questions concerning this matter, please contact me or your staff can contact Matthew McGloin, County Budget Officer at mmcgloin@ceo.lacounty.gov.

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c: Executive Office, Board of Supervisors
County Counsel
Alternatives to Incarceration
Anti-Racism, Diversity and Inclusion