



November 6, 2023

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Proposed Amendment to the Orange County Local Transportation Authority Measure M2 Ordinance No. 3

Overview

The Renewed Measure M Transportation Ordinance and Investment Plan Ordinance No. 3 requires an independent Taxpayer Oversight Committee to review annual audits and make a determination whether the Orange County Local Transportation Authority is proceeding in accordance with what was promised to the voters. In addition, it requires the Chair of the Taxpayer Oversight Committee to provide an annual certification of whether revenues have been spent in compliance with the Renewed Measure M Transportation Investment Plan. An amendment is being proposed to provide additional clarity to the well-established functions and responsibilities of the Taxpayer Oversight Committee and the Chair of the Taxpayer Oversight Committee.

Recommendations

- A. Direct staff to set a date of January 8, 2024, for a public hearing and Board of Directors action to consider adoption of the amendment to the Orange County Local Transportation Authority Measure M2 Ordinance No. 3 to address inconsistencies and interpretations of the individual responsibility of the Chair of the Taxpayer Oversight Committee as it relates to the annual certification that revenues have been spent in compliance with the Renewed Measure M Transportation Investment Plan.
- B. Direct staff to initiate the process to amend the Orange County Local Transportation Authority Measure M2 Ordinance No. 3 to clarify the functions and responsibilities of the Taxpayer Oversight Committee and the Chair of the Taxpayer Oversight Committee in providing annual certification that revenues have been spent in compliance with the Renewed Measure M Transportation Investment Plan.

Background

In July 2006, the Board of Directors (Board) approved the Orange County Local Transportation Authority (OCLTA) Renewed Measure M (M2) Ordinance No. 3 (M2 Ordinance), including the M2 Transportation Investment Plan (Plan), to place the M2 Plan on the November 2006 ballot. In November 2006, voters approved the M2 Plan, a one-half cent sales tax for transportation improvements. The Orange County Transportation Authority (OCTA) is committed to fulfilling the commitments made in M2. This means delivering all projects and programs included in the Plan and complying with specific requirements identified in the M2 Ordinance. One of the initial requirements in the M2 Ordinance was the establishment of a Taxpayer Oversight Committee (TOC).

Originally established in 1990, under the original Measure M (M1), the TOC is an independent, 11-member committee that is comprised of two members from each of the five supervisorial districts in the County and is chaired by the Orange County Auditor-Controller (Auditor-Controller). The M2 Ordinance Attachment C, Section IV defines the duties and responsibilities of the TOC; one of those responsibilities states that the TOC “shall review yearly audits and hold an annual public hearing to determine whether the Authority is proceeding in accordance with the Plan. The Chair shall annually certify whether the Revenues have been spent in compliance with the Plan.”

For the past 32 consecutive years (including 20 years from M1), the TOC has determined that OCTA has proceeded in accordance with the Plan. Traditionally, the TOC would review yearly audits and hold an annual public hearing, where a formal vote took place to determine whether OCTA has been proceeding in accordance with the Plan. Additionally, the Chair of the TOC would certify that M2 Revenues “have been spent in compliance with the Plan.” In past years, this certification has been provided via a transmittal letter from the Chair of the TOC to the Chair of the OCTA Board. This transmittal letter informs the Chair of the OCTA Board that the required public hearing was held, that the TOC found that OCTA was proceeding in accordance with the Plan and that the Chair of the TOC certifies that M2 Revenues have been spent in compliance with the Plan based on the information provided to the TOC for that year.

Discussion

The current Auditor-Controller, Andrew Hamilton, assumed office on January 2, 2023. As part of his review of his responsibilities as Chair of the TOC, Mr. Hamilton requested additional auditing services be performed beyond what has been historically undertaken by OCTA. Mr. Hamilton stated that these additional auditing services were necessary for him to feel comfortable given his individual responsibility for certifying that M2 Revenues have been spent in compliance with the Plan.

On September 12, 2023, the TOC voted to request that the OCTA Board approve the additional audits Mr. Hamilton requested. While some TOC members questioned the need for these additional auditing services, they ultimately acquiesced due to Mr. Hamilton's explanation that he needed the additional services to provide the annual certification as the TOC Chair.

On September 27, 2023, the OCTA Finance and Administration (F&A) Committee considered the TOC request for additional auditing services. While the F&A Committee did recommend providing the additional auditing services for the next two years, there was a discussion regarding the language in the M2 Ordinance related to the TOC Chair's annual certification requirement.

The discussion among the F&A Committee members centered around the intent of the M2 Ordinance related to the TOC Chair's annual certification and the TOC's action to determine whether OCTA is proceeding in accordance with the Plan. It was noted that a review of certifications provided by prior Auditor-Controllers suggested that the annual certification was simply an acknowledgment of the vote of the TOC. The F&A Committee requested that staff and legal counsel review the M2 Ordinance language and return with any recommendation needed to make the certification requirements clear and consistent with prior actions and the intent of the M2 Ordinance.

M2 Ordinance Inconsistencies

There are a few references in the M2 Ordinance related to the certification requirements. In Section IV.D on page C-4 of Attachment C in the M2 Ordinance, the language reads:

"The Committee shall review yearly audits and hold an annual public hearing to determine whether the Authority is proceeding in accordance with the Plan. The Chair shall annually certify whether the Revenues have been spent in compliance with the Plan."

There is similar language in Section 10.2 on Page 5 of the M2 Ordinance that provides additional context:

"The County of Orange Auditor-Controller ("Auditor-Controller"), in the capacity as Chair of the Taxpayer Oversight Committee, shall annually certify whether the Revenues have been spent in compliance with the Ordinance."

On page 28 of Attachment A in the M2 Ordinance there is language that reads:

"The annual audits, and annual reports detailing project progress, will be sent to the Orange County taxpayers every year and will be reviewed in

public session by a special Taxpayer Oversight Committee that can raise fiscal issues, ask tough questions, and must independently certify, on an annual basis, that transportation dollars have been spent strictly according to the Renewed Measure M Investment Plan.”

On page 29 of Attachment A in the M2 Ordinance there is language that reads:

“Spending decisions must be annually reviewed and certified by an independent Taxpayer Oversight Committee”

Lastly, on page 29 of Attachment A in the M2 Ordinance there is language that reads:

“The elected Auditor/Controller of Orange County must annually certify that spending is in accordance with the Plan”

In the five excerpts in the M2 Ordinance related to certification that M2 Revenues have been spent properly, two of them state that the “Committee” will provide the certification, while the other three references state that the “Chair” will provide the certification. However, in two of the three references that state the “Chair” will provide the annual certification, there is qualifying language that suggests the Chair is certifying the actions of the TOC.

The language in Section IV.D. on page C-4 of Attachment C mentions the Chair’s certification responsibility after a sentence that describes that the entire Committee will be reviewing information in a public setting and will make a determination if OCTA is proceeding in accordance with the Plan. The placement of those two sentences together is important – determining whether M2 Revenues have been spent in compliance with the Plan is a subset of determining whether OCTA is proceeding in accordance with the Plan. Said differently, it is not possible to determine that OCTA is proceeding in accordance with the Plan if M2 Revenues have not been spent in compliance with the Plan. This is further indication that the Chair’s certification is simply acknowledging and reporting the determination of the TOC.

In reference to the Chair’s certification in Section 10.2 on page 5, there is an added phrase that says the certification is “in the capacity as Chair of the Taxpayer Oversight Committee” which suggests the Chair is simply certifying the actions of the Committee.

Also, in determining the intent of the M2 Ordinance, it is useful to review the certifications from prior auditor-controllers. As described above, prior auditor-controllers ostensibly viewed the annual certification as an extension of the annual compliance finding vote taken by the TOC (Attachment A).

Furthermore, leaving the annual certification in the hands of one member of the TOC weakens the intent of the TOC and effectively reduces the responsibility of compliance determination to one individual regardless of the opinions formed by other members of the TOC. A key feature of the Measure M safeguards is the involvement of an independent, non-elected, externally screened, expert panel of voters with knowledge of the various jurisdictions across the County to certify OCTA's compliance with voter commitments. Staff and legal counsel believe the intent of the M2 Ordinance was to empower the TOC as an entire body and not leave the compliance determination in the hands of one member.

Proposed Amendments to the M2 Ordinance

After a careful review, and consultation with legal counsel, it is recommended that the language in the M2 Ordinance be modified in a few areas to eliminate any ambiguity and ensure consistency throughout the M2 Ordinance. Attachment B provides information on the amendment process, the language on amendments from the M2 Ordinance, and a history of prior M2 amendments.

It is recommended that Section IV.D. on page C-4 of Attachment C in the M2 Ordinance be changed to the following:

“The Committee shall review yearly audits and hold an annual public hearing to determine whether the Authority is proceeding in accordance with the Plan. The Committee will also annually certify whether the Revenues have been spent in compliance with the Plan.”

It is recommended that Section 10.2 on page 5 of the M2 Ordinance be amended to read:

“The Taxpayer Oversight Committee shall annually certify whether the Revenues have been spent in compliance with the Ordinance.”

And lastly, page 29 of Attachment A in the M2 Ordinance should be amended to read:

“The Taxpayer Oversight Committee must annually certify that spending is in accordance with the Plan”

A summary of the M2 Ordinance excerpts and proposed changes is included as Attachment C. Going forward, if this proposed amendment is accepted, the TOC – with the Auditor-Controller as Chair – should continue its practice of holding a compliance vote every year. In addition, the TOC should also vote to certify as to whether revenues have been spent in compliance with the Plan.

The process and timing for amending the M2 Ordinance is shown below:

Actions	Date
OCTA Executive Committee considers M2 amendment	November 6, 2023
Board considers M2 amendment and sets a public hearing date for January 8, 2024	November 13, 2023
Proposed amendment sent to local jurisdictions for public review prior to public hearing	November 13 – 16, 2023
Taxpayer Oversight Committee provided an update on M2 amendment	November 13, 2023
Issue public hearing notice (at least 30 days prior to public hearing)	November 13 – 17, 2023
Public hearing on M2 amendment and roll call vote by Board (requires two-thirds vote)	January 8, 2024
Adopted M2 amendment transmitted to local jurisdictions	January 8 – 11, 2024
Amendment effective 45 days following adoption	February 22, 2024

Summary

An amendment to the Orange County Local Transportation Authority Ordinance No. 3 is proposed to clarify the requirements related to the annual certification that M2 Revenues have been spent in compliance with the Plan.

Attachments

- A. Prior Year Taxpayer Oversight Committee Chair Certification Letters
- B. Procedures to Amend the Renewed Measure M Transportation Investment Plan and Ordinance No. 3, Language Excerpt and Amendment History
- C. Ordinance No. 3 Proposed Amendment Excerpts

Prepared by:



Francesca Ching
 Section Manager,
 Measure M2 Program Management Office
 (714) 560-5625

Approved by:



Kia Mortazavi
 Executive Director, Planning
 (714) 560-5741