




June 22, 2020

To: Members of the Board of Directors 
From: Darrell E. Johnson, Chief Executive Officer
Subject: Public Hearing to Amend the Measure M2 Orange County Local Transportation Authority Ordinance No. 3

Overview

On May 11, 2020, the Board of Directors directed staff to initiate the process to amend Measure M2 Orange County Local Transportation Authority Ordinance No. 3. The amendment will temporarily change the maintenance of effort requirements for fiscal year 2019-20 and fiscal year 2020-21 to assist local jurisdictions through this unprecedented period of uncertainty due to the economic impacts of the novel coronavirus pandemic. The amendment process calls for notifications to local jurisdictions, public notification, and a public hearing prior to the adoption of the proposed amendment.

Recommendations

- A. Amend the Orange County Local Transportation Authority Measure M2 Ordinance No. 3 to modify the maintenance of effort requirements for fiscal year 2019-20 and fiscal year 2020-21 to address anticipated near-term negative growth in general fund revenues due to the novel coronavirus pandemic.
- B. Direct staff to provide written notice of the amendment to local jurisdictions.

Background

In November 2006, Orange County voters approved the Measure M2 Expenditure Plan, also called Measure M2 (M2). The Orange County Transportation Authority (OCTA) is committed to fulfilling the promises made in M2. This means delivering all projects and programs included in the M2 Expenditure Plan and complying with the specific requirements identified in the M2 Ordinance No. 3 (M2 Ordinance). The M2 Ordinance includes an amendment process to address unforeseen circumstances and requires a

two-thirds vote from the Board of Directors (Board), as well as a public notification process.

Local jurisdictions are required to meet specific requirements in order to receive M2 revenues, one of which is related to maintenance of effort (MOE) spending levels. MOE is the amount the local jurisdictions spend in discretionary or general fund revenues (GFR) for streets and roads purposes. The intent is to ensure that M2 revenues do not supplant funding for streets and roads that a local jurisdiction was spending prior to Measure M1 and M2. This MOE requirement is tied to the state law that authorizes local sales tax measures.

The financial impacts, as a result of the novel coronavirus (COVID-19) pandemic, and its impact to sales tax revenues, fuel sales, and local jurisdiction GFR, will not be fully understood for quite some time. However, it is clear that local jurisdictions will have challenges balancing near-term financial obligations, including meeting the MOE requirement.

Discussion

There are significant financial impacts anticipated to occur as a result of the COVID-19 pandemic that may hamper local jurisdictions' ability to satisfy MOE requirements for fiscal year (FY) 2019-20 and FY 2020-21. Initial estimates, based upon an informal OCTA poll of local jurisdictions, indicate an approximate seven percent reduction in FY 2019-20 revenues (with some estimates as high as 14 percent), and an approximate seven percent reduction in FY 2020-21 revenues (with some estimates as high as 15 percent). As a result, local jurisdictions have expressed concerns about meeting MOE requirements.

To address these issues, the proposed amendment (Attachment A) will modify the M2 Ordinance, Section 6, to add a paragraph providing local jurisdictions relief from the FY 2019-20 and FY 2020-21 MOE requirement. In summary, the proposed amendment would:

- For FY 2019-20: allow local agencies to report actual MOE that may be below the established target; and
- For FY 2020-21: allow local jurisdictions to use a proportional share (percentage) of streets and roads expenditures to GFRs based upon the proportion of the FY 2020-21 MOE benchmark to GFRs that were reported in their respective Comprehensive Annual Financial Report for FY 2018-19.

It is challenging to develop a solution that meets every jurisdiction's individual situation. However, in consultation with OCTA legal counsel, the recommended amendment is a countywide solution intended to be fair and reasonable for all jurisdictions with the goal of balancing local funding issues with the intent of the M2 Ordinance. If approved, this will provide local jurisdictions a path forward before the approaching FY 2020-21 MOE certification requirement deadline of June 30, 2020. It should be noted that OCTA considered several other options ranging from maintaining the existing MOE requirement to suspending the MOE requirement – the latter of which is inconsistent with the legislative intent of the M2 Ordinance because M2 revenues would supplant and not supplement local revenues.

Notification Process

On May 11, 2020, staff presented to the Board the proposed amendment and the Board directed staff to notify the public and schedule a public hearing, in accordance with M2 requirements (Attachment B). The required notification to Orange County city councils and the Board of Supervisors was distributed on May 12, 2020 (Attachment C). Notices were also published in the Orange County Register (May 17, 2020), Excelsior (May 15, 2020), and Nguoi Viet (May 15, 2020).

In addition to the legally required notification process, which requires the distribution of the notice and amendment language to city councils and the Board of Supervisors, the notification was also distributed to city managers, city finance directors, and city public works directors. OCTA staff also presented information on the proposed amendment to the Technical Advisory Committee on April 22, 2020, and held an eligibility workshop for local jurisdiction staff on April 30, 2020. A discussion regarding the proposed amendment took place on May 14, 2020, at the Orange County City Managers Association meeting, and the amendment was also presented to the Orange County Council of Governments on May 28, 2020. To date, many jurisdictions have submitted FY 2020-21 budget certifications to OCTA using the amended MOE approach described above, although these certifications are not formally due until June 30, 2020.

At the May 12, 2020 special meeting of the M2 Taxpayer Oversight Committee, staff presented the May 11, 2020 item that went to the Board. While the item was for information only, comments from the committee members were supportive and indicated appreciation that the Board was working to ensure the intent of M2 was upheld through a temporary modification and not an elimination or deferral of the MOE requirement.

Generally, local jurisdictions and key stakeholders are supportive of the amendment. The City of Costa Mesa (City) has indicated that it would prefer a different calculation that would result in a lower MOE requirement and the ability to make up MOE if not met over multiple years. It is commonly accepted that deferred investment on streets and roads would lead to future higher costs or asset failures and is therefore not advisable. Further, the M2 Ordinance amendment is intended to create a balanced countywide policy for all jurisdictions. As of the writing of this staff report, OCTA has not received any other notable comments regarding to the proposed amendment.

If the Board approves the amendment, a notification letter will be sent to local jurisdictions (Attachment D) and the amendment will become effective in 45 days.

Summary

On May 11, 2020, the Board directed staff to initiate the process to amend the M2 Ordinance. The amendment modifies the MOE requirements for FY 2019-20 and FY 2020-21 while upholding the legislative intent of the M2 Ordinance. The proposed amendment is presented for input and approval.

Attachments

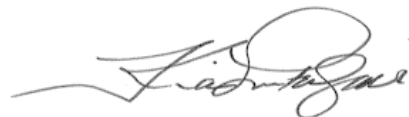
- A. Proposed Orange County Local Transportation Authority Ordinance No. 3, Maintenance of Effort Requirements, Section 6, Page 3
- B. Public Hearing Notice Published May 15 - May 17, 2020, California Newspaper Service Bureau, Daily Journal Corporation
- C. Letter to Orange County Mayors, From Steve Jones, Chairman, Dated May 12, 2020
- D. Draft Letter to Orange County Mayors/Supervisors, From Steve Jones, Chairman, Dated June 22, 2020

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