



April 5, 2021

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 voter-approved Measure M2 Ordinance No. 3 requires that local jurisdictions meet a maintenance of effort requirement to remain eligible to receive Measure M2 funding. Local jurisdictions are continuing to experience uncertainties in general fund revenues due to the coronavirus pandemic, which is anticipated to impact their ability to meet the maintenance of effort requirement. In response to these impacts, the Board of Directors approved an amendment to the Measure M2 Ordinance No. 3 in June 2020 to provide flexibility on this requirement through fiscal year 2020-21. An amendment to extend the revised maintenance of effort requirement through fiscal year 2021-22 is proposed to continue assisting local jurisdictions through this period of economic uncertainty.

Recommendations

- A. Direct staff to initiate the process to amend the Orange County Local Transportation Authority Measure M2 Ordinance No. 3 to extend the fiscal year 2020-21 revised maintenance of effort requirement into fiscal year 2021-22 to continue assisting local jurisdictions through this period of economic uncertainty.
- B. Direct staff to set a date of May 24, 2021, 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 as it relates to the maintenance of effort requirement.

Background

In November 2006, Orange County voters approved the Renewed Measure M Ordinance No. 3 (Measure M2 {M2} Ordinance), also called M2. 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 M2 Transportation Investment Plan (Plan) and complying with the specific requirements identified in the M2 Ordinance. Included in the M2 Ordinance is an amendment process to address unforeseen circumstances.

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 a local jurisdiction spends in discretionary non-transportation funds, or general fund revenues (GFR), for streets and roads purposes. The intent of this requirement is to ensure that M2 revenues do not supplant funding for streets and roads that a local jurisdiction was previously spending. This requirement must be met each year in order for a local jurisdiction to receive net M2 disbursements.

The original MOE level was established in 1991 with the first Measure M (M1) Program using a five-year average of the funding amount local jurisdictions spent on streets and roads maintenance and construction between 1985 and 1990. The MOE amount remained unchanged during the 20-year life of M1; therefore, it did not keep pace with annual inflation. Recognizing the need for an adjustment, a process was included in the M2 Ordinance to update the MOE amount every three years. The adjustment is determined by utilizing the California Department of Transportation construction cost index growth during a three-year period and applying that growth rate to the MOE, with the exception that the increase cannot be greater than the jurisdiction's increase in GFR for the same period. The most recent adjustment approved by the OCTA Board of Directors (Board) on April 13, 2020, is only the third adjustment to the original MOE as established under M1, and this established MOE benchmark will be used through fiscal year (FY) 2022-23.

Discussion

The M2 Ordinance requires jurisdictions to annually submit two items to OCTA related to MOE:

- 1) MOE certification - before the start of the annual FY budget, local jurisdictions must certify that sufficient expenditures have been budgeted to meet the MOE benchmark.
- 2) Expenditure report - annually, local jurisdictions must submit a detailed financial report. This report is used to validate eligible uses of M2 funds and to report actual MOE expenditures to meet the MOE benchmark requirement.

These requirements, outlined in Section 6 of the M2 Ordinance, and in Section III of Attachment B to the M2 Ordinance, must be met in order for local jurisdictions to continue to receive M2 revenues.

The M2 Ordinance allows for amendments for unforeseen circumstances, which is noted and further discussed in Section 12 of the M2 Ordinance. A specific process for amendments was established by the Board during M1 and has continued with M2. Amendments to the M2 Ordinance, which do not affect the Plan, require a two-thirds vote from the Board, as well as a public hearing and notification process.

As the state designated Local Transportation Sales Tax Authority responsible for administering M2, OCTA is committed to upholding the intent of the M2 Ordinance. As such, amendments are not a normal occurrence and should only be proposed when warranted by unforeseen circumstances, as in the case of the current economic impacts of the health pandemic. Over the last 30 years, between both M1 and M2, there have only been five ordinance amendments. During this same period, there have been ten Plan amendments. Ordinance amendments are corrective changes in nature, versus Plan amendments, which address funding adjustments within the same mode. Attachment A provides information on the amendment process, the language on amendments from the M2 Ordinance, and a history of prior amendments.

In June 2020, the Board, through the process described above approved an amendment to the M2 Ordinance to revise MOE requirements for FY 2019-20 and FY 2020-21 in anticipation of near-term negative growth due to the coronavirus (COVID-19) pandemic. For FY 2019-20, local jurisdictions reported actual MOE expenditures, which could be below the MOE benchmark. For FY 2020-21, local jurisdictions were given the option of meeting either the MOE benchmark or a proportional MOE calculation. The proportional calculation used the local jurisdiction's MOE benchmark compared to GFR, as reported in local jurisdictions' FY 2018-19 Comprehensive Annual Financial Reports. This option allowed local jurisdictions to scale the MOE requirement with fluctuations in their GFR in FY 2020-21.

The latest M2 sales revenue forecast, presented to the Board in October 2020, does not reflect a return to pre-pandemic revenue levels in FY 2021-22. Accordingly, the local jurisdictions may be challenged with satisfying the MOE requirement for FY 2021-22, which reverts to the MOE benchmark. In addition, several local jurisdictions have expressed support for the MOE flexibility offered in FY 2020-21 to be extended through FY 2021-22.

For these reasons, staff is recommending an M2 Ordinance amendment to extend the option for local jurisdictions to use the FY 2020-21 proportional MOE calculation for FY 2021-22. The proposed amendment language is provided in Attachment B. This change is not expected to be extended further, and the MOE will revert to the benchmark in FY 22-23.

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

Actions	Date
OCTA Executive Committee considers M2 amendment	April 5, 2021
Board considers M2 Eligibility Guidelines FY 2021-22	April 12, 2021
Board considers M2 amendment and sets a public hearing date for June 14, 2021	April 12, 2021
Proposed amendment sent to local jurisdictions for public review prior to public hearing	April 13 - 16, 2021
Taxpayers Oversight Committee provided an update on ordinance amendment	April 13, 2021
Issue public hearing notice (at least 30 days prior to public hearing)	April 13 - 18, 2021
Public hearing on amendment and roll call vote by Board (requires two-thirds vote)	May 24, 2021
Adopted amendment transmitted to local jurisdictions	May 25 - 28, 2021
Local jurisdictions required to submit the MOE certification for FY 2021-22	June 30, 2021
Amendment effective 45 days following adoption	July 8, 2021

Summary

An amendment to the M2 Ordinance is proposed to continue assisting local jurisdictions manage the economic impacts of the COVID-19 pandemic. The amendment will extend the revised MOE requirements for FY 2020-21 through FY 2021-22, while upholding the legislative intent of the M2 Ordinance. Staff also requests that the Board set a public hearing date for May 24, 2021.

Attachments

- A. Procedures to Amend the Renewed Measure M Transportation Investment Plan and Ordinance No. 3, Language Excerpt and Amendment History
- B. Proposed Orange County Local Transportation Authority Ordinance No. 3, Maintenance of Effort Requirements Excerpt, Section 6, Page 3

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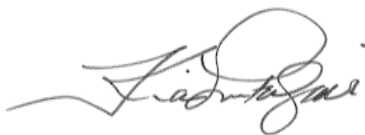
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