



August 4, 2025

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 all net revenues be allocated solely for transportation purposes described in the ordinance. A safeguard for the use of the Measure M2 net revenues indicates that any jurisdiction which uses net revenues in any amount and for any reason for a purpose other than those authorized by the ordinance must fully reimburse the Orange County Transportation Authority for any misspent funds and that jurisdiction shall be deemed ineligible to receive net revenues for a period of five years. The Board of Directors requested that staff develop options for potentially amending Ordinance No. 3 that include less severe remedies than what are currently required where Measure M2 net revenues are used for purposes other than those authorized by the ordinance.

Recommendations

- A. Provide direction to staff to initiate the process to amend the Orange County Local Transportation Authority Measure M2 Ordinance No. 3 to provide the Board of Directors with flexibility in determining a lesser penalty when a local jurisdiction uses Measure M2 net revenues for purposes other than those authorized by the M2 Ordinance No. 3.
- B. Provide direction to staff to make the necessary changes to the Transportation Investment Plan provided in Attachment A to reflect the changes made to the Measure M2 Ordinance No. 3.
- C. Direct staff to set a date of October 27, 2025, 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 safeguard of use of revenues requirement.

Background

In July 2006, the Orange County Transportation Authority (OCTA) Board of Directors (Board) approved the Measure M2 (M2) Ordinance No. 3 (Ordinance), including the M2 Transportation Investment Plan (Plan), to place the Plan on the November 2006 ballot. In November 2006, Orange County voters approved the Plan, a one-half cent sales tax for transportation improvements. OCTA is committed to fulfilling the promises made to voters. This means delivering all projects and programs included in the Plan and complying with specific requirements and safeguards identified in the Ordinance to ensure accountability and transparency.

One of the primary promises made to voters when Measure M (M1) and M2 were passed was that all funds would be used for transportation purposes only. While the public was generally supportive of using tax dollars for the transportation improvements outlined in the M2 program of projects, they were also concerned that funds might be used for non-transportation purposes not authorized by the Ordinance. To provide assurances to the voters, page 4 and page 28 of the voter pamphlet (Attachment A in the Ordinance) in Attachment A explicitly states that:

“When new transportation dollars are approved, they should go for transportation and transportation purposes alone. No bait-and-switch. No using transportation dollars for other purposes. The original Measure M went solely for transportation purposes. The Renewed Measure M must be just as airtight.”

Several safeguards were included in the Ordinance to demonstrate to the voters that M2 funds would only be used for purposes authorized by the Ordinance. Chief among those voter safeguards was the inclusion of a severe penalty defined in Section 10.4 of the Ordinance, which requires any jurisdiction be found ineligible to receive M2 dollars for a period of five years if they use M2 dollars for non-transportation purposes and the jurisdiction must pay back the misspent funds. Only the OCTA Board can find local jurisdictions to be ineligible to receive M2 funds. If the Board finds that a local jurisdiction used M2 funds for purposes not authorized by the Ordinance, the Board must impose a five-year penalty based on the Ordinance as written. In June 2024, the Board imposed this five-year penalty on the City of Buena Park (Buena Park); in June 2025, the Board imposed the same penalty on the City of Huntington Beach (Huntington Beach) as described below.

The Ordinance requires local jurisdictions to annually submit an expenditure report that details all M2 net revenues, interest earned, expenditures of M2, and expenditures of earned interest. Local jurisdictions' expenditure reports are signed by their respective Finance Directors, adopted by the City Council/ Board of Supervisors, and submitted to OCTA within six months of the local jurisdiction's fiscal year (FY) end.

The Taxpayer Oversight Committee (TOC) is an independent committee which is prescribed in the Ordinance and was originally formed after the passage of M1 in 1990. The committee upholds the integrity of M2 by monitoring the use of M2 funds and ensuring that all revenue collected from M2 is spent on voter-approved transportation projects within the Plan. Annually, the Audit Subcommittee (Subcommittee) of the TOC selects specific local jurisdictions for application of agreed-upon procedures (AUP) by OCTA's independent auditing firm. The AUP includes testing of expenditures for compliance with program requirements, review of indirect costs for adequate support and reasonableness, testing to ensure allocation of interest, and testing of the annual expenditure reports for accuracy. The independent auditing firm's report helps determine local jurisdictions' compliance with Ordinance provisions.

For FY 2023-24, one of the local jurisdictions selected by the Subcommittee for review of the M2 Local Fair Share (LFS) program funding was Huntington Beach. Crowe, LLP (Crowe), OCTA's independent auditing firm, performed the AUP for Huntington Beach with the results of the effort presented to the Board on April 28, 2025. Crowe identified one notable finding: Huntington Beach reported LFS expenditures of \$29,249 that were spent for purposes not authorized by the Ordinance. Huntington Beach acknowledged the finding and indicated that it was a timesheet coding error for an employee who worked in the water division. To uphold the M2 promises to voters, the Board acted in accordance with the Ordinance and determined on May 12, 2025, that Huntington Beach was ineligible for a period of five years and required pay back of the funds used for non-transportation purposes.

While the Ordinance requires that any local jurisdiction that uses M2 funds for non-transportation-related expenses be found ineligible for a period of five years, the Ordinance does not differentiate based on the context of the ineligible expenses. However, the Board does have some discretion in determining the penalty. In the cases of Buena Park and Huntington Beach, the Board considered the nature and severity of the violations when deciding whether to escrow future funds and for how long, ultimately deciding to escrow the withheld M2 funds for the full five-year period for both cities.

Discussion

The Ordinance includes specific language to address safeguards related to the unauthorized use of M2 net revenues. Section 10.4 on page six of the Ordinance states:

“No Net Revenues shall be used by a jurisdiction for other than transportation purposes authorized by the Ordinance. Any jurisdiction which violates this provision must fully reimburse the Authority for the Net Revenues misspent and shall be deemed ineligible to receive Net Revenues for a period of five (5) years.”

There is additional language included in the Plan which is provided as Attachment A in the Ordinance.

On page 20 of Attachment A in the Ordinance, it states:

“Agree to use Measure M funds for transportation purposes only, subject to full repayment and a loss of funding eligibility for five years for any misuse.”

On page 28 of Attachment A in the Ordinance, it states:

“An independent, outside audit of this fund will protect against cheaters who try to use the transportation funds for purposes other than specified transportation uses. A severe punishment will disqualify any agency that cheats from receiving Measure M funds for a five-year period.”

Lastly, on page 29 of Attachment A in the Ordinance, it states:

“Funds must be used only for transportation purposes described in the Plan. The penalty for misspending is full repayment and loss of funding eligibility for a period of five years.”

The finding of Huntington Beach as ineligible for five years due to a timesheet coding error prompted the Board to request that staff return with a potential amendment to the Ordinance that would allow the Board flexibility to apply a lesser penalty.

The Ordinance allows for amendments for unforeseen circumstances, which is noted and further discussed in Section 12 of the Ordinance. A specific process for amendments was established by the Board when M1 was passed and has been followed into the M2 period. Amendments to the Ordinance, such as this,

require a two-thirds vote from the Board, as well as a public hearing and notification process.

As the Local Transportation Sales Tax Authority responsible for administering M2, OCTA is committed to upholding the intent of the Ordinance and is entrusted to ensure that amendments only occur when absolutely necessary, keeping the promises to the voters at the forefront. M2 amendments are rare, with only four Ordinance amendments and two Plan amendments since the start of M2 in 2011. Ordinance amendments are corrective in nature, while Plan amendments address funding adjustments between projects and programs within the same mode. The change required for this requested action is an Ordinance amendment. Attachment B provides information on the amendment process, the language on amendments from the Ordinance, and a history of the prior amendments.

Proposed Amendments to the Ordinance

In order to achieve additional flexibility in determining the penalty for using M2 funds in a way that is not consistent with the Ordinance with consideration for specific circumstances, Section 10.4 on page six of the Ordinance could be changed to the following:

“No Net Revenues shall be used by a jurisdiction for other than transportation purposes authorized by the Ordinance. Any jurisdiction which violates this provision must fully reimburse the Authority for the Net Revenues used by the jurisdiction for purposes not authorized by the Ordinance and shall be deemed ineligible to receive Net Revenues for a period of between one (1) to five (5) years after considering the totality of the facts presented to the Board of Directors.”

Similarly, language on page 20 of Attachment A in the Ordinance could be amended to read:

“Agree to use Measure M funds for transportation purposes only, subject to full repayment and a loss of funding eligibility for between one to five years for any use of Measure M funds for purposes not authorized by the Ordinance, based on the totality of the facts.”

Additional language on page 28 of Attachment A in the Ordinance could be amended to read:

“An independent, outside audit of this fund will protect against jurisdictions that use the transportation funds for purposes other than specified transportation uses. A severe punishment will disqualify any jurisdiction that does so from receiving Measure M funds for a period of between one and five years.”

Lastly, the language on page 29 of Attachment A in the Ordinance could be amended to read:

“Funds must be used only for transportation purposes described in the Plan. The penalty for use of Measure M funds for purposes not authorized by the Ordinance is full repayment and loss of funding eligibility for a period of between one to five years, based on the totality of the facts.”

A summary of the Ordinance excerpts and requested changes is included as Attachment C. The process and potential timing for amending the Ordinance is shown below:

| Actions | Date |
|---|--------------------|
| Board requested staff to return with M2 amendment | May 12, 2025 |
| OCTA Executive Committee considers M2 amendment | August 4, 2025 |
| Board considers amendment and sets a public hearing date for October 27, 2025 | August 25, 2025 |
| Proposed amendment sent to local jurisdictions for public review prior to public hearing | August 26, 2025 |
| TOC will be provided with an update on M2 amendment | September 9, 2025 |
| Issue public hearing notice (at least 30 days prior to public hearing) | September 26, 2025 |
| Public hearing on M2 amendment and roll call vote by the Board (requires two-thirds vote) | October 27, 2025 |
| Adopted M2 amendment transmitted to local jurisdictions | October 28, 2025 |
| Amendment effective 45 days following adoption | December 11, 2025 |

OCTA is committed to delivering the M2 promises made to voters and takes this responsibility very seriously. This includes strictly adhering to the safeguards in the Ordinance, which ensures transparency and accountability of taxpayer dollars. This is evidenced by the annual independent TOC finding that OCTA

has administered M2 funds in accordance with the Ordinance for 34 consecutive years. Although the Ordinance requires that any local jurisdiction that misspends M2 funds be found ineligible for a period of five years, the Board has some flexibility in administering penalties by allowing jurisdictions to escrow funds for the period of ineligibility. This change would provide the Board with additional flexibility in assigning a lesser penalty for instances where agencies have used M2 funds for purposes other than those allowed by the Ordinance.

Summary

The Ordinance currently requires a fixed penalty for local agencies who use funds for unauthorized purposes. At the Board's request, revised language for the Ordinance to provide flexibility to impose a lesser penalty is being presented for Board consideration and approval to begin the process to amend the Ordinance.

Attachments

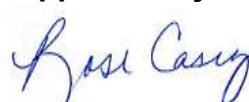
- A. Measure M2 Transportation Investment Plan Excerpts
- B. Procedures to Amend the Renewed Measure M Transportation Investment Plan and Ordinance No. 3, Language Excerpt and Amendment History
- C. Measure M2 Ordinance No. 3 Proposed Amendment Excerpts

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