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Transportation Sales Taxes in Los Angeles: Lessons from Forty Years of Experience

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RESEARCH REPORT

Transportation Sales Taxes in Los Angeles:

Lessons from Forty Years of Experience

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Abstract

This is the second study of voter-approved transportation sales taxes in Los Angeles County performed by the UCLA Institute of Transportation Studies with support from the Haynes Foundation. The earlier study examined the history of the four half cent sales taxes enacted by voters in Los Angeles County between 1980 and 2016. The current study looked in depth at four issues raised but not addressed in the first one. We report on the extent to which the “local return” provisions of the four measures fund transportation programs and projects in the cities and unincorporated areas of the county. We also explored tradeoffs between accountability to the voters through audits and taxpayer advisory committees in comparison with the county’s flexibility to change program elements through amendments when conditions change. Accountability to the voters was enhanced in the later sales tax measures but amendment procedures have been used to respond to changing needs in the county. We examined lawsuits brought against Metro regarding implementation of the sales taxes and found that there have been rather few. The COVID-19 pandemic struck while the study was underway and in response the report also explores the impacts of the pandemic on transportation sales tax revenues and program expenditures. The transportation sales taxes through the end of year 2020 have been the most important and resilient LA Metro funding sources during the pandemic. Sales tax revenue declined but far less than did federal and state sources of finance and revenues from fares paid by passengers.

Acknowledgments

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Martin Wachs was the project Principal Investigator, managed the process of compiling the manuscript, drafted several chapters, and edited the entire report. Natalie Amberg and Jeremy Marks collected the quantitative data, produced the graphs and tables, and drafted several chapters. The three authors together interviewed the current and former public officials whose views are incorporated into this report.

The authors thank the Haynes Foundation for the grant that made this project possible and the previous grant that resulted in an earlier report which led to the questions addressed in this one. The project was administered by the UCLA Institute of Transportation Studies, and we thank Juan Matute, Kathy Sekine, and Whitney Willis for their management of the project. The opinions and conclusions expressed in this document are those of the authors and not of the sponsoring organizations.

We also thank the staff of the Los Angeles County Metropolitan Transportation Authority who provided valuable assistance and the several current and former senior transportation officials who were interviewed as part of this study. Among those whom we interviewed were: Zev Yaroslavsky, former Los Angeles County Supervisor, Los Angeles City Council Member, and Metro Board member; Michael Bohlke, long time staff member to Metro Board members; Jacki Bacharach, Executive Director of the South Bay Council of Governments and former member of the Los Angeles County Transportation Commission; Timothy Mengle, Director of Budget at Los Angeles County Metropolitan Transportation Authority, Craig Hoshijima, Deputy Executive Officer for Citywide Planning & Development of the Los Angeles County Metropolitan Transportation Authority; and David Yale, formerly the Senior Executive Officer of the Countywide Planning and Development Department of the Los Angeles County Metropolitan Transportation Authority.

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EXECUTIVE SUMMARY

Executive Summary

Local option sales taxes (LOSTs) provide a large share of funding for local and regional transportation infrastructure projects and programs in California. Voters across the state have considered 86 county-level LOST measures for transportation since 1976, and approved 52 of them (60%). Thirty-five of these measures were in effect throughout California, as of June 2020. Some counties are more reliant on LOSTs for transportation funding than others and Los Angeles County receives more LOST revenue than any other county in the state and in the nation. Los Angeles currently has four half-cent LOST measures in place, the first of which, Proposition A, was approved in 1980, and the most recent of which, Measure M, in 2016. These sales taxes were, prior to the COVID pandemic, each expected to produce $844 million per year, providing the largest source of support for the Los Angeles County Metropolitan Transportation Authority ("LA Metro"), about 58% of its annual budget, which also includes other state and federal funding, farebox revenues from transit, toll revenue and advertising revenue. The Los Angeles County transportation sales taxes are of great interest locally because they support a huge transit investment program, the largest in the nation and the largest in Los Angeles history. They also are of interest nationally because the LA sales taxes are being emulated all across the nation.

This study extends and expands upon an earlier report supported by Haynes Foundation grant entitled ***A Taxing Proposition: Lessons from Ballot Box Transportation Finance in LA County*** (Wachs, et. al. 2018). That study interpreted the history of nine unsuccessful and four successful ballot measures for transportation funding and described the political motivations for each measure, and implications of the changes for transportation funding in the county over many decades. We address in this report three topics about the four Los Angeles County measures that were introduced but not examined in depth in the earlier study. This report complements the previous one and readers should consult the first report in order to understand the context for this one.

The first successful transportation sales tax in Los Angeles County, Measure A in 1980, started the region on its path to regional rail construction and transit system expansion. To attract sufficient votes for approval, the first measure proposed future investments in transportation that were ambitious and proved to be more costly than could be delivered with a regional permanent half-cent sales tax. Approval of a second half-cent sales tax was sought and obtained a decade later as costs rose and plans grew in scale and scope. More money was needed to fulfill the original plans, but expanded transportation plans were needed to convince voters to provide additional funds. The cyclical pattern was repeated twice more, and Measures R and M were pursued to continue growing the regional transportation network and address the rising costs that growth created. Each time more money was sought, more investment was proposed to justify the added taxation. Propositions A and C did not include provisions requiring the Metropolitan Transportation Authority to undergo regular financial, compliance, and/or performance auditing, or form an independent oversight body. Concerns arose that money was being spent too freely and without sufficient oversight. The two more recent measures consequently added auditing and oversight provisions to assure voters that their interests were protected and to increase confidence in Metro, especially after the requirement for approval by a supermajority of two-thirds was added. A large regional transportation program needs oversight to assure public confidence that the funds are wisely spent in support of the objectives that led voters to enact the measures, yet conditions change, new needs emerge, and there is a competing need for Metro to be flexible and responsive to new conditions.

After summarizing the major provisions of the four county sales tax measures and the revenue they produce, we present information about the "local return" provisions that annually fund the transportation programs of the 88 cities and unincorporated areas of Los Angeles County. All four Los Angeles County transportation sales tax measures specified that a portion of the revenues collected be returned to the 88 cities and the county's unincorporated areas to fund local transportation programs. Local transportation funding was radically altered by the 1978 tax-payer revolt that culminated with the passage of Proposition 13. Prior to the passage of this revolutionary measure, local transportation funding for streets, highways and transit primarily came from property taxes.

Delivering a portion of the revenue to local governments from each of four transportation sales taxes serves both political and practical objectives. Local jurisdictions were desperate to replace property tax funding unavailable after passage of Proposition 13 and the sales tax revenue addresses that need. Another legacy of the tax revolt was the requirement that every new sales tax be approved by a super-majority of two-thirds of those voting. Delivery of some funds to financially challenged local governments encouraged mayors and council members to support countywide sales taxes, and their support contributed to achieving the margin necessary for passage. Implementing local return funding is challenging in a county that contains 88 separate cities and unincorporated areas all wanting more of the revenue, so rules and procedures acceptable to a large number of jurisdictions have evolved to govern the process. Each rule and procedure adds complexity to the administration of the measures and leads to their being understood by relatively few lay citizens. This complexity appears to be acceptable to the country's voters as long as they have confidence that their elected representatives are acting in their interest.

Approved by the voters, the four Los Angeles County LOSTs create tension between accountability and flexibility. The measures' central features are lists of projects and programs to be funded after the voters approved them. Lists of funding commitments were developed by bargaining among groups who had particular priorities and their approval obligates Metro to comply with the voters' directives. Communities and citizens interest groups can challenge Metro, elect new representatives, and sue if they think commitments have been breached.

But the four measures will remain in force permanently. During their long lives, transportation technology will change dramatically, planned projects will be abandoned because of environmental challenges, new proposals will replace older ideas, and in response Metro must amend their plans. Required changes inevitably conflict with the long-term expenditure lists that were part of the last two of the four measures. Balancing the will of the voters with the need for flexibility means that departures from voter-approved plans need to be provided for but should be rare and carefully deliberated. We found that for the most part a workable balance has been established between them.

The two earliest measures, Propositions A and C, allowed Metro a great deal of flexibility as well as a flurry of media and public attention to abuses and poor management, which led to far more stringent requirements for audits and citizen oversight. Particularly, a referendum in 1998 required major adjustments to the agency's accounting and oversight. The two later measures, R and M, presented voters with auditing and amendment procedures far more complex and explicit than those of the first two measures. Mechanisms were included in the two more recent measures to make it possible, though difficult, to amend the voter-approved plans. Information on sales tax revenue and how it is spent is now systematically audited. The more recent measures also provide for individual citizens or expert review panels. Those bodies review audit outcomes, evaluate compliance with the measures, consider emerging trends, and recommend potential improvements. Amendments are allowable but subject to systematic hurdles intended to make them rare and to occur only when there is widespread agreement that they are necessary and appropriate.

The Metro Board has mechanisms in place that demonstrate it is responsive to county residents while maintaining flexibility to respond to changing conditions and current political imperatives. The actions of the oversight bodies are opaque and amendment procedures are complex and not well understood by most county residents. We found that despite complex provisions providing for reviews and limiting amendments, the Metro Board retains sufficient discretion to make revisions to budgets and expenditure plans amounting to hundreds of millions of dollars. That does not seem to be a major problem in the minds of the voters who have approved the later measures by large margins, suggesting that public confidence in Metro has grown since the embarrassments of the nineties. We explored the history of legal challenges to provisions in the four measures, finding that there have been relatively few. Differences in priorities and interpretations have rarely led to legal challenges. More often they have been resolved by negotiation, agreement, and crafting language in later ballot measures that reflect the outcomes of disputes raised by earlier ones.

While the study was underway, Los Angeles was hit by the COVID-19 pandemic which created uncertainty, anxiety, and financial hardship throughout most of 2020. We found, however, that sales taxes made Metro's financial situation far more flexible and resilient than would have been the case had Metro depended to a greater extent than it does on its other sources of revenue like Federal and state capital grants. Metro experienced deep fare revenue declines and enormous uncertainty but sales taxes rebounded relatively quickly, though unpredictably, in large part due to the fairly recent Wayfair Decision which affirmed that internet sales to California residents were subject to the payment of sales taxes in this state. As the pandemic caused people to turn to remote shopping, the downturn in fare revenue and funding from other sources was mitigated by the continuation of the collection of sales taxes as internet commerce replaced in person transactions. The CARES Act further softened the blow, and Los Angeles County, with four measures in place, exemplifies how resilient— though volatile— sales tax measures can be. As this report went to press, COVID-19 cases, hospital admissions, and deaths were increasing and new stay-at-home orders were in effect to mitigate the spreading of the virus. There may be further declines in year-over-year revenues, which in turn may put projects and service at risk. So far, sales taxes and the federal CARES Act stimulus have helped to stave off deep service cuts, and the arrival of a vaccine suggests the possibility of a brighter future.

CONTENTS

Introduction

Local option sales taxes (LOSTs) provide a large and growing share of funding for local and regional transportation infrastructure projects and programs in California. Voters across the state have considered 86 county-level LOST measures for transportation since 1976, and they approved 52 of them (60%). Thirty-five of these measures were in effect throughout California, as of June 2020. Some counties are more reliant on LOSTs for local transportation funding than others and Los Angeles County receives more LOST revenue than any other county. Los Angeles currently has four half-cent LOST measures in place, the first of which, Proposition A, was approved in 1980, and the most recent of which, Measure M, in 2016. These sales taxes were prior to the COVID pandemic each expected to produce $844 million per year, providing the largest source of support for the Los Angeles County Metropolitan Transportation Authority ("LA Metro"), which also receives other state and federal funding, farebox revenues from transit, and toll revenues. The Los Angeles County transportation sales taxes are of great interest locally because they are supporting a huge transit investment program, the largest in the nation and the largest in Los Angeles history. They also are of interest nationally because the sales taxes here are being emulated all across the nation.

This study extends and expands upon an earlier report supported by Haynes Foundation Grant #2482, entitled ***A Taxing Proposition: Lessons from Ballot Box Transportation Finance in LA County*** (Wachs, et. al. 2018). That study analyzed and interpreted the history of nine unsuccessful and four successful ballot measures for transportation funding and described the political motivations for each measure, and implications of the changes for transportation funding in the county over many decades. We do not repeat in this report the account of the history and the analysis of the currently active sales tax measures that are included there. That report left for future research the tasks of closing three gaps in information about the four Los Angeles County measures which are addressed in this report. In order to address these gaps in information, the authors reviewed financial data about the county transportation program available from Metro, local jurisdictions, the state of California, and other sources. We also conducted about a dozen interviews of public officials and former elected officials and retired Metro staff members, and reviewed planning and policy documents and media reports. This report complements the previous one and readers should consult the first report in order to fully understand the context for this one.

While the study was underway, the county was hit hard by the COVID pandemic, and the authors added a fourth task to this study, consisting of the examination of the impacts of the emergency on the revenue streams and implementation programs of the four county sales tax measures.

To set the scene for the analyses to follow, Chapter 2 introduces the four transportation sales taxes currently in effect in Los Angeles County and presents information about the revenue they have produced since their inception. Complete histories of the four measures appear in the earlier report described above.

Chapter 3 complements the findings of the earlier report by examining funding that has been set aside in the four Los Angeles sales tax measures for cities and unincorporated areas of the county to spend at their discretion. These expenditures are commonly referred to as "local return." Until the late 1970s, growing property tax revenues provided a large and sustainable source of local funding for public investments in transportation infrastructure and programming. However, in 1978, California voters approved Proposition 13, which capped property tax rates at one percent of assessed valuation, pinned property values to their 1975-76 levels, and limited annual increases in property tax bills to two percent. Proposition 13 also allows property value reassessments to occur only when ownership changes. One analysis suggests that local governments in

California saw their property tax revenues decline by as much as 53% due to the State's adoption of Proposition 13 (Howard Jarvis Tax Association, 2020). As a result of Proposition 13 new local taxes for special purposes, including transportation, must be approved by a super-majority of two thirds of those voting. Local governments struggled to adopt alternative revenue sources to finance the public transportation infrastructure investments and could not easily achieve the two-thirds majority that was required. By including transportation funding for local governments, the four county sales tax measures were able to replace part of the revenue lost as a result of the passage of the proposition. The flow of local return funds to local governments also encourages local mayors and councils to endorse the proposed propositions and encourage their citizens to support the measures, thereby increasing the chances of attaining the required super-majority. In the second major section of this report we analyze the history of local return funding in Los Angeles County and assess its significance as an element of transportation finance in the county.

Chapter 4 examines the ways in which the four current transportation sales taxes address tradeoffs between accountability and flexibility. When LOSTs are presented to county voters for approval, each measure generally projects how much revenue the sales tax measure is expected to generate over its lifetime, and proposes to fund specific lists of transportation infrastructure and program investments. On one hand, the voters expect Metro to deliver the projects promised when they approved the measures, but the taxes are to be collected permanently and on the other hand the agency must from time to time change its plans to reflect changes in project budgets, failures of promised projects to receive environmental clearance, changes in technology making it necessary to cancel some projects and initiate others. The first section of the report addresses the evolution over time of the delicate balancing act required to comply with promises made to the voters while adjusting programs to meet changing conditions the voters did not anticipate.

Lawsuits and other legal actions are brought when organizations and individuals feel they have been injured by public policy or that agencies responsible for the implementation of policies act counter to the public interest or violate the law. Chapter 5 addresses findings from an exploration of legal actions taken against LA Metro that would indicate challenges to the agency's interpretations of what they were required by the voters to do.

While this study was underway, the nation was hit by the largest public health emergency in a century. Los Angeles County has increasingly come to rely on sales tax revenue for transportation funding and now is contending with sales tax revenue declines resulting from the COVID-19 pandemic and its effects on consumer spending. In April 2020, LA Metro CEO Phillip Washington sent a letter to LA Metro employees projecting a dramatic $804-million decline in LOST revenue between March and September 2020 as a direct result of the COVID-19 pandemic. This is a completely unexpected annual loss of 24% in LOST revenue. Chapter 6 examines the nature and implications of the COVID 19 pandemic on Metro's finances because of changes in sales tax revenue plan accordingly.

The final chapter of the report offers interpretations of the findings from the four complementary analyses included in earlier chapters in light of the findings from other studies.

Chapter 1: The Four Los Angeles County LOST Measures and Revenue They Produce

For four decades Los Angeles County has been relying increasingly on revenue produced locally through sales taxes to finance its progress toward a regional rail system, to operate its extensive network of bus lines, to maintain and improve its highway network, and to expand its investments in active transportation programs, including bicycle and pedestrian facilities. Nearly half (48.4%) of the current LA Metro budget is raised by four permanent LOSTs: Proposition A, enacted in 1980; Proposition C, approved in 1990; Measure R, which followed in 2008, and Measure M, approved in 2016. Each of these measures, approved by the voters of Los Angeles County, authorized one-half percent general sales tax increases. The resulting total two percent sales tax for transportation is collected in Los Angeles County by the state along with other sales taxes and credited to the county usually about two months after being collected (California Department of Tax and Fee Administration, 2020). The allocation of funds from the sales taxes created by each measure are unique to each measure and are shown in Table 1. Revenues from the four measures raise a substantial proportion of the County's freeway and public transit funding, and support local street and transit improvements by way of local returns to both cities and unincorporated areas.

Table 1. Categorical Funding Allocations in Active Los Angeles County LOST Measures

County	Measure Name	Date	Highway	Transit	Local Return	Administration ***
Los Angeles	Proposition A	1980	0%	75%	25%	5%
Los Angeles	Proposition C	1990	25%	55%	20%	1.5%
Los Angeles	Measure R	2008	20%	65%	15%	1.5%
Los Angeles	Measure M	2016	17%	64%	17%	0.5%

Source: http://media.metro.net/about_us/finance/images/fy20_adopted_budget.pdf (see: page 27);

***: Revenue allocations for Administration are removed from total revenues, before other allocations.

Proposition A (1980)

A majority (54%) of the Los Angeles County electorate voted to adopt Proposition A, imposing the first half-cent sales tax to fund transportation investments throughout Los Angeles County. Of the total revenue collected under Proposition A, after allocating 5% for administrative costs, 25% are dedicated to local return, 35% are for rail system development, and the remaining 40% are for discretionary spending on "public transit purposes" determined by the Metro board. At the time it was enacted, as the first successful measure of its type, Proposition A's ordinance states that the revenue can be expended for many uses, allowing Metro to fund both capital and operating expenses, thereby keeping fares low and emphasizing to the public that a new rail system was being built. Figure 1 shows Proposition A's quarterly cash receipts from September 2009 to June 2020. In the first three years of Proposition A's implementation, the ordinance dedicated "such sums as are necessary" — from the 75% of Proposition A revenues remaining after removal of the 25% "local return" allocation — to support the following series of transit-related objectives:

> (1) A basic cash fare of fifty (50) cents;
>
> (2) An unlimited use transfer charge of ten (10) cents;
>
> (3) A charge for a basic monthly transit pass of $20.00;
>
> (4) A charge for a monthly transit pass for elderly, handicapped and students of $4.00;
>
> (5) A basic cash fare for the elderly, handicapped and students of twenty (20) cents; and
>
> (6) A comparable fare structure for express or premium bus service. (Los Angeles County Metropolitan Transportation Commission, 1980).

After allocating "such sums as are necessary" from the 75% of Proposition A revenues remaining after the removal of the 25% "local return" allocation, the original ordinance allocates the rest of Proposition A revenues "to the Commission [later renamed the "authority"] for construction and operation of the System," meaning the planned "rapid rail transit system" in Los Angeles County. (Los Angeles County Transportation Commission, 1980).

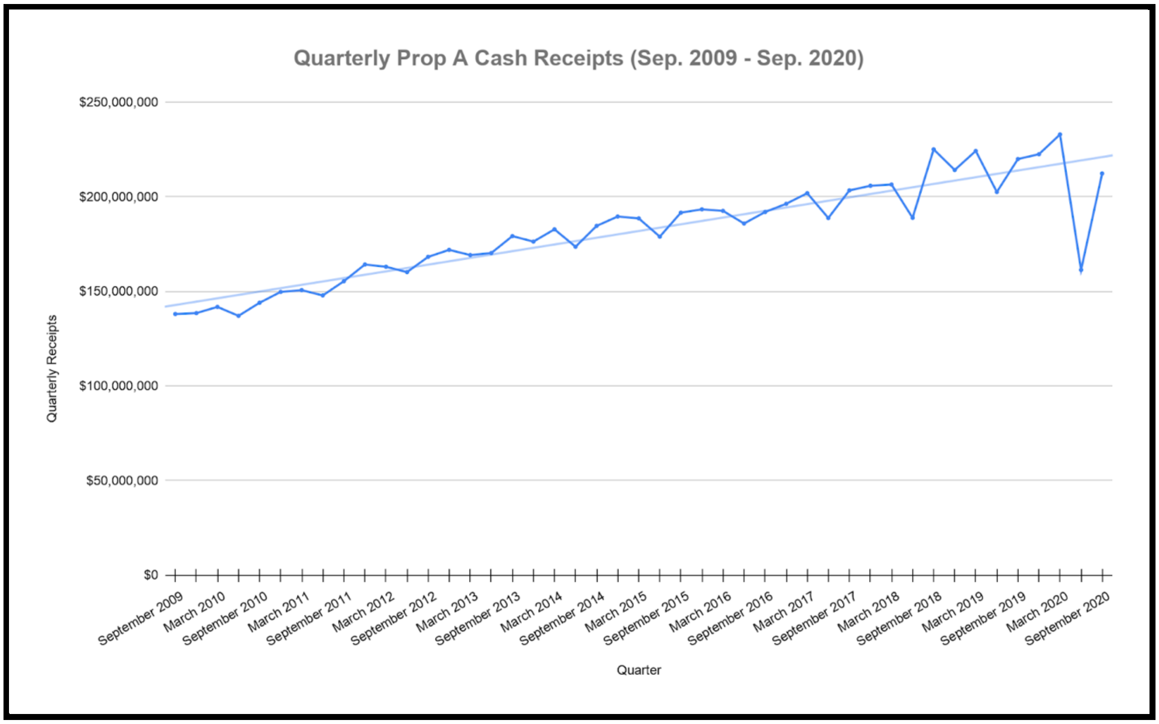

Figure 1. Proposition A: Quarterly Cash Receipts (Sep. 2009 - Sep. 2020)

Proposition C (1990)

After Proposition A was in place, costs to implement its projects were rising and interest groups proposed expansions to the regional transportation investment program to serve their needs. Proposition C was adopted by a majority (50.43%) of the Los Angeles County electorate voting in the November 1990 election, imposing the second, permanent half-cent sales tax to fund local and regional transportation investments in the County. As summarized in Table 1, of the total revenue raised by Proposition C, 1.5% was allocated for administration, and of the remaining revenue 5% was to be spent for rail and bus security, 10% for commuter rail, 20% for local return, 25% for freeways, and 40% for "discretionary" spending as directed by the Metro Board "to improve and expand rail and bus transit County-wide, to provide fare subsidies, increase graffiti prevention and removal, and increase energy-efficient, low-polluting public transit service." Figure 2 shows Proposition C's quarterly cash receipts from September 2009 through June 2020. The 40% "discretionary" spending allocation can be used to finance either operating or capital purposes, granting Metro some flexibility in measure implementation.

Like Proposition A before it, the Proposition C ordinance did not include provisions requiring the Metropolitan Transportation Authority to undergo regular financial, compliance, and/or performance auditing, or form an independent oversight committee. We later will address changes that were put in place later on, adding requirements of these types.

Measure R, "The Los Angeles County Traffic Relief and Rail Expansion Ordinance," was adopted by a narrow two-thirds supermajority (67.93%) of Los Angeles County voters, imposing an additional half-cent countywide sales tax for 30 years to fund transportation projects throughout Los Angeles County. After passage of Proposition 13 in 1978 and Proposition 62 in 1986 — and as the California Supreme Court affirmed in *Santa*

Clara County Local Transportation Authority v. Guardino (1995) — “special taxes” such as countywide LOSTs for transportation would, from 1995 onwards, require approval by a super-majority of two-thirds in order to be adopted.

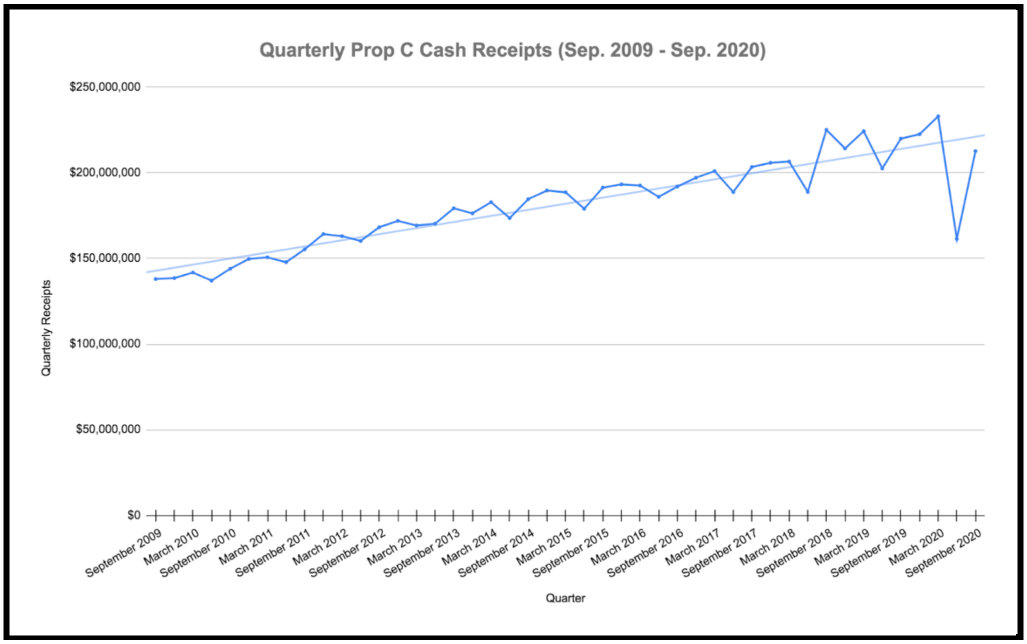

Figure 2. Proposition C: Quarterly Cash Receipts (Sep. 2009 - Sep. 2020)

Measure R (2008)

Measure R was far more complex than Measures A and C which had been enacted decades earlier. The California requirement that the measure be approved by a super-majority of two-thirds of the voters, attention by the media and elected officials in the nineties to the inadequacies of management and oversight by the Metro board, and the examples of successes at the ballot box of many other LOSTs in California that included new attention to oversight and amendment procedures in combination led to the addition of many provisions in Measure R that had not been at included in the first two successful measures. Among the most obvious differences, Measure R includes both an expenditure plan listing the projects to be funded using its revenue, and specific provisions governing ordinance and expenditure plan amendment processes. Unlike the earlier propositions, Measure R limited the tax to thirty years rather than imposing it permanently, added several new categories of investments, added provisions for regular audits, created an independent oversight body, made clearer distinctions between capital and operating funding, and created carefully defined geographic areas to insure that funds were distributed to all subareas of the county. The importance and evolution of these requirements will be presented in the next chapter.

As summarized in Table 1, of its estimated $40 billion in projected revenues over 30 years after 1.5% is allocated to administration, of the remaining revenue 2% is allocated to Metro Rail capital projects, 3% to Metrolink (commuter rail) capital projects, 5% to support “new rail” operations, 15% to local return, 20% to bus operations, 20% to highway capital investments, and 35% is reserved for new rail and/or bus-rapid-transit (BRT) capital investments. Figure 3, shows Measure R’s quarterly sales tax cash receipts from September 2009 through September 2020.

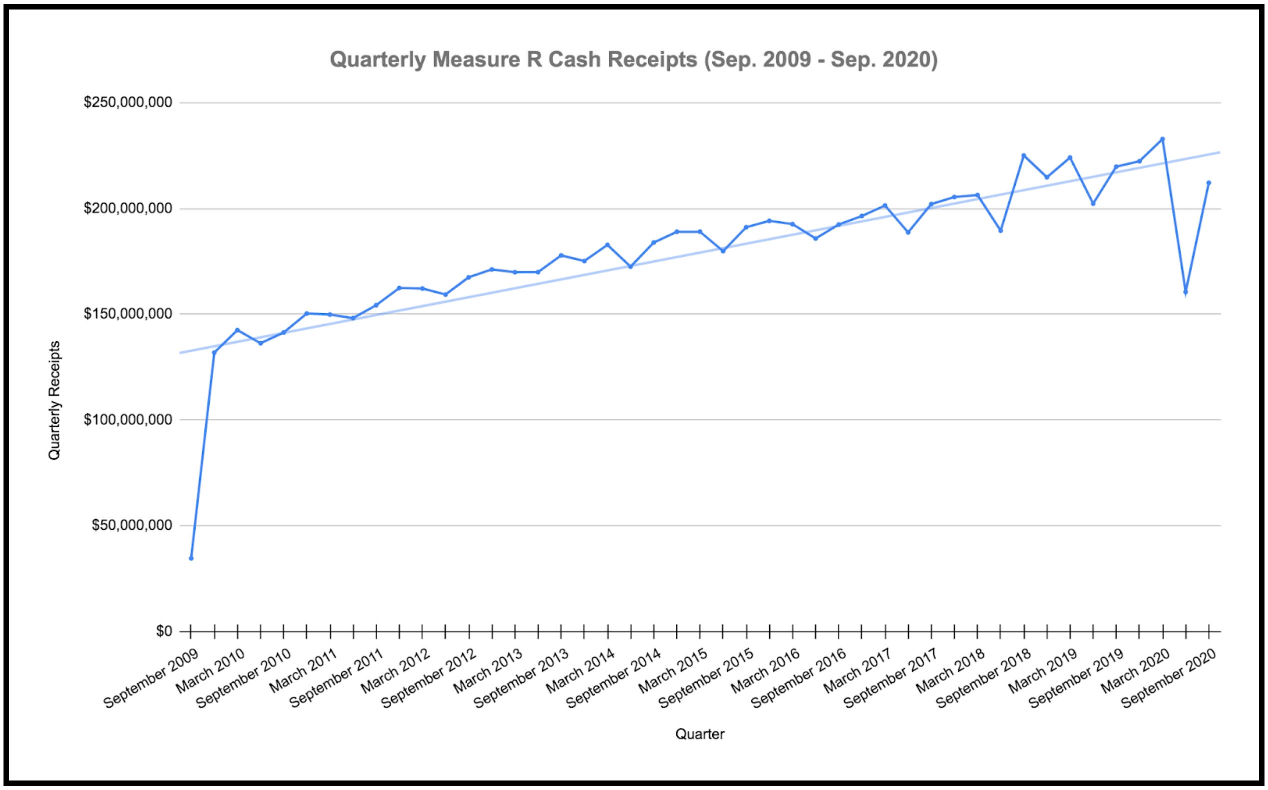

Figure 3. Measure R: Quarterly Cash Receipts (Sep. 2009 - Sep. 2020)

Measure M (2016)

The costs to complete the region's programs programmed in previous measures continued to rise, and transportation officials again returned to the voters for additional sales tax revenue. Measure M, the "Los Angeles County Traffic Improvement Plan," was adopted by a 71% supermajority of Los Angeles County electors voting at the time of the November 2016 Presidential election, imposing the fourth and most recent permanent half-cent sales tax in the County to fund local and regional transportation projects, and making permanent the half percent tax imposed earlier enacted for thirty years by Measure R. From the projected $860 million in annual Measure M revenue as shown in Table 1 the ordinance set aside 0.5% of the revenue for administration and of the rest allocated 17% for highway construction; 5% for Metro Rail operations;, 20% for transit operations by Metro and municipal transit operators; 2% for Americans with Disabilities Act (ADA) paratransit and Metro discounts for seniors, disabled, and students, 2% for Metro "state of good repair; meaning required maintenance of deteriorating facilities, 35% for "transit connectivity," meaning local transit services that provide access to trunk routes; 2% for the Metro Active Transportation Program of bicycle and pedestrian investments; and 17% for local return to cities and unincorporated areas of the county. Figure 4 shows Measure M's quarterly cash receipts for September 2017 through June 2020.

The most recent measure, Measure M, was even more complex than Measure R and far more specific and detailed than Propositions A and C as originally written. It's specificity and complexity makes it less transparent to lay citizens. Measure M includes an expenditure plan listing the projects to be funded using its revenue, and specific provisions governing ordinance and expenditure plan amendment processes. Also like Measure R, Measure M organizes its sales tax revenue fund into dedicated subfunds for transit operating and maintenance; transit, first/last mile capital investments (including a "transit contingency" subfund); highway investments; active transportation, complete streets capital investments (including a "highway contingency" subfund); and local return/regional rail. Measure M revenues in the contingency subfunds can be spent on inflation adjustments for any listed project if approved by two-thirds of Metro's Board. Contingency funds can also be used "to service the debt of any bonds issued or other obligations incurred," and may also be used to fund "expenditure plan major projects or multi-year subregional programs in any fiscal year in which Net Revenues received are not sufficient to meet Metro's funding obligations for that year for such projects" (Los Angeles County Metropolitan Transportation Authority, 2017).

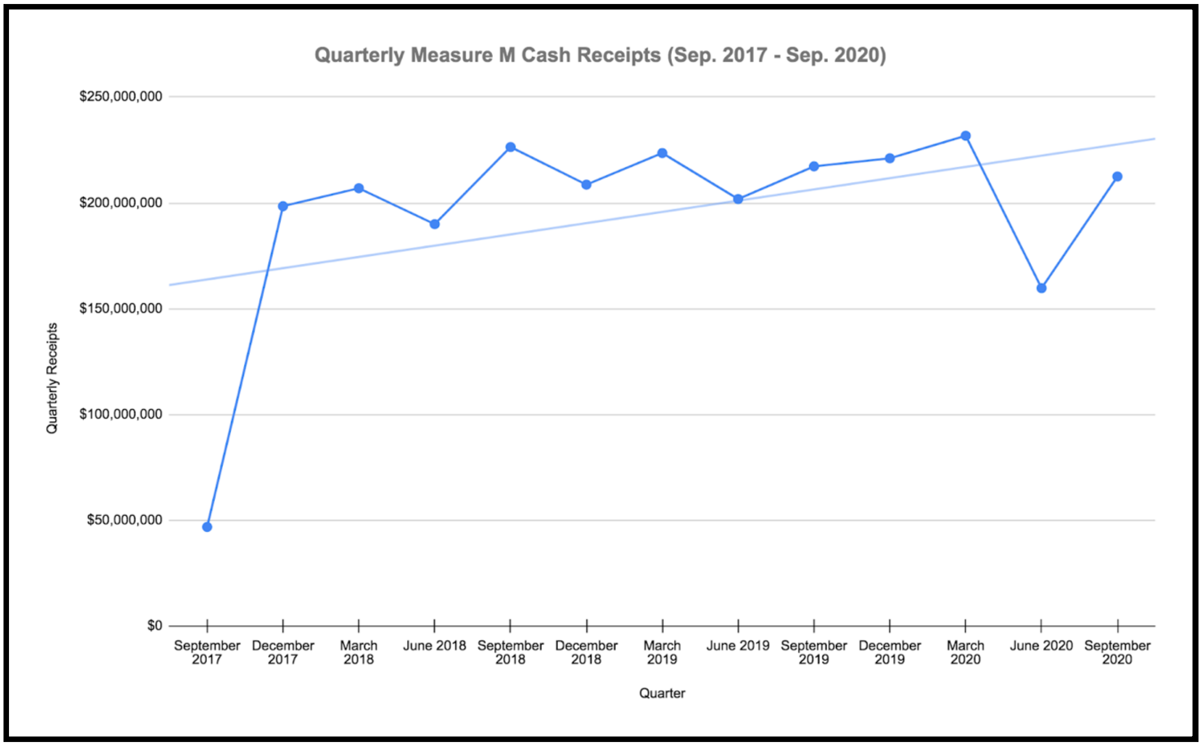

Figure 4. Measure M: Quarterly Cash Receipts (Sep. 2017 - Sep. 2020)

Conclusion

The first successful transportation sales tax in Los Angeles County, Measure A in 1980, started the region on its path to regional rail construction and transit system expansion. To attract sufficient votes to be approved, the first measure proposed future investments in transportation that were ambitious and they proved to be more costly than could be delivered with a regional permanent half-cent sales tax. Approval of a second half-cent sales tax was sought and obtained a decade later as costs rose and plans grew in scale and scope. More money was needed to fulfill the original plans, but expanded transportation plans were needed to convince the voters to provide additional funds. The cyclical pattern was repeated twice more, and Measures R and M were pursued to continue the growth in the regional transportation network and the rising costs that growth created. Each time more money was sought, more investment was proposed to justify the added taxation. Propositions A and C did not include provisions requiring the Metropolitan Transportation Authority to undergo regular financial, compliance, and/or performance auditing, or form an independent oversight committee. Concerns arose that the money was being spent too freely and without sufficient oversight. The two more recent measures consequently added auditing and oversight provisions to assure voters that their interests were protected and to increase confidence in Metro, especially after the requirement for approval by a supermajority of two-thirds was added. A large regional transportation program needs oversight to assure public confidence that the funds are wisely spent in support of the objectives that led voters to enact the measures, yet conditions change, new needs emerge, and there is a competing need for Metro to be flexible and responsive to new conditions. Chapter 4 describes the complicated ways in which accountability and flexibility are both addressed and the tensions between them. Before turning to those tensions and tradeoffs, the next chapter introduces another key feature of the sale tax measures, the local return programs.

Chapter 2: Local Return and the Four Los Angeles County LOST Measures

All four Los Angeles County transportation sales tax measures specified that a portion of the revenues collected are returned to the 88 cities and the county's unincorporated areas to fund local transportation programs. Local transportation funding was radically altered by the 1978 tax-payer revolt that culminated with the passage of Proposition 13. Prior to the passage of this revolutionary measure, local transportation funding for streets, highways and transit primarily came from property taxes. As noted in the introduction, the Howard Jarvis Taxpayers Association (2020) claims that the measure reduced property tax revenue by 57% of what it would otherwise have been by limiting assessed valuation of real estate, limiting property tax rates and also limiting local governments' capacities to reassess real property. As the revenue streams dried up after passage of Proposition 13, cities across the state struggled to reduce costs and replace disappearing property tax revenue. LOSTs were an answer to the transportation budget shortfalls occurring across the state, leading to 19 measures proposed before 1995 among California counties. Of those 19 measures, 18 gained voter approval by achieving a simple majority and only one failed. The two-thirds supermajority put in effect after 1995 did not deter efforts to enact LOSTs, with 64 measures put before voters since then. Currently, there are 34 measures in place in California, 28 of which provide for local return. Local return funding is included in all four of the measures in effect in Los Angeles County, and clearly is important to local governments. The City of Los Angeles, for example, reported that funds received from Prop. C provide 30% of the Department of Transportation's budget (Los Angeles City Controller, 2014).

Local return is crucial to obtaining political support for measures among local elected officials who in interviews described the promise of local funding as a way to achieve geographical equity within the region (Albrecht, et. al.2017). Former Metro Board Members described local return as "essential" for local communities. When measures are proposed, capital projects, like subway construction and highway widening, are typically presented to voters as ways to increase mobility across large parts of the county. Most capital projects are located in densely developed cities in the county and fewer are proposed in more sparsely populated suburban parts of the county. By committing funds across all areas, local return programs gain the backing of city officials, who encourage voters in the smaller towns and suburbs to support measures that require a supermajority of two-thirds to be enacted (Los Angeles County Metropolitan Transportation Authority, 2016).

Figure 5 shows the total revenue produced over time by the combined local return programs of the four Los Angeles County measures. Local return funding is clearly of enormous importance to Los Angeles County, and presently delivers over $650 million to local governments in the County. The increasing flow of revenue over the years is attributable to an increasing number of local tax measures over time and the steady growth of population and economic activity over time. The annual growth in total local return funding has been increasing about 5.5% on average from year to year due to economic growth alone prior to the recent downturn as a result of COVID-19. Figure 6 presents local return contributions in relation to the total revenue produced by the four half-cent sales tax measures combined.

Figure 6 provides greater detail by showing the contributions of each of the four measures over time, highlighting the timing of each measure and the different amounts each allocates to local return. The four measures allocate different percentages of their revenue to the 89 jurisdictions. The proportions allocated by each measure remains unchanged throughout each measure's lifetime, except that Measure M provides for a change in the proportion in the future. Proposition A, approved in 1980 immediately after Proposition 13, reflects the urgent need for local funding and provides the highest local return percentage of 25%. By the time the next Metro measure was introduced, Proposition 13 was a decade older, its effects had become obvious, and voters began to vote in favor of raising taxes. With an established revenue stream from Proposition A's local return, reducing the local return portion of later measures gave local jurisdictions more much-needed revenue while increasing funding for the county's major capital projects listed in the expenditure plan. Proposition C and Measure R provide 20% and 15%, respectively. Measure M's ordinance states that the percentage of revenue devoted to local return will increase from the present rate of 17% to 20% after July 1, 2039. The three percent increase will result from reductions in Measure M's Transit Construction funding and Highway Program, or both depending on a decision to be made by the Board of Directors.

Former elected officials whom we interviewed stated that local return funding was important in garnering their support. If there were ever to be additional sales tax measures, they would expect local return funds to comprise a greater proportion of the total revenue than they have been in past measures.

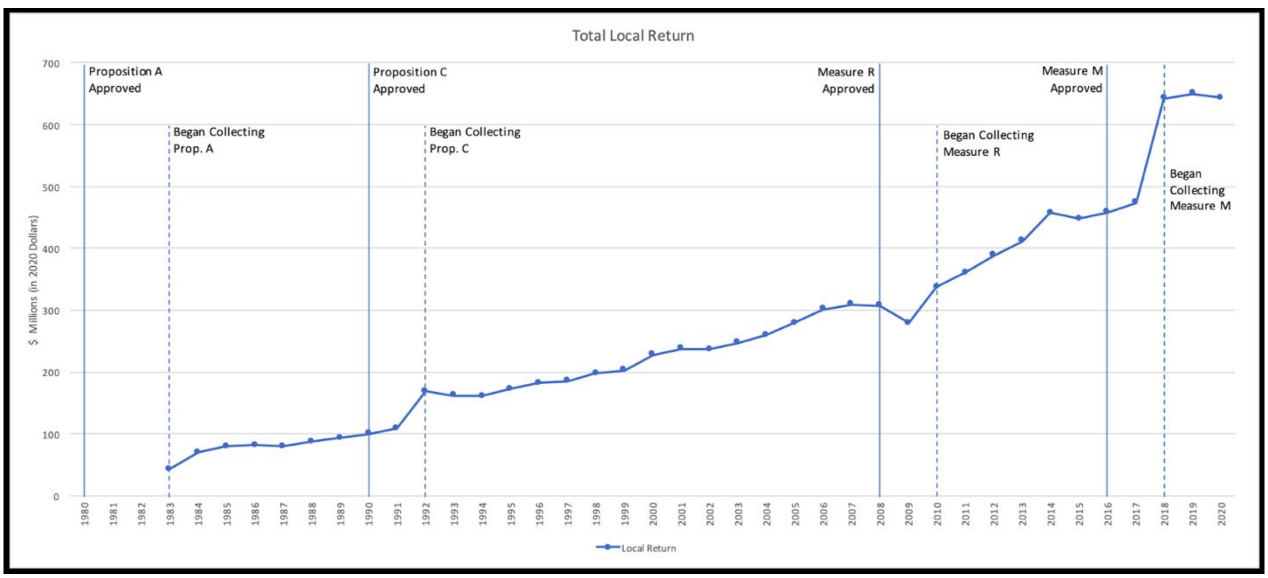

Figure 5. Total Local Return Funding from all four Los Angeles County LOSTs

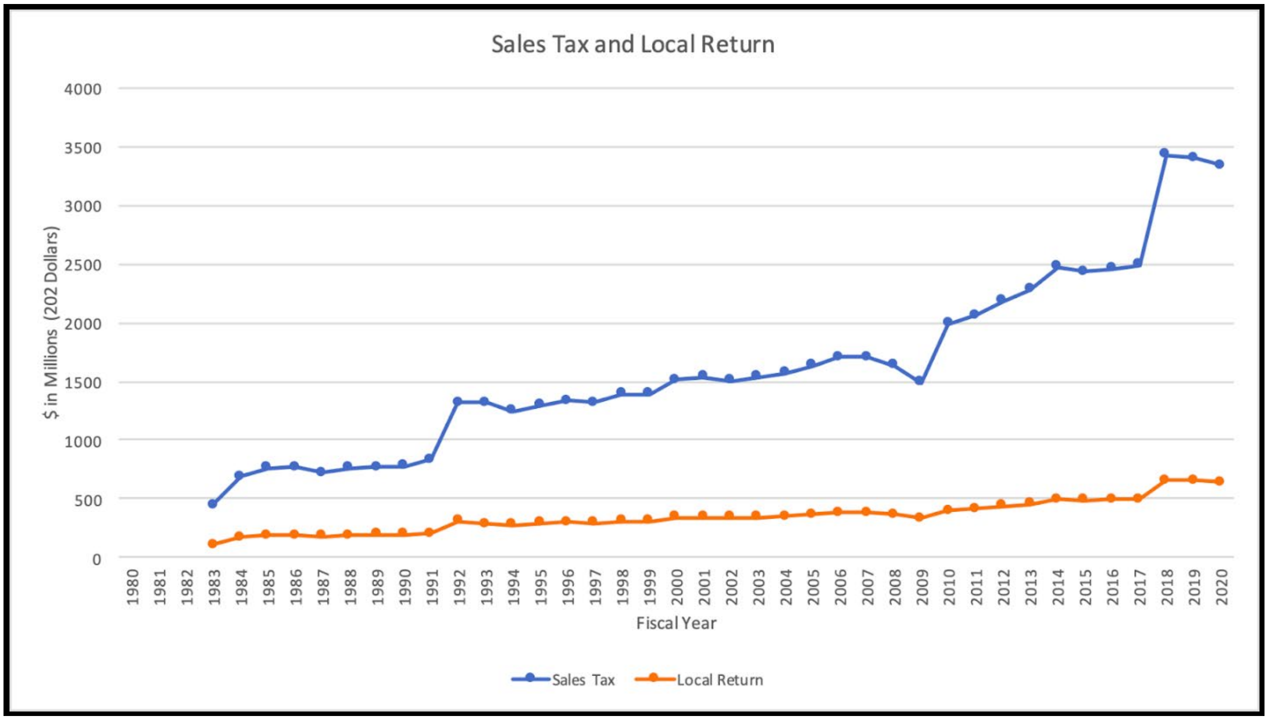

Figure 6. Local Return Funding in Relation to Total Los Angeles County Transportation Sales Tax Revenue

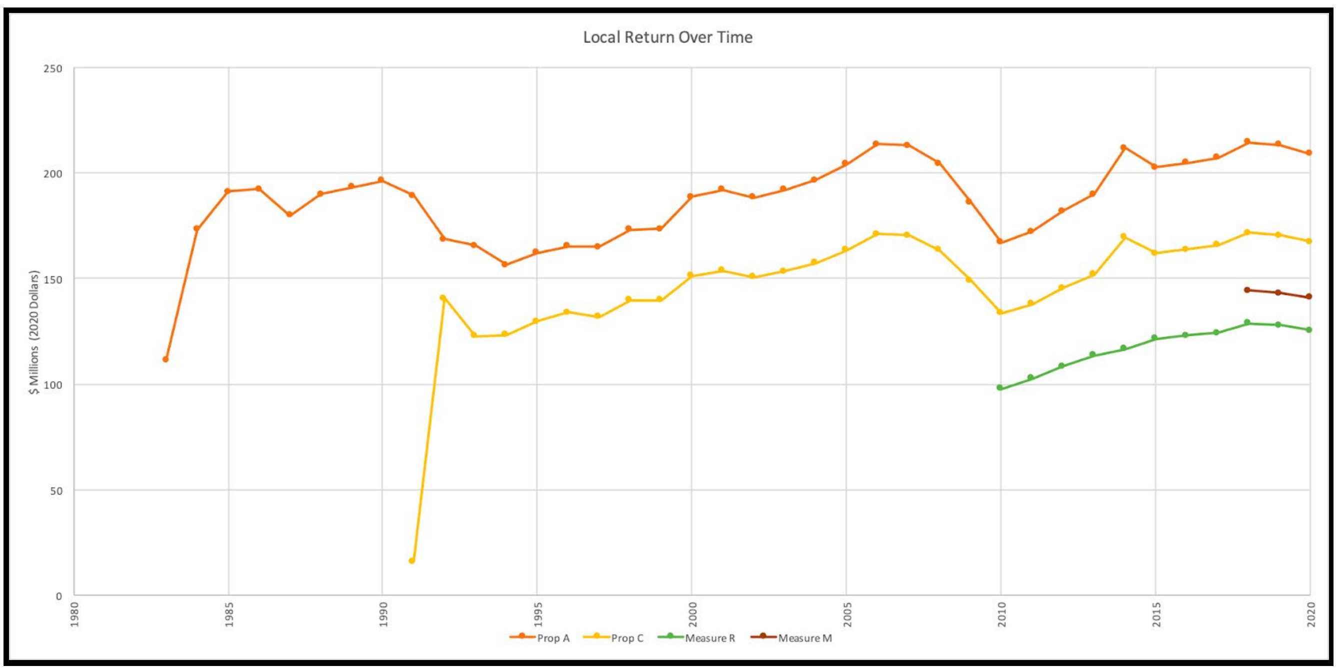

Figure 7. Local Return Dollar Revenue by Measure since Inception

The local return funds under all four measures are allocated among the 89 jurisdictions in proportion to their population. The California State Department of Finance's projected population is used each year to determine the amount each jurisdiction receives. The website called Urbanize Los Angeles estimated that Measure M's local return program would provide about $13.44 per person per year (Linton 2017). Using the 2017 population count as estimated by the Department of Finance with just over 10 million residents, Measures A, C and R and M will provide about $19.36, $15.49, $11.59 and 13.44 per person, respectively in local return funds to all the entitled jurisdictions.

The distribution of local return funds in proportion to population has been considered unfair by some communities which are disadvantaged by the formula because they house few people in relation to commercial and industrial activity. The City of Vernon, for example, had a residential population of just 112 people according to the census in 2010. Because the measures are enacted by voters and only people cast ballots, others regard population as the most appropriate criterion for distributing funds. After Measure M's voter approval, Metro explored changing the local return guidelines to include a minimum allocation of $100,000 per jurisdiction so that those having smaller populations might not be at a disadvantage (Linton 2017). After some debate, the distribution formula was ultimately retained, giving rise to the platitude that "buildings don't vote; people do." Former Board Members indicated that including a minimum municipal distribution would add complexity and would be difficult to change, especially since the measures in place all use the same distribution formula.

Metro distributes local return funds to the 89 jurisdictions monthly after they have been collected. The funds are placed in designated accounts for the jurisdictions to use within time periods stated in each measure's Local Return Guidelines. Propositions. A & C Local Return Guidelines state that cities have three years after the last day of each fiscal year to expend local return funds. Measures M & R's Local Return Guidelines state that jurisdictions have five years to expend funds. If the funds are not used during the provided time, Metro may reclaim them for reallocation to other jurisdictions (Los Angeles Metropolitan Transportation Authority, 2017). A Metro Board Report from 1991 indicated that the City of Irwindale's Proposition A Local Return funds lapsed, were collected by Metro, and reallocated to "discretionary programs of countywide significance" (Los Angeles County Transportation Commission, 1991). The same Board action authorized Metro to monitor cities with potentially lapsing funds by sending notices to those jurisdictions before funds lapse, allowing cities to avoid losing their local return funds.

Metro's guidelines allow jurisdictions to opt out of local return programs, foregoing the funding and the accounting and reporting requirements that go with it. If jurisdictions choose to opt out, the funds due to them are redistributed to others. The City of Vernon was the only jurisdiction to opt-out of local return under any of the four measures, stating that the administrative costs to organize the funds would amount to more than the funds received. Vernon opted back into the local return program for Measure M, perhaps demonstrating the value of even modest amounts of local return funds.

Local Return Spending Patterns

Each jurisdiction decides how to use the local return funds it receives from Metro though it is required to spend them on transportation. Each of the four measures includes a list of eligible expenditure categories for local return, specified in the measure ordinance and its Local Return Guidelines. The earliest measure, Proposition A, has the most permissive spending requirement, stating only that local return is to be used for "local transit," a term that has been interpreted to allow great flexibility. This reflects the influence of Prop. 13 and passage of the proposition at a time when local governments perceived an urgent need for funds. A former LA County

Transportation Commission Board Member stated in an interview that cities were not certain how they could utilize Proposition A's local return funds at the start of the program and that Commission staff initially provided them with guidance.

In 2016, Metro released its first Local Return Program Report detailing the nature of expenditures for each measure by each jurisdiction, using eight categories to classify projects: Streets & Roads; Active Transportation; Public Transit Operating & Capital; Transportation Marketing; Planning, Engineering and/or Study; Local Funding Contribution; Transportation Administration; and Other Transportation Projects (Los Angeles County Metropolitan Transportation Authority, 2016). Local return guidelines further explain the expenditures categories. For example, Public Transit Operating and Capital may include new fixed-route, extensions of routes, fare subsidies, service contracting, vehicles (new, replacement, and/or maintenance), improvements to bus stops or rail stations, Transit Access Pass (TAP) programs, and many others. The category "Other Transportation Projects" consists of project types that do not fit within specified categories, and includes measure-specific initiatives like Transit Oriented Community investments and other transportation projects that do not fall under a specific project code. Table 2 shows that Measures R and M provided funds in all of the categories, while the earlier Propositions. A & C supported spending in fewer categories.

Despite Proposition A's ordinance stating that the measure's local return funding is available for "local transit," Table 2 indicates that funding from Prop. A has been used for expenditures in additional categories without objection. The Local Return Program Guidelines, written by Metro, have been updated several times during the measure's lifetime. The most recent update for Propositions. A & C, for example, occurred in 2007, at which time active transportation was included.

Metro estimates that just over 50% of the local return funds are used by the 89 jurisdictions for local public transit services, including both fixed-route and on-demand services. The second largest expenditure type is local street improvements at 19.01%, followed by active transportation at 16.23% (Los Angeles County Metropolitan Transportation Commission, 2016).

Table 2. Local Return Spending by Categories for Each Measure

Spending Category	Prop. A	Prop. C	Measure R	Measure M
Streets and Roads		X	X	X
Active Transportation	X	X	X	X
Public Transit Operating & Capital	X	X	X	X
Transportation Marketing	X	X	X	X
Planning, Engineering and/or Study	X	X	X	X
Local Funding Contributions			X	X
Transportation Administration	X	X	X	X
Other Transportation Projects	X	X	X	X

Local governments are permitted to trade, lend, and gift local return funds from Prop A, Measure R, and Measure M to other jurisdictions, after approval by Metro. Proposition A Guidelines specify that traded funds can be used only for public transit purposes. Measures R and M do not contain the same restrictions (Los Angeles County Metropolitan Transportation Authority, 2007). If the receiving city spends the funds on transportation, the contributing city may receive general fund monies in trade for them which they then may use for other purposes. In an interview, a local public official stated that cities and subregions value this flexibility. Funds may also be pooled among jurisdictions and with funds from other sources to achieve for “maximum return on investments." Proposition C does not permit the trading of funds but its guidelines do allow funds to be used in multi-jurisdictional projects, which Metro suggests and promotes in the local return guidelines.

Metro’s regional investment programs, particularly new rail transit routes, have experienced major cost increases and Metro requires local jurisdictions to contribute 3% of the cost of constructing new transit stations in their jurisdiction. The contributions can be made from sources chosen by the jurisdiction, including their general funds. Metro allows local jurisdictions to use their local return funds for these contributions. Measures R & M allow funding contributions from local jurisdictions “to major rail transit and capital projects” (Los Angeles County Metropolitan Transportation Authority, 2017). Adding sticks to the carrots provided by local return funds, Measure M guidelines specify that if jurisdictions do not agree to fund Metro’s regional projects, Metro may withhold up to 15 years of local return funds (Los Angeles County Metropolitan Transportation Authority, 2017). The inclusion in Measure R of a 3% local commitment to regional projects drew such strong objections from the cities that the guidelines were loosened to allow the 3% to be used for first/last mile projects including bicycle and scooter rental programs and community shuttles.

Conclusion

Delivering a portion of the revenue to local governments from each of four transportation sales taxes serves two purposes, political and practical. Local jurisdictions were desperate to replace property tax funding unavailable after passage of Proposition 13 and the sales tax revenue addresses that need. Another legacy of the tax revolt was the requirement that every new sales tax measure be approved by a super-majority of two-thirds of those voting. Delivery of funds to financially challenged local governments encouraged mayors and council members to support the countywide sales taxes, and their support contributed to achieving the margin necessary for passage. Implementing local return funding is challenging in a county that contains 88 separate cities and unincorporated areas all wanting more of the revenue, so rules and procedures acceptable to a large number of jurisdictions have evolved to govern the process. Each rule and procedure adds complexity to the administration of the measures and leads to their being understood by relatively few lay citizens. This complexity may be acceptable to the country’s voters as long as they have confidence that their elected representatives are acting in their interest. Balancing accountability to the voters with the flexibility to respond to changing circumstances is the subject of the next chapter.

Chapter 3: Balancing Accountability and Flexibility in Four Los Angeles County LOST Measures

The heart of each measure was the list of programs and projects to be funded should the voters approve. Voters are, consequently, presumed to be motivated by the explicit commitments that those lists create. The lists of funding commitments in each measure were developed with interest group and geographic communities' priorities clearly in mind. Approval of a measure entitles county residents to expect promises made to be delivered. Manville and King (2013) demonstrate that support for later ballot measures is a reflection of the voters' confidence that promises made in earlier elections have been kept. Approved measures obligate Metro to comply with the voters' directives. Some have sued when they believed that voter-approved commitments have been breached, indicating the seriousness with which the commitments are viewed.

On the other hand, measures have been enacted that will remain in force permanently while perceptions of need and voter preferences surely will change over time. LOSTs inherently embody a tension between accountability and flexibility. During the lifetime of an enacted sales tax measure, transportation technology will change dramatically, planned projects will be abandoned because of environmental challenges, new proposals will replace older ideas, especially when new leaders are elected and governments must from time to time amend their plans. Regional transportation plans and transportation improvement plans are required by state and federal laws to be updated periodically and the regional transportation plan is required under 49 USC 5303to be "fiscally constrained," meaning that commitments of funds must be explicit and reasonably assured. For these reasons when plans provide for implementation of voter-approved projects and programs there must be provision made to amend them while complying with the voters' directives. Balancing the will of the voters with the need for flexibility means departures from voter-approved plans need to be provided for, but if voter-approved measures are to be meaningful amendments should be rare and carefully executed according to specified rules and procedures (Wachs, et. al.,2020). In this chapter we examine the ways in which the balance between commitments made to voters and the need for flexibility on the part of Metro decision makers has evolved over four decades.

Support for Proposition A in 1980 was in part based on a visionary regional transit building program and in part based on the need to replace the local transportation revenue lost to the county's jurisdictions as a result of Proposition 13. The measure provided for very little oversight, auditing, enforcement, or review of the ways its revenue was spent beyond the ordinance's requirements and the project list. Proposition. A placed responsibility for the capital investments in transportation to the LA County Transportation Commission (LACTC) later rebranded as Metro, and gave localities freedom to utilize local return funds as they saw fit, though the Commission did monitor the cities' spending. Proposition C, approved in 1990, includes guidelines similar to Proposition A although it added to the list of major capital projects to be funded. With respect to local return, Proposition C, added two requirements: timely usage of funds and no trading of funds between jurisdictions (Los Angeles County Transportation Commission, not dated). Within a decade, the absence of oversight and review led to a great deal of concern about management of the capital investment program leading to criticism by elected officials and hostile media attention.

On April 1, 1993, following years of interagency wrangling, the state Legislature required the consolidation of the Southern California Rapid Transit District (SCRTD) and the Los Angeles County Transportation Commission (LACTC). The new agency is what is today known as Metro (Elkind 2014, 151). The two agencies had co-existed since the formation of the LACTC in 1976 — the LACTC managed planning, design, and construction of the regional transportation system while the SCRTD was responsible for system operations (Garrett 2006, 440-441). By the early 1990s, neither agency was in good political standing. Among other problems, the SCRTD faced construction cost overruns on the Red Line subway as well as frequent bus driver strikes while the LACTC faced criticism over its expense accounts and choice of a foreign company to supply the Green Line's rail cars (Elkind 2014, 148-149). Furthermore, the coexistence of two transit agencies resulted in administrative gridlock and redundant overhead costs (Garrett 2006, 593).

The merger placed planning and operations under one entity and was intended to provide more unified delivery of transit service in Los Angeles County. The new agency carried over financial commitments from both pre-existing agencies, placing it in a precarious and overcommitted financial situation from the very beginning despite the revenues from Propositions A and C. Though the Blue Line had opened in July 1990, the Los Angeles County Metropolitan Transportation Authority (MTA) still owed debt on the capital investment for its construction. The decrease in sales tax revenue from an ongoing economic recession meant that all Proposition A revenue for rail was dedicated to repaying the Blue Line debt and local match for the Metro Rail Red Line MOS-1 and MOS-2 (Elkind, 2014). Gasoline tax revenue was also declining as a result of a combination of increasing automobile fuel efficiency and stagnant tax rates that did not keep pace with inflation. The ambitious rail program adopted by LACTC also took up most of the 40% Discretionary Funds provided by Proposition C. With so much revenue tied up in capital-intensive rail projects, the MTA had few uncommitted funds left to cover increasing rail and bus operating costs (Garrett 2006).

By 1994, the MTA faced a $300 million budget shortfall and even the most ardent rail proponents began to recognize that the agency could no longer adhere to the 30-Year Plan. Public confidence in the agency declined dramatically due to repeated subway project cost overruns, construction accidents that killed three workers, a tunnel fire underneath the Hollywood Freeway, a giant sinkhole that consumed part of Hollywood Boulevard, the discovery that subway tunnel walls were not built to the required thickness. Debt obligations rose and federal corruption convictions of several MTA officials led to the enactment of "the state's toughest conflict-of-interest law [...] to prevent MTA Board members from receiving more than $10 in campaign contributions from contractors, lobbyists and companies seeking transit agency business" (Rabin, 1998).

Responding to the crescendo of public criticism, LA County Supervisor Zev Yaroslavsky sponsored a ballot measure entitled the "MTA Reform and Accountability Act," which sought to force the agency to change its course in order to free up future dollars for a more affordable and effective transit system, including a larger role for buses. Yaroslavsky had not come to the decision to oppose subway construction lightly, as he had consistently supported the project, in his words, "based on a set of assumptions that [had] gone up in smoke." In addition to ending subway construction with funding from Propositions A and C after completion of the North Hollywood line, the initiative would create a five-member Citizens Oversight Committee to monitor the MTA's spending of sales tax revenues and require an annual independent audit of the agency to ensure it complied with voter-approved restrictions on the use of transit tax monies. County voters approved Yaroslavsky's measure in November of 1998 with 68.5 percent of the vote. Very importantly, the initiative prohibited the use of sales tax revenue raised by Propositions A and C to start any additional new subways in Los Angeles County. The depth of the distrust of the transportation agency is indicated by the fact that the initiative passed in every State Assembly district in the county, including those next in line to receive funding for new rail lines. The later measures, R and M explicitly funded new rail lines and their passage by substantial margins makes it clear that trust in Metro had been restored by the time of the later measures. Yaroslavsky's voter-approved initiative created oversight committees for Proposition A and C and established an auditing process for the LOST measures which were part of the process of restoring that confidence. The initiative also set the scene for the inclusion of oversight provisions in the two later measures, R and M, becoming more complicated and demanding with each successive measure.

Metro's Oversight Committees

As a result of Yaroslavsky's initiative, the four measures are now all subject to fiscal audits and to oversight by Independent Taxpayer Oversight Committees (ITOCs). Annual financial audits by certified independent accounting firms have been required of expenditures under all the measures since approval of his initiative in 1998, with the audit and oversight requirements written into the language of the later measures as presented to the voters. Though the residents of the county are mostly unfamiliar with the oversight procedures, the requirements are carefully detailed in the measures. The composition and responsibilities of the oversight bodies differ, reflecting the evolution of concerns for accountability over time.

After the crisis of confidence in the Metro Board, the Independent Oversight Committee for Propositions A and C began functioning as created by the success of the 1998 measure written by Yaroslavsky. It consists of five residents of the county who serve without compensation, appointed by different authorities: the Mayors of Los Angeles, Long Beach, Pasadena, the Chair of the County Board of Supervisors, and the Chair of the Metro Board of Directors. Members serve indefinitely and there are no fixed terms of service and some of the current members have served since the inception of the requirement. The Oversight Committee meets in public session at Metro headquarters at least annually to receive and review the annual audits and transact other business (Los Angeles County Metropolitan Transportation Authority Independent Taxpayer Oversight Committees, Overview, 2020).

The Measure R Independent Taxpayer Oversight Committee was approved by the voters as part of the measure. It consists of three retired federal or state judges residing in the county and serving two-year terms without compensation, one each appointed by the Mayor of Los Angeles, the Chair of the County Board of Supervisors, and a selection committee of the other cities in Los Angeles County. This panel of judges is required by the Measure to meet twice each year in public session, and in addition to reviewing the audits it is required to report its findings to the Metro Board.

The most recent measure, Measure M, included provisions approved by the electorate for an oversight body having composition and responsibilities that differ from the earlier measures. This group is required to meet four times per year, to review annual fiscal audits and to review compliance with the plans presented in the measure and report to the Metro Board, offering its advice as well as certifying compliance with the measure. The oversight group, also unsalaried and composed of county residents, is to be composed of seven people who may apply for the positions and whose applications are reviewed by a three-member selection panel of Metro Board members. The membership of the Measure M oversight body is to be selected to fill the following criteria, though the selection panel has the authority to fill the positions if these cannot be met:

1. A retired federal or state judge;
2. A professional from the field of municipal/public finance and/or budgeting with a minimum of ten (10) years of relevant experience;

3. A transit professional with a minimum of ten (10) years of experience in senior-level decision making in transit operations and labor practices
4. A professional with a minimum of ten (10) years of experience in management and administration of financial policies, performance measurements, and reviews
5. A professional with demonstrated experience of ten (10) years or more in the management of large-scale construction projects
6. A licensed architect or engineer with appropriate credentials in the field of transportation project design or construction and a minimum of ten (10) years of relevant experience
7. A regional association of businesses representative with at least ten (10) years of senior-level decision making experience in the private sector (Los Angeles Metro Independent Taxpayers Oversight Committees, 2020).

Measure M spells out the duties of this oversight body in more detail than the earlier Measure R, demonstrating the evolution of understanding of oversight functions over time. This committee is responsible for selecting the Measure M independent auditor, approving its scope of work, directing efforts of the annual independent auditor for Measure M, as well as preparing and delivering annual reports to the Board on the findings of the independent auditor. At the conclusion of each annual audit, this committee must "make findings as to whether Metro is in compliance with the terms of the Ordinance[.]" This committee also reviews all proposed amendments and must "make a finding [for each amendment] as to whether the proposed amendments further the purpose of the Ordinance." The committee is also empowered to "[make] findings on the effective and efficient use of funds" for each of the Measure M subfunds, and "review the programmed [Measure M local return] revenues and uses for each of the local jurisdictions." On an annual basis, the committee is charged with reviewing project costs (including "significant cost increases and/or major scope changes of the major corridor projects"), making recommendations for improving project delivery, and analyzing Metro's overall implementation. Because Measure M was enacted so recently, sufficient time has not elapsed to assess the effectiveness of its oversight process and body, but the requirements and powers given to that body are certainly far greater than those for the earlier measures.

We reviewed minutes of meetings of the several oversight bodies and asked staff and former Metro Board members their impressions of the importance and effectiveness of oversight. The annual fiscal audits of Metro projects and local return programs were reported by interviewees to be necessary and appropriate for oversight of a complex organization that regularly spends billions of dollars of public funds. The Oversight Committees, however, were perceived to have little genuine influence over decisions made by the Metro Board. Former Board members told us they were not strongly influenced by the oversight committees, and did not remember who the members of the oversight bodies were. It remains to be seen whether the increased oversight powers and responsibilities created by Measure M will change perceptions of their influence.

Annual Audits

As written in 1980 and 1990, respectively, the Proposition A and C ordinances did not explicitly require any regular financial or performance auditing of Metro's collection and expenditure of LOST revenues, nor did they require the establishment of public oversight committees to monitor implementation on behalf of Los Angeles County voters. The freedom to act without accountability was undoubtedly among the causes of the crisis in confidence that motivated the changes introduced by Yaroslavsky's measure. Los Angeles County voters approved the Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998 by a substantial majority. Ever since then, an annual audit has been conducted of spending under each of the four sales tax measures. The audits are conducted by independent accounting firms under contracts with Metro. The auditors follow standard nationally-recognized auditing procedures and their reports are reviewed by the oversight committees responsible for the different measures. They become part of the public record available to be reviewed on the Metro website. The annual audits have helped to assure public confidence in Metro's management.

Propositions A and C, which were written before audits and oversight were required, continue to allow the Metro Board some flexibility moving funds among projects and in their oversight of the local return allocations and spending. The later measures, R and M, limit the use of funds to a greater extent and provide for more oversight, particularly over local return expenditures. The audit requirements for Measures R and M contain are detailed, directing that annual audits determine whether jurisdictions are complying with the terms of the ordinances. We first describe findings from oversight of Metro's compliance with requirements applicable to overall Measure R and M revenues and expenditures, and then describe findings from oversight of the local return programs established under each of the two recent LOST measures.

The Measure R and M ordinances require Metro to contract for annual independent audits to determine how well the agency has complied with each measure's Schedule of Revenues and Expenditures, and with requirements related to the collection and expenditure of revenues.

The Measure R Oversight Committee reported that the independent auditor found that Metro complied "in all material respects, with the requirements that are applicable to Measure R revenues and expenditures" during fiscal years from 2010 through 2018 (Los Angeles County Metropolitan Transportation Authority, 2020a). The Measure M Oversight Committee also reported that the independent auditor found Metro complied "in all material respects, with the requirements that are applicable to the Measure M revenues and expenditures" during fiscal years 2018 through 2019 (Los Angeles County Metropolitan Transportation Authority, 2020b). These findings of compliance do not address local return spending programs, which are audited separately.

Table 3 shows local return audit results for Measures R and M review using Metro's 17 compliance criteria. The most frequent violations identified in the annual audits include failure to submit timely expenditure plans and expenditure reports, inadequate verification that funds were expended with Metro's approval, and inadequate evidence that funds were spent for transportation purposes, all of which are requirements stated in the measures.

According to the audit findings for Measures R and M, 82 cities out of the 88 and the unincorporated areas of the county failed to comply with at least one requirement during at least one fiscal year since the implementation of Measure R. A few cities stand out with more non-compliance findings than others, including Maywood and South El Monte, each with 11 violations and Compton, with a total of 17 reports of non-compliance. If the guidelines are continuously not met by any jurisdiction, Metro "reserves the right to suspend or revoke allocations" for Measures R and M. Revisions to the Proposition A and C guidelines in 1998 and 2007, respectively, include similar language allowing Metro to suspend local return funds if a jurisdiction fails to comply.

In addition to creating oversight bodies and audit procedures, Metro has gradually put into place additional procedures and requirements aimed at avoiding some of the poor management practices that led to the Reform Act by making the agency more accountable for its actions. After the adoption of Measure R, Metro's Board adopted the Unified Cost Management Process and Policy for Measure R Projects (Los Angeles County Metropolitan Transportation Authority, 2011), which caps project funding for each Measure R project at the amount specified in the measure's expenditure plan. If a project runs low on funds, cost management strategies must be adopted and Board approval is required to allocate Measure R contingency funds that exceed amounts allocated to the project in the expenditure plan approved by the voters. The required cost management processes, which must be used prior to seeking Board approval of contingency funds, include: value engineering, scope reductions, new local funding, and countywide transit cost reductions as well as other viable cost containment strategies.

Table 3. Measure R and M Local Return Audit Violations by Compliance Criteria

Reason	Number of Findings per Fiscal Year										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	TOTALS
Funds were expended for transportation purposes		8	1	1	6	4	8	4	4	2	**38**
Funds were used to augment, not supplant, existing local revenues being used for transportation purposes											
Evidence of signed and returned assurances and understanding agreement											
Accounts and records have established a separate operating Measure R Local Transportation Assistance Account for LR Purposes		4									**4**
Verification of revenues received, including allocations, project generated revenues, interest income properly recorded	2	5	2	3					1		**13**
Verification that funds were expended with LACMTA's approval	1	9	7	11	13	8	8	11	17	4	**89**
Verification that funds were not substituted for property tax and is compliant with assurance and understanding (funds expended for non-Measure (R or M) LR Programs		2									**2**
Timely submission of Expenditure Plan (Form One)		6	8	9	6	2	3	15	10	6	**65**
Timely submission of Expenditure Report (Form Two)	17	4	4	2	5	2	6	2	5	8	**55**
Timely use of funds								1	3		**4**
Administrative expenditure did not exceed 20% of the total annual LR expenditures		1	2	3	2	1	3		1		**13**
Approval obtained from LACMTA for fund exchange (trades, loans, or gifts)											
Verification that funds expended and reimbursed by another fiord, were properly credited to the LR account upon reimbursement											
Verification that fiords exchanged with another jurisdiction were properly recorded by that jurisdiction											
Establishment of and approval by LACMTA for, a reserve fund											
For capital reserve fund, verification that a separate account has been established, and the current status is reported in the expenditure plan											
Where recreational Transit Services, Recreational Transit Form submitted timely							1				**1**
TOTALS	**20**	**39**	**24**	**29**	**32**	**17**	**29**	**33**	**41**	**20**	**284**

Amending Plans While Keeping Promises

As noted in the introduction to this chapter, accountability to the voters is enormously important and contributes to public confidence in the agency, but conditions change from time to time, projects are cancelled or become infeasible, and new ones are proposed that were not envisioned when the voters approved the measures. While assuring voters that Metro is fulfilling its commitments, it needs flexibility to respond to changing conditions. There is a constant struggle to balance flexibility against the fulfillment of commitments.

Propositions A and C, as noted earlier, did not include accountability provisions and also did not provide for amendments. Because the first two measures listed programmatic categories for transportation expenditures rather than enumerating specific projects, they provided Metro flexibility without the need for amendments. If substantial amendments were needed, they could be presented to the voters for reconsideration, which is exactly what happened with the Reform and Accountability Act in 1998. After the 1998 Reform and Accountability Act, it was clear that future measures would have to include ironclad assurances that voter approval of projects and programs could not be thwarted at the whims of Metro Boa members. The two later ones, Measures R and M, specified in technical language rather complex rules and procedures that made amendments more difficult. Metro also created a more permanent and transparent structure to its funding programs.

Because Propositions A and C did not include expenditure plans, Metro's Board may make substantive changes, like increasing or reducing funds programmed to finance a given project, without amendments. Those two propositions, however, had allocated funds among the expenditure categories presented earlier. The Metro Board has the flexibility to make changes in allocations without amendments, but must remain in compliance with the categorical revenue allocation rules in Propositions A's and C's ordinances (Los Angeles County Metropolitan Transportation Authority, 1998). The 1998 MTA Reform and Accountability Act of 1998 reinforced this limit by requiring the Board to "comply with the revenue allocation percentages set forth in Section 5(c) of Proposition A (1980) and Section 4(b) of Proposition C (1990), respectively, on at least an annual basis" (Los Angeles County Metropolitan Transportation Authority, 1998).

The 1998 Act, perhaps surprisingly, increased the Board's discretion over fund allocation in some ways. It amended Proposition C by making sales tax revenues previously eligible "to provide public mass transit improvements to railroad rights-of-way" the act allowed county-wide transit-related improvements to freeways and State highways (Los Angeles County Metropolitan Transportation Authority, 1998). While it prohibited the use of Proposition C revenues on "new subway" projects, the 1998 Act thus allowed some of its highway funds for some rail capital investments as long as they were on the ground or above it.

As approved by the electorate, Proposition C funds are distributed in two ways. Some are dedicated to the local return program discussed in the previous chapter. In addition there is an annual "call for projects, a "competitive process that distributes funds to regionally significant transportation projects" by making grants after proposals have been reviewed. A 2014 audit of the Los Angeles Department of Transportation's management of the grants it received through Proposition C found that between 1993 and 2014 the City of Los Angeles had received a disproportionately small amount— just 27%— of the annual "Call for Projects" funding grants made under Proposition C, despite the City of Los Angeles comprising an average of 40 percent of the county's total population (Los Angeles City Controller, 2014). The flexibility to respond to concerns of this sort was present in Propositions A and C as they were written but Measures R and M made it necessary to make changes through more formal processes.

The Metro Board has quite often exercised its flexibility under Propositions A and C by reprogramming funds within their revenue allocation category. For example, on June 27, 2013, Metro's Board approved "an increase to the life-of-project (LOP) budget for the base Crenshaw/LAX Transit Corridor Project [...] by $160,100,000 [...] using [...] $149.91million in Proposition C 25% funds [and] $10.09 million in Proposition C 40% funds from the Wilshire Bus Rapid Transit project […]" (Los Angeles County Metropolitan Transportation Authority, 2013). In another example, on June 22, 2000, Metro's Board approved "reprogramming $259,568 in Proposition C 25% funds" between two high-occupancy vehicle (HOV) lane projects in Los Angeles County (Los Angeles County Metropolitan Transportation Authority, 2000).

In a few instances, Proposition C funds were transferred by the Board without formal amendment to replace funding from other measures. For example, the Board moved to accelerate the expenditure of Proposition C's 25% funds "one year in advance of when they were programmed through the previous [Los Angeles County Transportation Improvement Program (TIP)] Call for Projects process" (Los Angeles County Metropolitan Transportation Authority, 1998a). In another instance, on June 27, 2013, Metro's Board approved replacing nearly $378 million in Measure R funds with an equivalent amount of Proposition C's 25% funds, or bonds backed by those funds (Los Angeles County Metropolitan Transportation Authority, 2013). These examples indicate that the Metro Board retains a great deal of discretion to allocate funds raised by Propositions A and C even as increasingly demanding requirements regarding amendments have been added to the later measures.

In an interview, a former Metro official who helped to draft the later measures told us that they reflected a clear intent to put a 'firewall' between operations and capital funding." While allowing changes in what is funded the provisions that allow amendments also earmark portions of total revenues for capital uses and others for operational uses. Funding earmarked for one use cannot be used to finance the other, while changes can be made within each of those major categories. Metro also subdivided the county into planning areas and allowed programmatic reallocations of funds by amendment, but specified that reprogrammed funds should be kept within the same subareas to assure what constituents like to call geographic equity.

Measure R created subfunds to operationalize allocation categories in the ordinance and to allow for systematic audits. Subfunds are independent accounts created for: (1) transit capital; (2) highway capital; (3) operations; and (4) local return. Funding for Metro Rail capital projects, Metrolink capital projects, and new rail and/or BRT capital investments are now taken from the "Transit Capital" subfund. Highway capital investments are funded by the "Highway Capital" subfund. New rail line's operations and bus operations are funded by the "Operations" subfund. Similarly, all local return allocations are made from the "Local Return" subfund. For example, the 15% of Measure R funds earmarked for local return uses are deposited into the Local Return subfund, and may only be used on local return projects and programs (Los Angeles County Metropolitan Transportation Authority, 2008). This arrangement makes accounting for and auditing funds easier and allows spending program amendments to be more simply and clearly specified.

The Measure R ordinance allows sales tax revenue to be "allocated solely for the transportation purposes described in this Ordinance," but allows the Board by two- thirds vote to amend the measure's ordinance or expenditure plans "for any purpose, including as necessary to account for the results of any environmental review required under the California Environmental Quality Act of the projects." Amendments may be "for any purpose except that the Board cannot amend the amendment procedures or the provisions in the ordinance create the firewall between capital and operations spending. They prohibit amendments that reduce "total net revenues allocated to the sum of the Transit Capital Subfund and the Highway Capital Subfund," and prohibit the adoption of "an amendment transferring Net Revenues between the Transit Capital Subfund and the Highway Capital Subfund" more than once in a ten year period, starting in 2020. Similarly, Section 11(c) prohibits the adoption of "any amendment to this Ordinance [or expenditure plan] that reduces Net Revenues allocated to the Operations Subfund or the Local Return Subfund." Clearly, Metro wishes at once to permit amendments but to limit them in ways it deems to be consistent with the intent of the measures approved by the voters.

While the Measure R ordinance did not clearly define the term "subregion," those geographic subdivisions were created by administrative action and have been used by Metro Board and Staff. The most recent measure, Measure M's, ordinance includes a map to insure that the definition of subregions is clear (Los Angeles County Metropolitan Transportation Authority, 2016b). Shown in Figure 8, the nine subregions are: (1) Arroyo Verdugo, (2) Las Virgenes Malibu, (3) Central City Area, (4) San Gabriel Valley, (5) North County, (6) South Bay, (7) Westside, (8) Gateway Cities, (9) San Fernando Valley.

Measure R's ordinance allows the Metro Board to determine, by a two-thirds vote, that a project has been completed, and if so it may re-allocate any remaining unspent project funds to another project of the same type (i.e., transit or highway), so long as the recently finished and newly funded projects are in the same subregion.

Metro may not amend the rules in Section 11 of the Measure R ordinance, those which govern amendments, without submitting the proposed amendment for "simple majority" approval by Los Angeles County voters. A former Metro official explained that this clause was meant to enable the Metro Board to "move highway money over to transit, or vice versa, but not in a way that would impact the schedules for the projects in the measure." This former Metro official went on to state that: "There was quite a bit of thought put into that requirement in order to make sure that changes going forward aren't able to tear down the firewall" between capital and operating expenses.

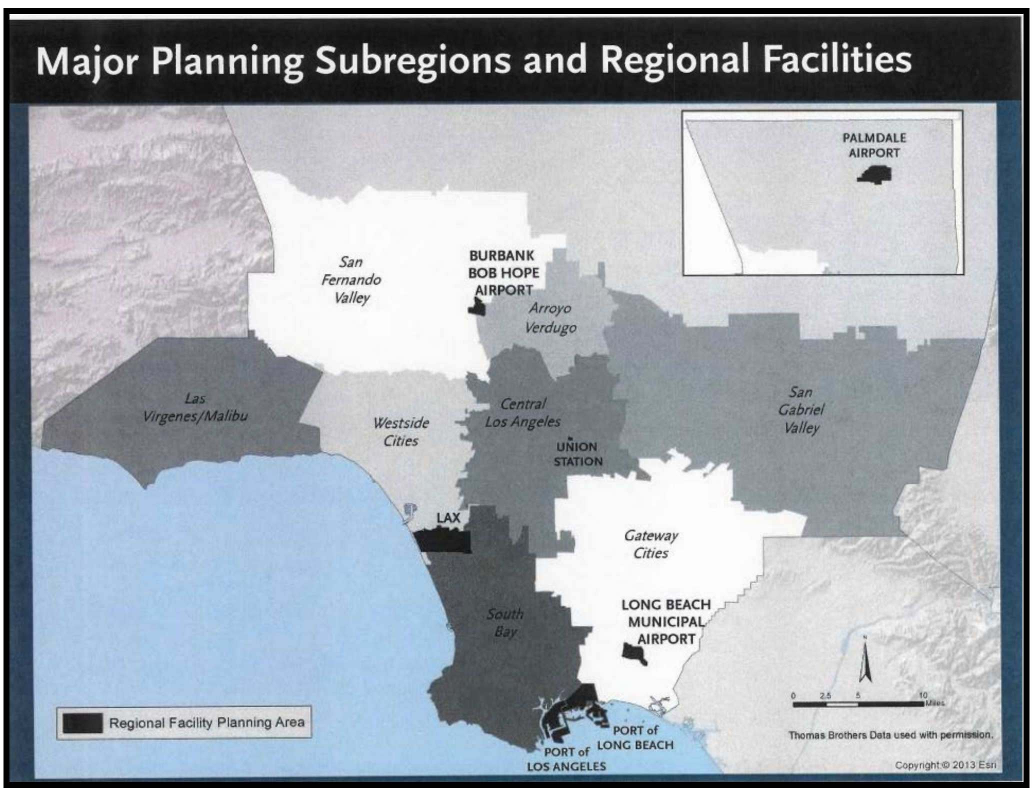

Figure 8. Los Angeles Metro's Designated Major Planning Subregions

Measure M, the most recent half-cent sales tax approved by the voters in 2016, provides for amendments in accordance with the principle that to comply with the wishes of the electorate amendments should be allowed, but rare. The Measure M ordinance allows the Metro Board to adopt certain kinds of amendments to the measure's ordinance and project list only once each decade through a process specified in the ordinance. For example, amendments that transfer net revenues between the Transit, First/Last Mile (Capital) Subfund and the Highway, Active Transportation, Complete Streets (Capital) Subfund, and amendments that would alter the subregional map may only be adopted once in any ten-year period, beginning in FY2027. Amendments to the map of subregions are also to be made once in a decade. The complexity of the amendment provisions assures that most citizens will not grasp them even if they are aware that such provisions exist. Other amendments, however, can be made at any time, such as changing the schedule of expenditures to either speed up or slow down spending on a project

Once every decade, beginning in 2027, the Metro Board must "conduct a comprehensive assessment of each project and program identified in [the expenditure plan] as an 'Expenditure Plan Major Project' or as a 'Multi-Year Subregional Program' [...] to determine which are either completed, or anticipated to be completed during the next ten-year period." After the Metro Board's approval of this assessment by a two-thirds majority vote it may elect to: (1) "[a]dd 'Expenditure Plan Major Projects' and 'Multi-Year Subregional Programs' to the Expenditure Plan by a two-thirds vote so long as such additions do not delay the Groundbreaking Start Date, Expected Opening Date, or amount of [Measure M funding] of any other 'Expenditure Plan Major Project' or 'Multi-Year Subregional Program'"; (2) "adopt an amendment to transfer Net Revenues between the Transit, First/Last Mile (Capital) Subfund and the Highway, Active Transportation, Complete Streets (Capital) Subfund"; and (3) beginning in 2047, amend "Subregional Maps" borders, defining Measure M's "Subregional Planning Areas" (Los Angeles County Metropolitan Transportation Authority, 2016a). When a project is completed under-budget, Metro's Board may determine that the project is "complete" by a two-thirds majority vote, and reallocate surplus funding within the same subregion as the completed, under-budget project.

Section 11 of the Measure M ordinance permits the Metro Board to amend the ordinance, expenditure plan, and map of subregions by two-thirds supermajority vote "for any purpose [...] including as necessary to account for the results of any environmental review required under the California Environmental Quality Act or the National Environmental Policy Act and any related federal statute[.]" Similarly, by a two-thirds vote, the Metro Board may vote to "amend the "Schedule of Funds Available" […] to accelerate a project, provided that any such amendments shall not reduce the amount of funds assigned to any other project or program [...] or delay the Schedule of Funds Available for any other project or program[.]" However, Section 11 also places several restrictions on the nature of the amendments that Metro's Board may adopt. Examples of what the Board may not do when making amendments include:

- The Metro Board of Directors shall not adopt any amendment to this Ordinance, including [the Measure M expenditure plan], that reduces total Net Revenues allocated to the sum of the Transit, First/Last Mile (Capital) Subfund and the Highway, Active Transportation, Complete Streets (Capital) Subfund.
- Not more than once in any ten year period commencing in FY2027, Metro may adopt an amendment transferring Net Revenues between the Transit, First/Last Mile (Capital) Subfund and the Highway, Active Transportation, Complete Streets (Capital) Subfund.
- The Metro Board of Directors shall not adopt any amendment to this Ordinance, including [the Measure M expenditure plan], that reduces Net Revenues allocated to the Transit Operating & Maintenance Subfund or the Local Return/Regional Rail Subfund.

While the Board is given the authority to amend plans in response to changing conditions, the limitations are included to insure compliance with the intent of the voters by limiting reallocations of funds both programmatically and geographically. Beyond that, the rules governing the process of amendment cannot be changed without returning to the voters for approval. Section 11, which addresses rules for amendments, can only be changed by two-thirds majority vote of the Metro Board, subsequent resubmission of the motion to voters, and majority approval by the Los Angeles County electorate.

Learning from Amendments Made, Pending, and Proposed

Ordinance and expenditure plan amendments have changed the four currently-active LOSTs in Los Angeles County. We describe expenditure plan amendments that have resulted in “substantive” project changes, meaning that a project to be funded by a LOST underwent major changes to its budget, delivery timeline, and/or project scope. Ordinance amendments sometimes result from the procedures outlined above, but substantive project changes occur less formally, as well, through changes to project budgets, timelines, scopes or revisions to administrative policies that do not require amendments. Changes without amendment occur when a project listed for LOST funding undergoes a budget increase using funds from other sources (e.g., State Highway Account funds). Other substantial changes in projects occur when a LOST measure enumerates a broad funding category (e.g., 3% of Measure R revenues are for “Metrolink Capital Improvement Projects within Los Angeles County”) but does not list specific projects. The Metro Board sometimes adopts changes to projects in a listed category without amendments or the need to issue a public notice.

A proposed amendment to Section 11(b) of the ordinance, which the Metro Board approved by a two-thirds vote on August 6, 2012 (Los Angeles County Metropolitan Transportation Authority, 2012), would have allowed the Metro Board to adopt amendments by two-thirds vote that would transfer net revenues between Measure R’s Transit Capital and Highway Capital Subfunds, so long as the funding remains within the same subregion. Intended to give the Board more flexibility, this also would have removed the restriction on adopting such changes “more than once in any ten (10) year period commencing after the year 2019.” The Metro Board approved this amendment and moved to insert it into the Measure J ordinance, which appeared on the November 6, 2012 ballot. When Measure J narrowly failed to obtain the required two-thirds approval from voters, the proposed amendment to Measure R also failed. It needed only “a simple majority vote of the electors voting on a measure to approve the amendment,” but was defeated because it was part of a larger measure requiring a two-thirds majority.

Measure R may be amended once in a decade starting in the year 2020, so Metro is considering amendments during the current year. Metro is considering amendments that would transfer funds between the Highway Capital and Transit Capital Subfunds. As explained in a February 27, 2020 Metro letter to constituents, Metro might authorize such transfers for several reasons, including to: (1) add transit or highway funding for a new project, (2) add transit or highway funding to an existing project, and/or (3) transfer funds to pay interest on debt (Los Angeles County Metropolitan Transportation Authority, 2020c). The term "existing project" refers to a project that is already listed in a measure's expenditure plan and a "new project" is one that would need to be added to an expenditure plan. Metro must provide one-year advance notice if funding for a project is to be reduced, meaning that 2021 is the earliest that the Board can adopt an inter-fund transfer amendment. At its June 26, 2020 meeting, Metro’s Board considered an amendment that would transfer $400 million in Measure R funds from the Highway Capital Subfund’s “Interstate 405, I-110, I-105, and SR-91 Ramp and Interchange Improvements (South Bay)” into the Transit Capital Subfund’s “South Bay Transit Investments.” A South Bay official whom we interviewed explained that the goal of this amendment is to tap into the Highway Capital Subfund to finance the “peoplemover" at the new NFL stadium in Inglewood (Los Angeles County Metropolitan Transportation Authority, 2020c). That project was not mentioned in the proposed amendment and a lay person who reads minutes of the meeting would not be able to infer the purpose of the amendment unless it was explained by an insider.

Metro's Board may reallocate surplus Measure R funds after a project is completed or when it otherwise deems it appropriate, by 2/3 majority between the Highway Capital and Transit Capital Subfunds. Surplus funds consist of money allocated to a project that was not spent prior to the project being certified as "completed." These transfers may only occur once in a ten year period beginning in 2020, but Metro may adopt amendments to advance the availability of funds for projects in the Measure R expenditure plan at any time. Now conducting the first ten-year amendment review of Measure R, the Board of Directors is considering approving an amendment that would add a new section to the Measure's ordinance. The proposed "Section 18, entitled "Transferring Net Revenues Between Subregions" would allow surplus revenue to be transferred between the Transit Capital and Highway Capital Subfunds among subregions (Los Angeles Metropolitan County Metropolitan Transportation Authority, 2020c). If this amendment is approved, Metro will be required to comply with the rule in Section 11 of the Measure R ordinance that prohibits subfund transfers "that [reduce] total Net Revenues allocated to the sum of the Transit Capital Subfund and the Highway Capital Subfund." At least four subregions "either expressed an intent to cancel a project, or anticipated having Measure R surplus funds after the completion of a project," making these subregions potential beneficiaries of inter-fund transfers (Los Angeles County Metropolitan Transportation Authority, 2020d).

On June 27, 2013, the Board adopted an amendment by two-thirds vote to advance the "Funds Available Beginning" dates of several Measure R transit corridor projects within the same subfund (i.e., Transit Capital or Highway Capital) and subregion, without the need for a formal ordinance or expenditure plan amendment (Los Angeles County Metropolitan Transportation Commission, 2013). Taking action based on this amendment, at its October 2018 Regular Board meeting, Metro approved reprogramming $35.048 million of surplus revenue from the I-5/SR 14 HOV Direct Connector project to five North County highway operational improvement projects, keeping the funds within Measure R's 20% Highway Funds category.

Several Board actions increased the budgets for Measure R-funded projects by making large changes that did not require the programming Measure R funds. For example, at its October 22, 2015 meeting, Metro's Board approved "programming $50.111 million in supplemental funding for the I-5 Carmenita Road Interchange project [...] and an increase in project funding from $369.770 million to $419.881 million." A higher than expected number of court settlements resulting from the eminent domain right-of-way acquisition process caused project costs to increase, which in turn necessitated the budget increase. Metro's Board used "a combination of Regional Improvement Program (RIP) Future County Share, and State Highway Account (SHA) funds to close the funding gap" (Los Angeles County Metropolitan Transportation Authority, 2015). Despite the complex provisions of Measure R that appear to limit the Board's freedom to move money from one account and subregion to another, transactions of this sort make it clear that the Board has great flexibility to do so without resorting to amendments.

Some Measure R funding categories do not enumerate specific projects. For example, the 3% of Measure R funds allocated to Metrolink capital improvement projects in Los Angeles County are not associated with specific projects. The Board allocates these funds to Metrolink capital improvement projects as they see fit after negotiations with Metrolink management and the budget adjustments do not require formal amendments so long as the total expenditures do not exceed the $1.182 billion in "Total" Measure R funds allocated to this funding category. For example, the Metro Board voted at its June 23, 2016 meeting to approve programming "an additional $6,560,142 of Measure R3% - Metrolink Commuter Rail funds [...] for a total LOP of $15,000,000 for the

Bob Hope Airport/Hollywood Way Metrolink Station Project" (Los Angeles County Metropolitan Transportation Authority, 2016c). At its June 22, 2017 meeting, Metro's Board approved as part of the consent calendar, meaning without discussion or debate, "an amendment to increase the Fiscal Year (FY) 2017 budget in the amount of $4,300,000 out of Measure R 20% [Highway Capital] funds for the Rosecrans/Marquardt Grade Separation Project" (Los Angeles County Metropolitan Transportation Authority, 2017A). This project was not listed on the original Measure R expenditure plan (Los Angeles County Metropolitan Transportation Authority, 2008a), but was understood to be included within the "BNSF Grade Separations in Gateway Cities" funding category enumerated in that plan. The fact that the Board could reprogram over four million dollars without public discussion is another indication that it maintains a great deal of flexibility despite the many limitations written into the proposition.

Because it is relatively new, Measure M, enacted in 2016, has yet to undergo any amendments to its ordinance or expenditure plan. However, when Los Angeles was awarded the 2028 Olympics Metro decided to speed up certain capital construction projects to deliver 28 new projects prior to the start of the Olympic games. the Board considered an amendment at its September 27, 2018 meeting — but ultimately removed a motion — to direct the Metro CEO to "[d]evelop an amendment to the Measure M Ordinance and Expenditure Plan to advance the "Schedule of Funds Available" dates for the accelerated transit and highway projects to comply with the 28 by 2028 schedule[.]" With the same motion, the Metro Board voted to adopt and approve as policy the "28 by 2028 Initiative," listing the projects intended to be ready for the 2028 Summer Olympic and Paralympic Games," but does not offer a guarantee or commitment to their completion by 2028 (Los Angeles County Transportation Authority, 2018a).

The Metro Board at its June 22, 2017 meeting (Los Angeles County Metropolitan Transportation Authority, 2018a) adopted the Measure M Program Guidelines (Los Angeles Metropolitan Transportation Authority, 2018) which "[provide] the overarching framework for the management and oversight of Measure M and its component elements." The Measure M Guidelines — which may be revised by Metro's Board — contain provisions regulating project schedule acceleration, cost containment, and cash flow management, and generally elaborate on the implementation policies that are contained in Measure M's ordinance.

Conclusion

Approved by the voters, the four Los Angeles County LOSTs inherently embody a tension between accountability and flexibility. The measures' central features are lists of projects and programs to be funded after the voters approved them, presumably motivated by the commitments that those lists create. The lists of funding commitments were developed by bargaining among groups who had particular priorities and their approval obligates Metro to comply with the voters' directives. That accountability is repeatedly stated by County Supervisors to be a solemn obligation. Communities and citizens interest groups can sue if they think commitments have been breached, and they can vote Supervisors out of office at the next election.

On the other hand, four measures have been enacted that will remain in force permanently. During their long lives, transportation technology can change dramatically, planned projects can be abandoned because of environmental challenges, new proposals can replace older ideas, and in response Metro must amend their plans. Regional Transportation Plans and Transportation Improvement Plans are required by state law to be updated periodically to reflect the changing transportation needs of the largest county in the nation. Required changes will inevitably conflict with the long-term expenditure lists that were part of the last two of the four measures. Balancing the will of the voters with the need for flexibility means that departures from voter-approved plans need to be provided for but should be rare and carefully deliberated. This chapter delved into how tensions between accountability and flexibility have been addressed in Los Angeles and we found that for the most part a balance has been established between them.

The two earliest measures, Propositions A and C, allowed Metro too much flexibility and a flurry of media and public attention to abuses and poor management led to far more stringent requirements for audits and citizen oversight. A referendum in 1998 required those major adjustments to the agency's accounting and oversight and the two later measures, R and M, presented voters with auditing and amendment procedures that were far more complex and explicit than those of the first two measures. Mechanisms were included in the two more recent measures to ensure that procedures are in place that make it possible, though difficult, to amend the voter-approved plans. Information on sales tax revenue that is collected and how it is spent is systematically audited, and readily available on Metro's websites to interested organizations and individuals. In addition to audits, the more recent measures provide for citizens or expert review panels, composed reflecting local interests and differences among communities. Those bodies are intended to review audit outcomes, evaluate compliance with the measures, consider emerging trends, and recommend potential improvements. Amendments are allowable and possible but subject to systematic hurdles intended to make them rare and thus to occur only when there is widespread agreement that they are necessary and appropriate.

The Metro Board has mechanisms in place that demonstrate to county residents that it is responsive to them and while maintaining flexibility to respond to changing conditions and current political imperatives. As a result, the actions of the oversight bodies are opaque and amendment procedures are complex and likely not well understood by most county residents. We found that despite complex provisions providing for reviews and limiting amendments, the Metro Board retained discretion to make revisions to budgets and expenditure plans amounting to hundreds of millions of dollars. That does not seem to be a major problem in the minds of the voters who have approved the later measures by large margins, suggesting that public confidence in Metro has grown since the embarrassments of the nineties.

Chapter 4: Legal Challenges to Metro's Sales Tax Measures

Forty years have passed since the enactment of the first of four LOST Measures in LA County in 1980. Over those four decades, public controversies have sometimes arisen over Metro's expenditures and some parties have alleged that Metro has failed to comply with voter approved requirements. The controversies included some which arose because of community opposition to a proposed project, failure to obtain environmental clearance for a promised project, and allegations that promised investments were not made. In some but not all instances of controversy, there have been threats of legal action and in fewer suits have been filed. The previous project and earlier sections of this report can be understood more completely by studying these controversies.

Several lawsuits have affected the implementation of LOST measures in Los Angeles County, some of which established precedents affecting subsequent LOST implementation in Los Angeles County and throughout California. This chapter reviews litigation that relates to LOST adoption and voting requirements, environmental review, modal, temporal, and geographic equity in LOST project funding, and modal restrictions on the use of LOST revenue.

When Proposition A was approved by 54 percent of Los Angeles County voters in November 1980, the Executive Director of the Los Angeles County Transportation Commission (LACTC), George ("Rick") Richmond, refused to implement the tax on the grounds that doing so would violate the provisions of 1978's Proposition 13. Section 4 of Proposition 13 required a two-thirds supermajority of the electorate to approve the imposition of "special taxes" by "special districts." Later, Proposition 62 was approved by the voters in 1986 requiring both new "special" and new "general" taxes in California to be approved by two-thirds of the electorate, but the question had not been clearly resolved at the time of Proposition A. To compel implementation of the tax, LACTC filed a petition for writ of mandate. In Los Angeles County Transportation Commission v. Richmond (1982), the Supreme Court of California, in *en banc* review, found in favor of the LACTC, concluding that the tax was valid having been adopted by a majority of the county electorate. The court reasoned that the LACTC was not a "special district" governed by Proposition 13. Proposition 13 relates to "real property tax relief," and — since the Commission lacked authority to levy property taxes — LACTC was not considered to be a "special district" and was not bound by those provisions of Proposition 13.

In 1987, a new local option sales tax proposed by the Santa Clara County Transportation Authority to fund transportation projects in Santa Clara County received approval from a majority — but less than two-thirds — of the county electorate. The Santa Clara County Auditor-Controller, Carl Guardino, refused to sign bonds for the measure until the tax was determined to be valid (Santa Clara County Local Transportation Authority v. Howard Jarvis Taxpayers Association, 1993). The Local Transportation Authority then filed a writ of mandate in California's Sixth District Court of Appeal to compel the County Auditor-Controller to validate the tax measure and sign the bonds in question. The Sixth District Court of Appeal subsequently found that the tax measure invalid because it failed to meet the two-thirds voter approval requirement provisions of Proposition 62 and Proposition 13, and the California Supreme Court affirmed in Santa Clara County Local Transportation Authority v. Guardino

(1995). Thus, after 1995, it was understood that all California local option sales taxes would require two-thirds supermajority approval from voters whether the measure was new or an extension of an expiring tax.

Metro's predecessor agency, the LACTC — which merged with the SCRD in 1993 as a result of SB 152 to become LA Metro — was restricted by the California Public Utility Code from imposing transactions and use taxes for anything other than "public transit purposes" (Rubin and Moore, 2019). This meant that LACTC was not authorized to dedicate LOST revenues to highway projects. The case law was unambiguous. In the case of City of El Cajon et al. v. Lonergan (1978), California's Fourth District Court of Appeals found that San Diego County — the Comprehensive Planning Organization (CPO) of the San Diego Region — lacked the authority to authorize the use of funds from sales taxes "enacted for public transit purposes" to improve public roads. Accordingly, Proposition A in 1980 did not allocate any revenue to highway projects. During the drafting of Proposition C, LACTC attempted to circumvent this obvious restriction. It tried to allocate some Proposition C revenue to highway projects by convincing "a super majority of the various Los Angeles County cities, which LACTC believed had the authority to place such a tax on the ballot, to pass resolutions doing so." (Rubin and Moore, 2019). When this failed, LACTC carefully crafted ordinance language that allocated 25% of Proposition C revenues "to provide essential County-wide transit-related improvements to freeways and State highways" (Rubin and Moore, 2019).

A major lawsuit in Los Angeles County charged inequity in LOST measure design and implementation. It was filed when LACTC proposed to reallocate discretionary Proposition C funding to cover a budget shortfall affecting the SCRTD, which operated the first two rail transit lines and bus transit service throughout the county. The budget shortfall arose, according to the plaintiffs, because "the vast majority of [Measure C] funds [were spent] on new rail projects while consistently defunding the bus system and claiming business hardship" (Mann, 2004). Bus ridership far exceeded rail ridership in Los Angeles County, when only the early segments of the Blue Line and Red Line were in operation. In Labor/Community Strategy Center v. Los Angeles County Metropolitan Transportation Authority (1994), several co-plaintiffs, including the NAACP Legal Defense and Education Fund and the Bus Riders' Union, launched a class-action lawsuit against the Los Angeles County Metropolitan Transportation Authority (MTA), based on Title VI of the U.S. Civil Rights Act of 1964, challenging a set of proposed increases in transit fares and service reductions intended to ease the budget shortfall and accompany the Measure C discretionary funding reallocation. The suit, which ended with a pre-trial settlement by consent decree, alleged that the distribution of Measure C funding was modally inequitable. The consent decree required the MTA to reduce bus crowding and maintain higher funding levels for bus routes for ten years. Subsequent attempts by plaintiffs to obtain an extension of the settlement agreement beyond the originally specified ten-year period were denied by a Los Angeles District Court whose ruling was upheld by an Appellate Court.

An important question arose over whether funds could be designated in a LOST if a project designated to receive funding had not been previously approved in an environmental impact review. Litigation in Los Angeles County affirmed an earlier landmark ruling, in Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments (2009), that the submission of an expenditure plan to county voters "does not constitute a binding commitment to construct the projects set forth in the investment plan," and that the activity is therefore not required to be preceded by certification of an Environmental Impact Report (EIR). In City of South Pasadena v. Los Angeles County Metropolitan Transportation Authority (2011), a court of appeals affirmed an earlier trial court decision that the inclusion of the I-710 Tunnel project in the Los Angeles County Measure R expenditure plan did not qualify as a "project" under the California Environmental Quality Act (CEQA), and therefore was not required to be preceded by an EIR certification before being put before the voters. Both of these decisions follow from the so-called "funding mechanism exemption" included in CEQA Guidelines (Guidelines for Implementation of the California Environmental Quality Act, 2019), which provides — for purposes of CEQA — that the following are excluded from the definition of a project: "[t]he creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment." This decision promotes expediency in LOST measure design and passage, as CEQA environmental review requirements can be time-intensive and costly. If local transportation agencies had to obtain CEQA clearance for all proposed projects before they could be placed on an expenditure plan and presented to voters, this would add significant time and financial cost to the process of local transit agencies designing, promoting, and obtaining public approval of LOSTs in California.

Los Angeles County LOSTs have also been challenged on the basis of geographic and temporal equity. Los Angeles County's 2016 Measure M faced a legal challenge from municipalities in the county, which claimed there had been geographic and temporal inequity in the distribution of Measure M funding. In *City of Carson et al. v. Dean C. Logan in his official capacity as County Registrar-Recorder/County Clerk for the County of Los Angeles* (2016), seven Los Angeles County municipalities filed suit in Los Angeles County Superior Court, alleging that the Measure M ballot language "conveys a false impression of equal distribution of projects over time." The plaintiffs alleged that, under Measure M, "projects in the western and northern regions of the county will be completed much sooner [...], while south county regions will not see local return until 2039-2040." The Los Angeles Superior Court denied the plaintiffs' petition and ruled in favor of the County of Los Angeles, finding that the plaintiffs had failed to convince the court that the Measure M ballot language lacks due clarity or specificity.

Conclusion

The four Los Angeles County transportation sales taxes have become the mainstay of transportation finance in the most populous county in America. During the four decades since the passage of Measure A in 1980, the first Los Angeles County transportation sales tax, this finance mechanism has become institutionalized, producing hundreds of millions of dollars each year. The rules, procedures, and politics associated with administering four different measures have become increasingly complex, but for the most part negotiated agreements, procedures, amendments, have evolved through negotiation and adjustment over those four decades. There is no master plan nor overarching philosophy guiding their evolution, but the county, its cities, and their many competing interests have come to rely on sales tax revenue to finance transportation system expansion, operation, and maintenance. We explored the history of legal challenges to provisions in the four measures, and found that there have been relatively few. Differences in priorities and interpretations have rarely led to legal challenges. More often they have been resolved by negotiation, agreement, and crafting language in later ballot measures that reflect the outcomes of disputes raised by earlier ones.

Chapter 5: The COVID Pandemic and Metro's Sales Taxes

On January 26, 2020, the Los Angeles County Department of Public Health reported the first case of COVID-19 in Los Angeles County. In the following month, the Department of Health issued several measures for the county, ultimately resulting in the March 4th declaration of a Local Health Emergency. This declaration resulted in the enhancement of testing and preparation despite stating that the "...individual risk for contracting COVID-19 remains low for most individuals in the County" (County of Los Angeles Public Health, 2020). A week after this announcement came the order prohibiting gatherings as well as the closure requirements of businesses and schools least until the end of the March in order to limit community spread (County of Los Angeles Public Health, 2020a). The rapid shutdown across the county led to high unemployment numbers and evictions. Coupled with anxiety over the new virus, consumer spending dramatically dropped as the "shelter-in-place" order came into effect. As weeks passed, rates of new cases, hospitalizations, and deaths stabilized and business activity, travel, and sales tax revenues appeared to all climb back toward pre-pandemic patterns. In late November and early December, the trends reversed again and a new stay at home order was put into effect. The holiday season has seen a serious rise in the rate of infections, hospitalizations, and deaths.

Metro projects the revenue expected to be generated over the life of each measure, and the County bonds against expected future LOST revenues to support its capital construction program. When LOST measures generate lower revenues than expected, the County — having bonded against expected future revenues — Metro becomes overextended and lacks adequate funds for planned investments. The revenue produced by LOSTs is dependent on sales volumes that in turn depend on many economic factors that quickly felt the effects of the pandemic. The volatility in these figures for Los Angeles County is influenced by the rise and fall in COVID cases and the limits on commercial activity imposed by the state and the county.

Nationally, sales tax revenues from traditional sources, including "brick and mortar" retailing, declined dramatically as a result of the pandemic, but sales tax revenue from electronic or internet commerce increased as people stayed at home. Adjusted for population and inflation, e-commerce retail sales during the second quarter of 2020 increased nationally by 43.3% compared with second-quarter sales of 2019, though traditional retail sales decreased nationally during the same quarter by 10.1%. During the third quarter of 2020, e-commerce sales were 34.4% higher than in 2019, but by then traditional retail sales in stores had risen and were 1.5% higher than the previous year (Sivak, 2020). In April of 2019 California had enacted AB 147 which requires retailers located outside the state to register and pay sales and use taxes on sales made to buyers in California if they have made more than $500,000 in sales to California residents in any year. The law followed in the wake of the 2018 decision by the U.S. Supreme Court in the case of South Dakota versus Wayfair, known as the "Wayfair Decision," in which the court held that states could charge sales taxes on goods sold to their residents by retailers outside the state. California has aggressively sought payment of taxes owed on internet sales by charging penalties and taking legal action against businesses that do not comply (Los Angeles Times, 2020).   Metro's fare revenue fell dramatically but even as local in-person sales declined, sales taxes declined far less because they included telephone and internet sales including those from vendors outside of the state (California Department of Tax and Fee Administration). In Los Angeles County, trips made in person to retail and recreational establishments were in late 2020 about 24% below the same month in 2019 (Google, 2020), indicating a decline in sales, while internet sales had increased so much that total sales tax losses were much smaller.

Metro's Projections of Likely Losses

Metro analysts in May of 2020 reacted to the rapidly changing situation by estimating revenue loss due to the pandemic by fiscal year quarters (fiscal years begin on July 1st, which marks the start of the first quarter), including sales tax revenues, ridership, and farebox revenues. For the third quarter of fiscal year 2020, ending March 2020, through the fourth quarter, ending June 2022, under low-, medium-, and high-loss scenarios, they projected losses in sales tax revenues in comparison with earlier forecasts used to prepare their annual budget, between \$833 million and \$1.2 billion (Los Angeles County Metropolitan Transportation Authority, 2020d). These estimates include revenue from the four countywide sales taxes and smaller state sales tax funding streams that they receive from the Transportation Development Act, State Transit Assistance, and Senate Bill 1 (SB1) State of Good Repair funding. The Transportation Development Act (TDA) — enacted in 1971, and amended several times since — created two funds of importance for local transportation agencies, which support Metro's public transportation services: (1) State Transit Assistance (STA) and (2) the Local Transportation Fund (LTF). In 2017, the Road Repair and Accountability Act, also known as SB1, came into effect. This Act created the State of Good Repair (SGR) program, which provides state funding for transit infrastructure repairs and provides "\$105 million annually to transit operators in California for eligible transit maintenance, rehabilitation, and capital projects" (California Department of Transportation, 2020). In the high-loss scenario over the six-quarter period shown in Figure 10, this would be "a 20% decline over the six quarters, with a majority of the decreases in FY20 Q4 and FY21 Q1" (Los Angeles County Metropolitan Transportation Authority, 2020d).

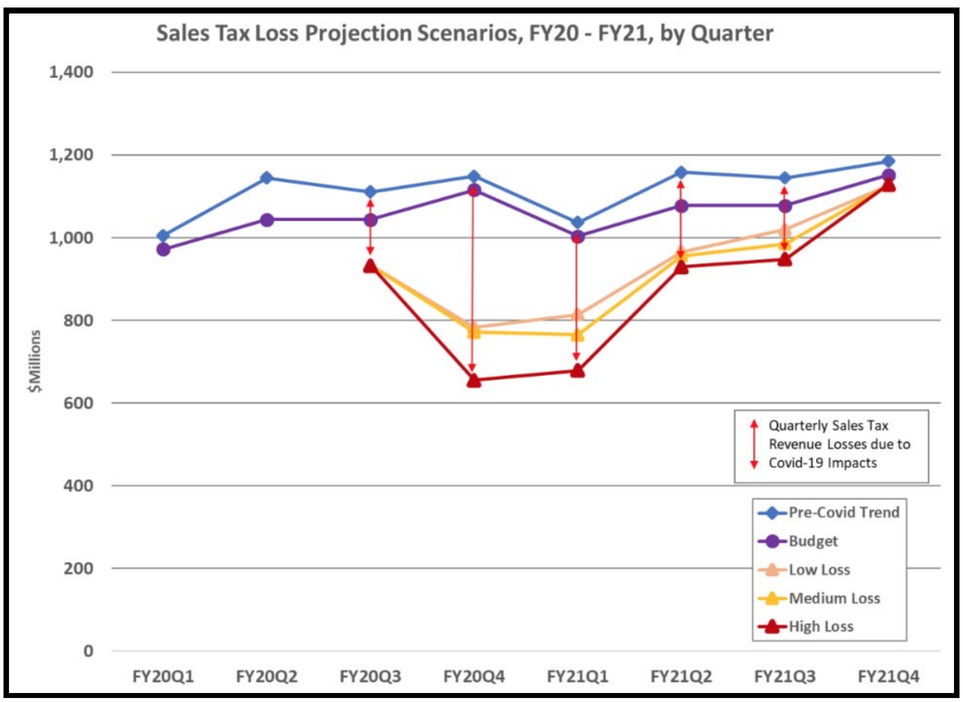

Figure 9. ***LA Metro Sales Tax Loss Projection Scenarios (Q1 2020 through Q4 2021)***

Metro also estimated two-year (i.e., Quarter 1 of 2020 through Quarter 4 of 2021) farebox and toll revenue losses between $197.3 million and $25 million, respectively, in the highest-loss scenario. The two-year high-loss sales tax revenue loss estimate is $1.06 billion, for a total high-loss revenue decline estimate of $1.442 billion across Fiscal Years 2020-21. Metro estimated a funding gap of $1.8 billion, the result of combined revenue losses from declines in sales taxes, farebox, toll, and "other system generated revenues," including advertising, parking, Metro's bicycle-based shared micromobility program, HOV lane fines, Green Fund and Carbon Credit revenues. It is too soon to conclude that Metro's projections were accurate, overly optimistic, or too pessimistic. Metro assumed "a recovery starting in September 2020," which has since been threatened by rising numbers of COVID cases and a second, though modified, stay at home order in early December (Los Angeles County Metropolitan Transportation Authority, 2020d). The actual declines in revenue as of this writing have been serious and concerning, but smaller than those forecast in large part because of the resources made available by the CARES Act and the generation of sales tax revenue by internet sales. Congress enacted the second federal stimulus just before Christmas, and after hesitating as long as he could, President Trump signed the bill into law on December 27th. The new bill closely resembles the bipartisan proposal written by members outside their party leadership structure and released December 1. The final omnibus transportation funding bill provides $45 billion in transportation-specific aid, in addition to the $68 billion in aid provided by the CARES Act nine months earlier. As this is being written we presume but cannot be certain that the additional funds will be distributed to transportation agencies using the same formulas as the earlier CARES Act (Davis, 2020), but the second bill designated a total of $14 billion for public transit agencies and $10 billion for highway agencies, with the remainder going to ports and airlines and other transportation companies and agencies. .

The Pandemic's Impacts on Sales Tax Revenue

The full extent of the pandemic's effects will not become clear for many years, but we examine Metro's four LOST measures during most of 2020 to gain some insight into the reliability of LOST revenue during sudden economic downturns. Figure 9 shows the year-over-year percentage difference in revenue and aggregate cash receipts from all four measures and the month to month variability. At the beginning of 2020 the graph shows that the four measures collected higher revenue than in other months. Not long after the peak, both the year-over-year comparisons and the graph of cash receipts show dramatic revenue declines, reaching their lowest levels in May, a few months into the pandemic. After May, revenues recovered gradually to 2019 levels. In July 2020, for example, the year-over-year percent change was an increase, although of only 0.41%. However, after the initial downturn and bounceback in receipts, the cash receipts and year-over-year percent changes became more volatile for the rest of the year as COVID cases rose and fell and control measures were imposed and eased. While revenues declined, a more salient observation is that they became less stable and less predictable.

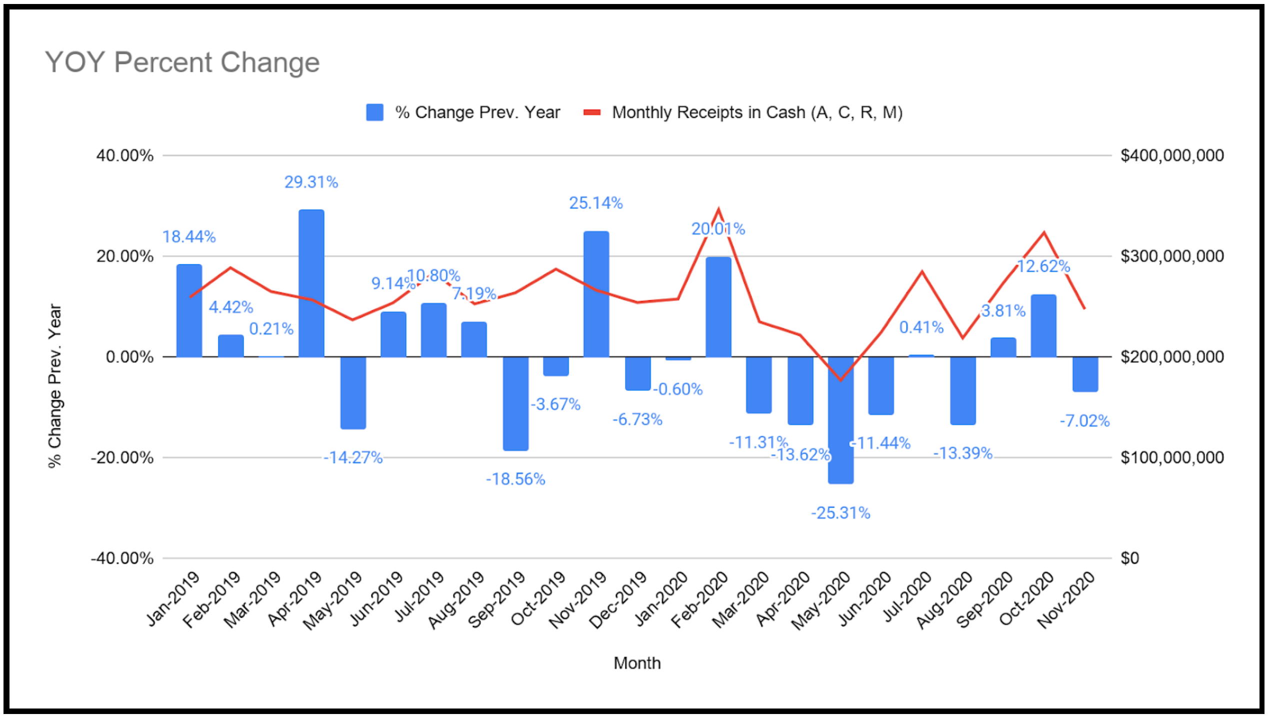

Figure 10. Monthly Aggregate Cash Receipts During the Pandemic From the Four Los Angeles County LOSTs

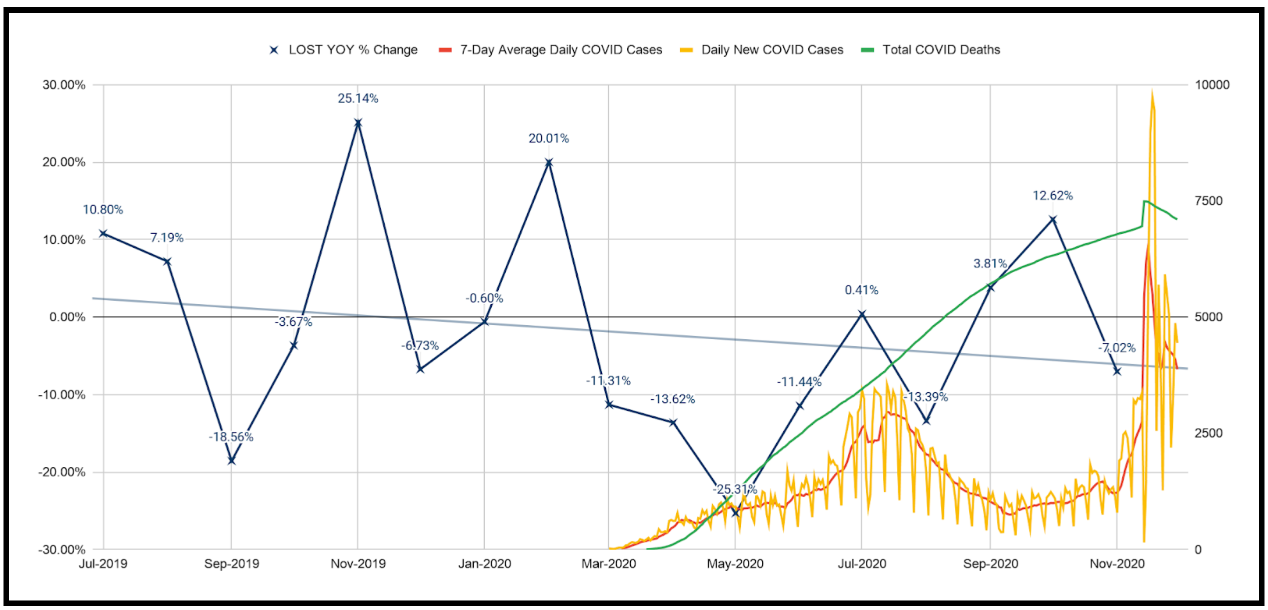

Figure 11. Monthly Year-Over-Year Percent Change in LOST Revenue as COVID-19 Arises (shown in 7-day Daily Averages)

Figure 11 shows changes in sales tax receipts in comparison with COVID-19 cases. Using data from the Los Angeles County Department of Public Health, we examined new daily cases, smoothed the daily cases by using seven-day average cases, and total COVID-19 deaths in order to determine whether there are relationships between revenues and the spread of the disease. Early during the pandemic, before May 2020, as the number of cases rose, year-over-year monthly revenue declined substantially. From May to July 2020, daily new cases rose at an increasing rate and the percent change in revenue moderated. When the daily occurrence of new cases began to decline later in the summer and businesses began to reopen, there was a more substantial improvement in the year-over-year revenue comparisons. In November, there was a sharp increase in cases and a substantial decline in revenue. California's most recent stay-at-home order, announced December 3, 2020 (Office of Governor Gavin Newsom, 2020), will likely result in continuing year-over-year declines in LOST revenues even with holiday spending that characterizes this period. The major impact of the pandemic on sales tax revenue is an increase in volatility, decreasing the predictability of revenue, and a probable loss of at least some revenue. While the graphs show some increases over 2019 when compared from month to month, revenue declines in any month are funds that are never regained.

The impacts of the pandemic on LOST receipts in Los Angeles County are similar to those in other counties throughout the state. Monthly data from the California Department of Tax and Fee Administration (CDTFA) from calendar years 2019 and 2020 are shown in Figure 12 and more detailed numerical data appear in a table in Appendix A. The 24 counties which rely on local transportation sales taxes saw year-over-year declines between February and April, slight increases through July, and greater volatility after August, with some counties experiencing year-over-year increases while others, such as San Francisco, showing large year-over-year losses (California Department of Tax and Fee Administration, 2020). Even where dollar losses are modest, large month to month fluctuations in revenue cause anxiety due to uncertainty that a jurisdiction will be able to make bond payments and meet contractual and payroll obligations.

Metro's LOST revenue losses also means a reduction in local return funds that are sent to jurisdictions throughout the county. Local return funds, analyzed in Chapter 3, are used to support each city's transportation programs and the payments fluctuate with the ups and downs of Metro's sales tax revenue. Figure 10 shows the impact of the COVID-19 pandemic on sales tax revenues. Using Metro's local return estimates for each city for 2019 and their 2020 fiscal year totals, we estimated the effects of the pandemic on local return funding in 2020. We estimated that the local return funding each city received in FY2020 would be 1.8% below what had been estimated prior to the pandemic and about 1.1% below 2019 revenue. The City of Los Angeles, the largest jurisdiction in the County, housing just over four million people— just under 40% of the county's population— lost an estimated $4.564 million in local return funds during FY2020 from the four sales tax measures combined. The City of San Gabriel, housing approximately the median population of all jurisdictions receiving local return funds—about 46,000 people—will receive about $2.5 million in local return funding in FY2020, which amounts to approximately $46,000 less than had been estimated by Metro at before the year started. While these losses were damaging, they were modest in comparison with losses experienced by many businesses and institutions. In FY 2019, the collected local return revenues surpassed the estimates made by Metro prior to the start of the year by 2.74%, which suggests that the calculated decline may underestimate the full extent of the damage done by the pandemic. Had the economy continued to expand, sales tax revenue could have been greater than forecast by Metro, but it is reasonable to conclude that the damage was modest even if revenue might have been higher in the absence of the economic slowdown. As mentioned above, the uncertainty in revenue caused by the pandemic is damaging to every jurisdiction even when the eventual dollar losses are modest.

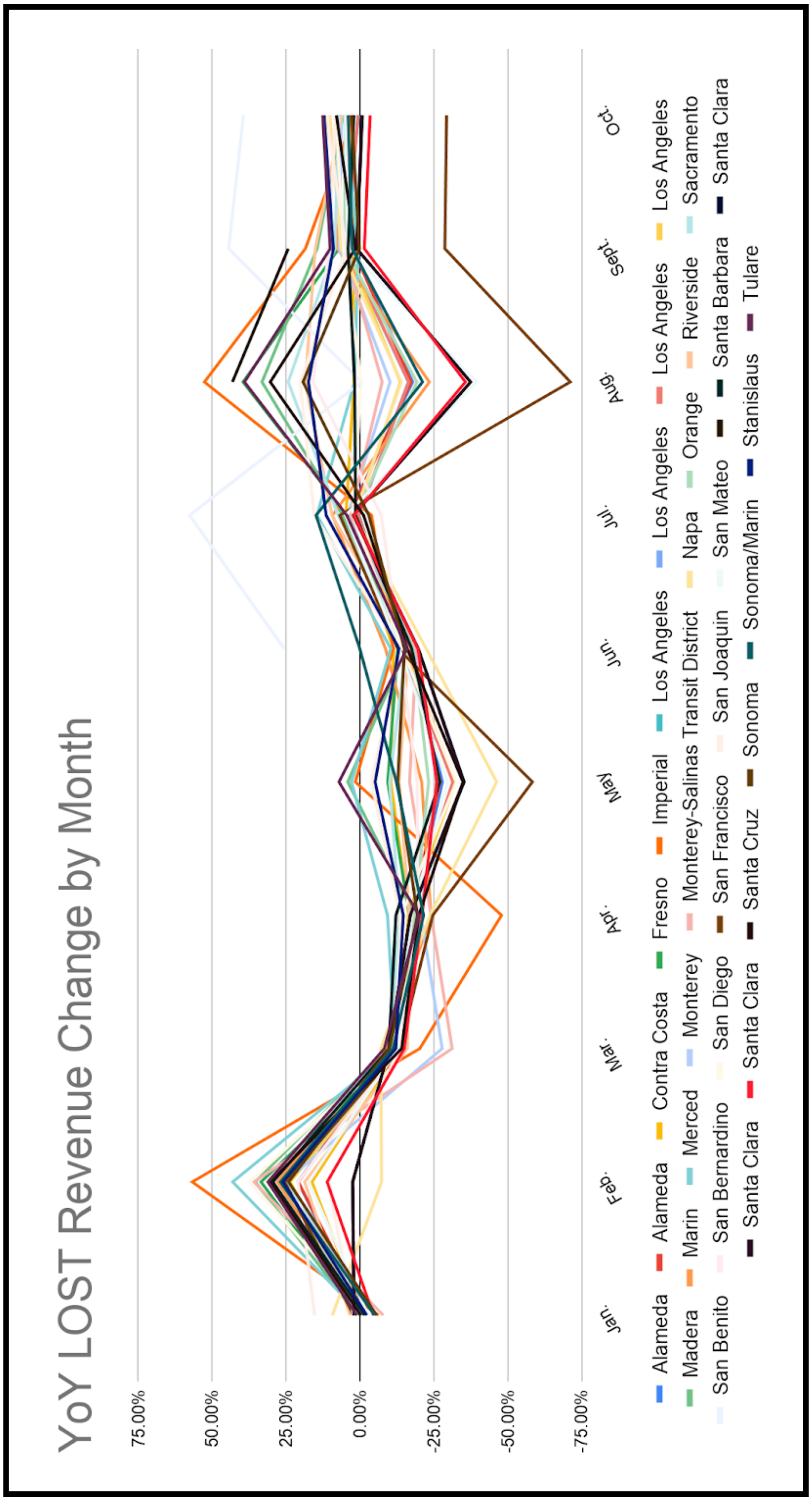

Figure 12. Monthly Year-Over-Year Percent Change in LOST Revenue for 24 LOST Counties, 2019-2020

Inching Toward Recovery in Transportation

Metro and all other transportation agencies faced many other changes occurring at the same time as the declines in sales tax revenue. There were dramatic declines in travel during the early phases of the COVID-19 public health emergency, with local transportation agencies and transportation industry groups reporting stark initial declines in observed vehicle miles travelled (VMT) in the first half of 2020. For example, IHS Markit reported on April 21, 2020, that gasoline sales in late March 2020 were down nationally by 47% from the same month in 2019 (Smith, 2020). Traffic data firm Inrix showed similarly that personal travel had dropped by almost half between late February 2020 (before most Stay-at-Home orders were in effect) and early April 2020 (Schuman, 2020). The California Legislative Analyst's Office (LAO) reported in March and April 2020 as much as a 40% year-over-year decline in VMT, but that a partial recovery had occurred by June 2020, by which time available VMT data showed a smaller 14% year-over-year decline (Legislative Analyst's Office, 2020). More recent data suggests VMT recovered to an even greater extent by October.

The decline in total Los Angeles County LOST revenues and VMT data correspond with the onset of state- and locally-mandated "Stay-At-Home" orders intended to curb spread of the contagious COVID-19 virus. The partial recovery similarly follows the federal stimulus funding provided by the CARES Act and the partial easing over time of the initial sanctions. The CARES Act bolstered consumer spending by expanding unemployment benefits, offering small business support through the Paycheck Protection Program (PPP), and providing $1200 direct payments to Americans earning less than $75,000 per year, among other provisions. Fourth quarter reports likely will reflect another decrease in consumer spending — and decline in LOST revenues — relative to the quarter ending in September, due to the second "Stay-at-Home" order and the long delay until the federal government's second stimulus bill, the Coronavirus Response and Relief Supplemental Appropriations Act, or CRRSA, approved in late December.

The funding gap facing Metro was mitigated by the federal stimulus released in the first month of the stay-at-home order. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by Congress on March 27, 2020, included a $25 billion emergency apportionment for public mass transit agencies. The funding was allocated to states — after reserving $75 million for the Federal Transit Administration (FTA)'s administrative expenses. The funding was provided in five programs, each with its own funding formula that was in place prior to the enactment of the current legislation: (1) the urbanized area formula; the non-urbanized (i.e., rural) formula; the state-of-good-repair formula; the high-density state formula; and the growing state formula. The federal relief funds were made available without any requirements for local matching to agencies including Metro, "to support capital, operating, and other expenses necessary to prevent, prepare for, and respond to COVID-19" (The Planning Report, 2020). In addition to the $25 billion emergency apportionment, the FTA announced in March 2020 that it had "expanded eligibility [for] federal assistance [...] under FTA's separate Emergency Relief Program to help transit agencies respond to the coronavirus (COVID-19) in states where the Governor has declared an emergency" (Federal Transit Administration, 2020). This allows "all transit providers in states where the Governor has declared an emergency related to COVID-19 to use their federal formula funds for operating expenses in addition to capital expenses and permits operating expenses to be covered at an 80 percent federal share rather than 50 percent" (Federal Transit Administration, 2020). The FTA also established "an Emergency Relief docket that allows transit providers in states where the Governor has declared an emergency related to COVID-19 to request temporary relief from a variety of federal procedural requirements in order to move more expeditiously when faced with emergency conditions (Federal Transit Administration, 2020).

Los Angeles County received $1.068 billion of the national $25 billion CARES apportionment for local transit agencies (Los Angeles County Metropolitan Transportation Authority, 2020d). Metro is using these funds to replace lost farebox revenue and to cover the costs of transit operations, capital investments and eligible planning expenses normally paid for by local sources of funding (Federal Transit Administration, not dated; Federal Transit Administration, not dated b). An example of this is the payment of overtime and sick leave made necessary because of employee absences resulting from cases of COVID. To obtain the federal funding, Metro must submit a list of all eligible expenses incurred on or after January 20, 2020 for reimbursement, following the standard federal claims process with which Metro is familiar.

Figure 13 shows Metro's expected CARES funding allocation summary for Los Angeles County. Metro has informed the public that Los Angeles County will use its CARES apportionment to: "maintain funding to mitigate reduction in Countywide Sales Tax Revenues for FY20 Budget and FY21 Projected"; "allocate supplemental funding to mitigate additional revenue losses and increased costs related to COVID-19"; and "allocate funding to address some regional needs to support countywide transit impacted by the loss in sales taxes and other revenues" (Los Angeles County Metropolitan Transportation Authority, 2020d). Metro is responsible for distributing state funds to the municipal transit operators in the county and it expects that CARES funding will reimburse the municipal transit operators twice the amount of expected sales tax revenue losses for FY20 and FY21 to the smaller operators and "½ of one year in sales tax funding amounts," to the larger municipal operators and other transit operators including, for example, Metrolink commuter rail service and Access Services paratransit for elderly and disabled patrons for their expected FY20 and FY21 sales tax losses and estimated loss in fare revenues (Los Angeles County Metropolitan Transportation Authority, 2020d).

Municipal Operators & Metro			
	FY20/FY21 Loss	**Supplemental CARES**	**Total Allocations**
Municipal Operators	$ 73.9	$ 73.9	$ 147.9
Metro Bus	167.1	167.1	$ 334.2
Metro Rail	126.5	126.5	$ 252.9
Total Municipal Operators & Metro	367.5	367.5	735.0
Other Transit Operators			
Small Operators	2.8	5.0	7.8
Tier 2 Operators	1.5	3.0	4.5
Metrolink	21.4	35.0	56.4
Access Services	25.2	8.3	33.5
Total Other Transit Operators	50.9	51.4	102.3
Regional Needs to support Countywide			
Regional Facilites & Hubs	9.4		9.4
Regional TAP & Fare Subsidies	10.0		10.0
Regional Rail Infrastructure	12.1		12.1
Planning, Bike Ops & Others	61.6		61.6
Congestion Management & Commute Services	67.7		67.7
Total Regional Countywide Transit Needs	160.8	-	160.8
Direct Apportionments			
North County			45.2
Metro			24.7
Total Direct Apportionments (North County/Metro)			69.9
CARES Funding			**$ 1,068.0**

Figure 13. Expected Los Angeles County CARES Act Transit Funding Allocations

In May 2020, LA Metro CEO, Phil Washington, released a “Call for Action” that details a set of strategies for mitigating the negative impacts of the COVID-19 pandemic on Metro’s operations, and outlines a framework to guide the agency’s actions during the months ahead. The first section of the strategic framework highlights actions the agency will “Work to Continue,” and includes such elements as COVID-19 related precautionary measures on public transit, “legally required” payments including bond payments, bus and rail operations, “key” infrastructure projects, and any projects “under executed construction or manufacturing contract” (Metro, 2020). “Key” infrastructure projects, which are referred to by the agency as falling into the “first bucket” prioritized by Metro, include: (1) Crenshaw/LAX; (2) Regional Connector; (3) Purple Line Extension; (4) Gold Line Foothill Extension; (5) Patsaouras Bus Plaza; (6) Airport Metro Connector; and (7) Phase 1 of the renovation of Union Station, known as the “Link US” project (Metro, 2020). The remainder of projects and programs fall into the “second bucket” of items that have the next priority. They are “currently being evaluated with the objective of staying on Measure M schedule,” meaning Metro will defer their consideration for three to six months. Among these secondary priority projects are partially grant funded projects; projects in various phases short of construction and planning projects; highway projects; regional rail projects; Measure M funded projects that were being accelerated to be in place for the 2028 Olympics, non-Measure M projects; and maintenance and renewal projects intended to achieve the desired State of Good Repair (Metro, 2020). The issuance of the “call to action” also marked the start of work by an internal Metro “Recovery Task Force,” to further study, extend, and elaborate on its immediate plans.

As the pandemic continued and uncertainty mounted, Metro postponed adoption of its FY 2021 budget from the usual date of May until September. When the Board convened remotely in September 2020, it was presented with a budget for the coming fiscal year that slightly exceeded six billion dollars, a decrease in the annual budget of 16 percent in comparison with the previous year. The budget reflected the fiscal damage done by the pandemic but was predicated on no layoffs of personnel and only modest service adjustments in response to changes in travel. Revenue was projected based on reductions in revenue of about eleven percent for each of the four sales tax measures. Sales taxes were expected to be the most stable sources of revenue.
In comparison, fare revenue was forecast to be 78% below the previous year; toll lane revenue was expected to dip by 26%, state transit assistance from SB1 funding to decrease by 27%, and state of good repair funding to fall by 16% (Los Angeles County Metropolitan Transportation Commission, 2020g). These projections are all vulnerable to error in uncertain times and the course of the recovery from the pandemic makes forecasting riskier than ever, but the projections reveal that sales taxes are critical the agency and among the least volatile of its sources of revenue.

In December 2020, Metro published a draft report by the Recovery Task Force, entitled “A Path Forward” (Los Angeles County Metropolitan Transportation Authority, 2020f) which describes a strategy for longer-term recovery from the disruptions imposed on the agency by the pandemic emergency and also reaches beyond the current emergency. The report is a draft because it had not been approved by the Metro board at the time this study was written and is subject to possible revision. The draft proposes strategies that take advantage of changed traffic flows in Los Angeles resulting from the pandemic, such as improvements in express bus operations on arterial streets and freeways, and longer-term transit market enhancements like cash incentives to families that agree to reduce their car ownership and use. Some of the recommendations relate specifically to COVID-related problems, including the use of masks and the cleaning of vehicles and facilities. Other recommendations reveal longer-term intentions such as reducing the costs of capital projects, training staff more effectively, and informing the public more vigorously. The report recommends several ways that Metro can enhance its revenue, including increasing advertising revenue, increasing retailing at stations and leasing or selling surplus land held by Metro after developing new rail and express bus lines. With respect to the accountability and amendment dimensions of the sales tax measures discussed in earlier chapters of this report, the Task Force recommends that consideration be given to amending Measures R and M to make them more helpful in responding to the pandemic. The report recommends considering amendments that would change “subfund definitions to allow more flexibility,” revise “local return guidelines,” and to allow changes in the “scope and mode of projects to allow more rapid expansion of [the] transit system” (page 93). These recommendations are preliminary and are stated in general terms. Specific amendments are left to be developed later. The report identifies the Metro’s Board recently initiated Highway Reform working group, which examines new projects eligible under highway subfunds, as an example of the expansion of Measures R and M uses.

Conclusion

The COVID-19 pandemic brought uncertainty, anxiety, and financial hardships throughout the majority of the year 2020. We found, however, that sales taxes made Metro’s financial situation far more flexible and resilient than would have been the case had Metro depended to a greater extent than it does on its other sources of revenue like Federal and state capital grants. Metro experienced deep fare revenue declines and enormous uncertainty. Sales taxes rebounded relatively quickly, though unpredictably, in large part due to the fairly recent Wayfair Decision which affirmed that internet sales by California residents were subject to the payment of sales taxes in this state. As the pandemic caused people to turn to remote shopping, the downturn in fare revenue and funding from other sources was mitigated by the continuation of the collection of sales taxes as internet commerce replaced in person transactions. The CARES Act further softened the blow, as hopefully will the second stimulus package. Los Angeles County, with four measures in place, exemplifies how resilient though volatile sales tax measures can be, as shown through the variation of monthly revenues based on consumer behavior. As COVID-19 cases increase and stay-at-home orders take effect to mitigate the spreading of the virus, we may see further declines in year-over-year revenues, which in turn may put projects and service at risk. So far, sales taxes and the federal CARES Act stimulus have helped to stave off service cuts, and the arrival of a vaccine suggests the possibility of a brighter future.

Chapter 6: Conclusions

Los Angeles County, the most populous county in the United States, relies heavily on four half cent sales taxes to finance new investments in transportation and support ongoing transportation operations. The fiscal year 2021 Metro budget will be about $6 billion of which about 58% is expected to be raised by the four regional sales tax measures (Los Angeles County Metropolitan Transportation Commission, 2020g). Though the sales taxes administered by the Los Angeles County Metropolitan Transportation Commission raise revenue in support of all transportation modes, a large proportion of the funds are spent on public transportation and most residents of the county identify the taxes with public transit even though most residents rarely or never use transit. Metro operates one of the largest public transit networks in the country and funds local, or “municipal” transit operators throughout the county. Transit can be considered an “essential service” because many of its users lack alternatives and this was recognized by federal support for transit in the stimulus packages.

An earlier report to the Haynes Foundation documented the political history of transportation funding in Los Angeles County and in particular the rise of voter approved sales taxes as a major source of transportation revenue in Los Angeles (Wachs, et. al., 2018). This study addressed three specific questions as a sequel to the earlier report: (1) how the four permanent sales taxes balance the need to be accountable to voter-approved requirements in the measures against the need to be flexible enough to change expenditures as county needs evolved over time; (2) how funding to local governments, critical to the passage of the four measures, was being implemented and managed over time; and (3) the extent to which and how legal challenges and lawsuits against Los Angeles Metro revealed shortcomings and strengths in the ballot measures. While the research was underway, the COVID-19 pandemic battered the region and we examined the impacts of the pandemic on Metro and assessed what could be learned about sales taxes from the disruptions wrought by the pandemic.

Every form of transportation finance requires compromises and influences the nature of policymaking. Los Angeles County has created unique opportunities and accepted demanding burdens by relying on four separate sales taxes that had to be approved by voters, the two most recent of which required two-thirds majorities. Each measure promised a large number of projects that surely would not have been financially feasible without the taxes. Many of those were necessary primarily to entice voters to support the measures and, perhaps equally importantly, to garner support from elected officials who influence the voters they represent. Appealing to constituents of every political persuasion in every supervisorial district and every major political jurisdiction resulted in long lists of promised capital investments in rail lines, highway improvements, bike lanes, and bus service. Each of the measures was unable to produce sufficient revenue to fulfill its promises and each evoked the need for another measure. Passage of the next measure then required more promises of projects and services, and a cycle of political promises and financial needs to meet them was repeated. Today, the many promises of future projects are taken as political commitments by the representatives of every area of the county. Though Metro is well funded in comparison with many other transit agencies, it will likely be unable to fulfill its promises without seeking further funding in the future. The pandemic accelerated but did not create financial challenges that baked into the structure of the agency.

Provisions in the four measures that return some of the sales tax revenue to each city and unincorporated area have become a major element of transportation politics in Los Angeles County. In the wake of Proposition 13 and decades of property tax limits, the sales taxes could not have succeeded without local return provisions, and we found that local governments treasure, guard, and watch over this funding even if it constitutes a modest portion of local spending.

Metro is a relatively young organization, having been formed only a few decades ago by the forced merger of a regional planning agency with a large transportation operating agency. In the course of its short history it has learned many lessons and reshaped its governance. We found that for the most part Metro manages its programs responsibly. Its board operates openly and relatively transparently in full public view, and the representative composition of the board constantly refers to the obligations it has to fulfill the commitments made to the voters who enacted the four measures that provide a majority of their funding.

Once since the adoption of the first measures, in the wake of embarrassing failures of management, staff, and contractors, the public was presented with a measure, written by a Metro board member, to limit the board's discretion and audit its expenditures. Passage of that measure itself strengthened management and oversight and influenced the culture of Metro which from that time onward took review, oversight and compliance far more seriously in every aspect of its operations. After a period of rising public distrust, the last two decades have seen more responsible, though still highly politicized, management of its sales tax revenues. In addition to formal annual financial audits, elected representatives who serve on the board spark loudly on behalf of the commitments made to their particular constituencies. Taxpayer oversight committees seem to fill roles that are more symbolic than those of the board itself, but they do remind all of the obligations the agency has to the taxpayers. Symbolism is unimportant, however, since very few citizens understand the list of project and program commitments that have been made, the progress made each year on meeting them, or the nature of the amendment process. Rather, citizens form supportive or critical attitudes based on limited personal experience with Metro services and media accounts of new projects and controversies.

While fulfilling obligations enacted by the electorate is always a principal obligation of the board, we also found sufficient flexibility in the amendment provisions of the measures and the board adopted procedures to allow the board to respond to changes in priorities and perceived needs as conditions change, federal funding programs become available, and planned projects are occasionally cancelled or dramatically redesigned. Permitting the reallocation of funds within subregions and within program areas achieves a degree of flexibility while staying true to the wishes of the voters. Amendment procedures that we reviewed in earlier chapters are complex, arcane and opaque, so few citizens who care about traffic and transit are aware of them. To amend spending programs, board members must follow complex rules that severely limit the frequency and nature of changes, commission technical studies, and hold public hearings. The complexity assures that amendments are rare, and that in itself strengthens the commitment to the voters made in the measures. Amendments can be pursued and achieved when they are needed, and it is probably beneficial to the region that they cannot be carried out in haste.

In our litigious society, a strong indicator of inadequacies in public programs is the frequency and nature of lawsuits brought against the agencies that manage them. Metro has been threatened with legal action and sued occasionally, but we identified relatively few legal actions derived from the sales tax measures that revealed any systematic weaknesses in agency finances or in its fulfillment of commitments to the voters. When suits have been brought, the agency has generally prevailed or reached settlements with the plaintiffs.

The COVID-19 pandemic deeply impacted Los Angeles Metro as it did transit operators everywhere and though the sales taxes were created for other reasons the pandemic revealed that LOSTs are the most resilient of the agency's revenue sources. Sales tax revenues declined during the first several months of the pandemic, and then rebounded far more quickly than other sources of revenue. We believe this is attributable to the fact that as sales declined at traditional retail outlets, internet sales rose to replace them and internet sales are subject to sales taxes in California wherever the seller is located.

Since their adoption for the very first time in 1980, voter approved sales taxes gradually have become the principal instrument of transportation finance in Los Angeles County as well as other counties in California and in many other states. They have changed the nature of transportation politics. To garner the large majority of votes needed to enact them, LOSTs invariable promise more than can be delivered with their proceeds. While many new and important transportation projects have been built and many transportation services are being operated using sales tax revenue, most constituencies assert that they were promised more and that leads to the need to raise more revenue. But raising more revenue leads agencies to repeatedly promise voters more than they can deliver. We found that the Los Angeles Metro has accomplished a great deal that could not have been done with LOSTs, and that over time it has navigated this complex political landscape by effectively balancing accountability for delivering promises against sufficient flexibility to address changing needs. The recent COVID crisis revealed that LOST financing in Los Angeles was perhaps more resilient than could have been anticipated prior to the emergency.

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Appendix A

LOST Year-Over-Year Percent Change (FY 2019 vs FY 2020)

County	Ballot Designation	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.
Alameda	Measure B	-1.51%	20.95%	-11.45%	-17.66%	-27.90%	-16.48%	4.00%	-17.83%	2.24%	3.01%
Alameda	Measure BB	-2.38%	20.88%	-11.98%	-17.43%	-27.10%	-16.94%	3.66%	-17.38%	2.35%	3.64%
Contra Costa	Measure J	-0.96%	16.24%	-13.25%	-16.57%	-10.43%	-11.42%	4.73%	2.05%	2.27%	4.03%
Fresno	Measure C Extension	-0.04%	33.47%	-14.11%	-16.72%	-9.39%	-12.80%	4.55%	39.55%	7.12%	7.25%
Imperial	Measure D	-6.27%	56.74%	-20.24%	-47.91%	1.56%	-11.25%	-3.92%	52.62%	18.47%	1.91%
Los Angeles	Proposition A	-0.71%	23.94%	-13.83%	-16.47%	-31.65%	-13.86%	0.32%	-16.42%	4.67%	0.60%
Los Angeles	Proposition C	-0.70%	23.92%	-13.83%	-16.47%	-31.63%	-13.86%	0.32%	-16.43%	4.67%	0.61%
Los Angeles	Measure R	-0.81%	23.79%	-13.56%	-17.05%	-31.38%	-14.37%	0.45%	-16.47%	4.58%	0.67%
Los Angeles	Measure M	-1.28%	23.59%	-13.61%	-16.32%	-32.44%	-14.92%	1.44%	-13.68%	4.48%	2.44%
Madera	T	0.98%	35.39%	-9.37%	-18.44%	4.11%	-15.77%	5.86%	33.14%	14.49%	5.79%
Marin	AA	-1.45%	27.91%	-8.88%	-24.05%	-20.88%	-8.64%	9.31%	-23.47%	7.61%	6.36%
Merced	Measure V	-0.55%	43.06%	-12.01%	-9.31%	2.87%	-10.43%	14.52%	1.82%	0.61%	5.32%
Monterey	Measure X	-4.92%	25.32%	-27.83%	-20.59%	-26.05%	-18.91%	4.18%	-10.19%	7.00%	6.27%
Monterey-Salinas Transit District	Measure Q	-7.88%	35.87%	-31.19%	-24.06%	-16.79%	-19.09%	3.28%	-7.51%	5.37%	4.30%
Napa	T	9.32%	-7.30%	-7.06%	-23.68%	-46.26%	-22.38%	1.89%	-13.97%	6.38%	10.16%
Orange	M2	-0.46%	25.23%	-13.79%	-18.37%	-23.24%	-17.97%	1.63%	-19.25%	5.16%	5.01%
Riverside	A2	3.27%	18.72%	-16.03%	-16.74%	-13.23%	-16.42%	9.46%	18.48%	15.09%	6.19%
Sacramento	A2	-2.20%	24.76%	-10.50%	-13.38%	-10.04%	-15.52%	7.40%	24.26%	8.51%	7.11%
San Benito	Measure G	--	--	--	--	3687.21%	25.62%	57.66%	-0.54%	44.43%	39.40%
San Bernardino	Measure I2	15.32%	20.98%	-13.35%	-19.51%	-19.35%	-13.53%	-7.22%	15.87%	10.53%	8.23%
San Diego	TransNet2	-2.99%	37.22%	-11.61%	-14.03%	-32.63%	-14.24%	2.38%	-0.40%	5.50%	8.12%
San Francisco	Proposition K	2.15%	25.44%	-13.45%	-24.64%	-58.35%	-12.83%	6.81%	-71.17%	-28.73%	-29.31%
San Joaquin	K	2.17%	10.75%	-13.82%	-13.58%	-3.84%	-13.73%	15.45%	20.21%	4.59%	11.50%
San Mateo	A2	-2.74%	17.36%	-12.78%	-17.50%	-29.69%	-13.26%	4.88%	-39.45%	4.20%	4.89%
San Mateo	W	--	--	--	--	--	--	--	4466.19%	43.15%	24.27%

Santa Barbara	A	-1.61%	29.46%	-9.80%	-12.17%	-27.03%	-17.50%	1.48%	1.80%	4.02%	2.10%
Santa Clara	A	2.03%	2.49%	-9.87%	-17.02%	-35.27%	-19.74%	2.20%	-37.44%	1.10%	-0.74%
Santa Clara	B	2.03%	2.43%	-9.87%	-17.04%	-34.98%	-19.72%	2.22%	-37.45%	1.11%	-0.85%
Santa Clara	B	-4.56%	11.10%	-15.00%	-21.02%	-26.01%	-19.61%	2.01%	-35.69%	-1.49%	-3.44%
Santa Cruz	Measure D	-0.31%	30.32%	-14.12%	-19.93%	-34.85%	-16.00%	-1.24%	30.33%	1.57%	7.95%
Sonoma	M	-5.63%	24.14%	-10.01%	-19.47%	-12.79%	-15.05%	-3.00%	19.25%	0.16%	2.84%
Sonoma/Marin	Q	-4.94%	26.91%	-11.19%	-21.53%	-12.33%	0.06%	14.85%	-21.18%	2.64%	4.00%
Stanislaus	L	-2.29%	26.08%	-12.13%	-14.67%	-5.14%	-13.21%	11.43%	17.41%	8.99%	12.13%
Tulare	R	1.07%	31.14%	-8.25%	-19.98%	7.09%	-15.94%	4.45%	39.07%	10.05%	12.60%
Average		**-0.59%**	**24.01%**	**-13.37%**	**-18.85%**	**91.28%**	**-13.63%**	**5.68%**	**128.42%**	**6.85%**	**5.42%**

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