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BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

)	
)	Case No. 11-2-0603-1
In the Matter of)	
)	
Appeals of City Attorney's)	DECISION AND ORDER
Explanatory Statement for)	
Seattle Referendum No. 1)	
_____)	

This matter came before the Seattle Ethics and Elections Commission (the "Commission") on appeals of the Seattle City Attorney's Explanatory Statement of Seattle Referendum No. 1 filed by (i) Protect Seattle Now and (ii) Let's Move Forward, Phil Lloyd, and the Washington State Department of Transportation ("WSDOT").

I. DOCUMENTS AND EVIDENCE CONSIDERED

In considering these appeals, the Commission reviewed the following documents and evidence:

1. Protect Seattle Now's Letter to Wayne Barnett dated June 3, 2011 regarding Appeal of City Attorney's Explanatory Statement for Seattle Referendum No. 1;
2. Protect Seattle Now's Opening Brief, dated June 8, 2011 and filed June 9, 2011, together with Appendices A through K;
3. Declaration of Gary W. Manca, dated June 9, 2011;
4. Protect Seattle Now's Proposed Amendment No. 1, filed June 9, 2011;

- 1 5. Protect Seattle Now's Proposed Amendment No. 2, filed June 9, 2011;
- 2 6. Protect Seattle Now's Proposed Amendment No. 3, filed June 9, 2011;
- 3 7. Protect Seattle Now's Proposed Substitute Explanatory Statement, filed June 9,
- 4 2011;
- 5 8. Objection to Explanatory Statement by Let's Move Forward and Washington
- 6 State Department of Transportation dated June 9, 2011, together with Appendix A;
- 7 9. Let's Move Forward and WSDOT's Proposed Amendments to City Attorney's
- 8 Draft Explanatory Statement for Seattle Referendum No. 1, filed June 9, 2011;
- 9 10. Let's Move Forward and WSDOT's Proposed Amendments to City Attorney's
- 10 Draft Explanatory Statement for Seattle Referendum No. 1 (Redline), filed June 9, 2011;
- 11 11. Declaration of Kymberly K. Evenson in Support of Objection to Objection to
- 12 Explanatory Statement by Let's Move Forward and Washington State Department of
- 13 Transportation, dated June 9, 2011, together with Exhibits 1 through 3;
- 14 12. City Attorney's Response to Objections to Referendum 1 Explanatory Statement,
- 15 dated June 15, 2011, together with Attachment A;
- 16 13. Protect Seattle Now's Reply Brief, dated June 16, 2011;
- 17 14. Reply in Support of Objection to Objection to Explanatory Statement by Let's
- 18 Move Forward and Washington State Department of Transportation, dated June 16, 2011,
- 19 together with Appendix A; and
- 20 15. the oral argument presented by the parties at the hearing on June 17, 2011.

21 II. BACKGROUND AND FINDINGS

22 1. Section 6 of Ordinance No. 123542 provides: "The City Council is authorized to
23 decide whether to issue the notice referenced in Section 2.3 of each Agreement. That decision shall

1 be made at an open public meeting held after issuance of the Final Environmental Impact
2 Statement."

3 2. Section 2.3 of each of the agreements referenced in Ordinance No. 123542 provides
4 in relevant part: "The PARTIES understand that environmental review of the proposed PROJECT
5 is underway at the date of this Agreement and agree that only preliminary design work and other
6 work outlined in 23 CFR 636.109(b)(2) may proceed under this Agreement prior to the issuance of
7 a Final SEPA/NEPA Environmental Impact Statement (FEIS) and federal Record of Decision
8 (ROD). If an alternative other than the Proposed Bored Tunnel is selected, this Agreement will be
9 terminated pursuant to the provisions of Section 28 of this Agreement. If the Proposed Bored
10 Tunnel is selected, the remaining work under this Agreement other than preliminary design work
11 may proceed no sooner than after the issuance of the ROD and only after WSDOT and the City
12 Council each provide notice to the other that it wishes to proceed with the Agreement."

13 3. SMC § 2.14.030(A) provides in relevant part: "The City Attorney shall prepare
14 an explanatory statement on each City measure, describing in clear and concise language, the
15 law as it presently exists and the effect of the measure if approved."

16 4. SMC § 2.14.030(B) provides: "Within five (5) days after its filing with the
17 Executive Director, anyone dissatisfied with the explanatory statement prepared by the City
18 Attorney may appeal to the Seattle Ethics and Elections Commission by filing an objection with
19 the Executive Director and serving a copy of the objection upon the City Attorney. The
20 objection shall identify the appellant's grievance and contain a proposed amendment or
21 substitution. The Seattle Ethics and Elections Commission shall convene as soon as practical to
22 consider the explanatory statement and the objection; and its decision shall be final. There shall
23 be no appeal to the Hearing Examiner."

ATTACHMENT A

EXPLANATORY STATEMENT

Alaskan Way Viaduct replacement agreements referendum measure (Ord. 123542, Section 6)

1. Ordinance Number 123542, Section 6, and the referendum process

This ballot measure will neither approve nor reject the deep-bore tunnel as an alternative to replace the Alaskan Way Viaduct. Rather, as explained below, your vote will affect how the City Council will decide whether to proceed with current agreements on the deep-bore tunnel beyond preliminary design work, after environmental review is completed.

The Seattle City Council enacted Ordinance 123542 (the Ordinance) on February 28, 2011, accepting three agreements between the City of Seattle and the Washington State Department of Transportation (the State). The agreements relate to the City's and the State's preferred alternative to replace the Alaskan Way Viaduct along Seattle's central waterfront with a deep-bore tunnel. The three agreements address utility design, utility relocation, property issues, environmental remediation, design review, permitting, and construction coordination. Construction of the proposed deep-bore tunnel is the subject of a separate contract between the State and a contractor. The City is not a party to that construction contract.

A sufficient number of Seattle voters signed referendum petitions to refer the Ordinance to a public vote. The King County Superior Court, however, determined that Section 6 of the Ordinance is subject to a public vote. The rest of the Ordinance, now in effect, accepts the agreements (Sections 1 and 2); authorizes the Clerk to sign the agreements (Section 3); directs the Mayor to see that the agreements are faithfully kept and performed (Section 4); provides that the agreements may only be amended as authorized by ordinance (Section 5); ratifies and confirms prior consistent acts (Section 7); and provides for an effective date (Section 8).

Section 6 of the Ordinance references an identical Section 2.3 in each of the three agreements currently in effect. Under Section 2.3 only preliminary design work is permitted before issuance of the Final Environmental Impact Statement (FEIS) and the federal Record of Decision (ROD). An FEIS provides an analysis of the environmental impact of a proposed action and reasonable alternatives to the proposed action. In its ROD, the Federal Highway Administration will select an alternative from the FEIS for purposes of federal funding. Section 2.3, specifies that the City Council will decide whether to issue the notices to proceed with work under the agreements beyond preliminary design work if the deep-bore tunnel alternative is selected. If the deep-bore tunnel alternative is not selected, the agreements terminate.

Section 6 authorizes the City Council to decide whether to issue the notice to proceed with work under the agreements at an open public meeting after issuance of the FEIS and ROD without passing another ordinance.

2. The law as it presently exists

The Ordinance accepted the three agreements regarding replacement of the Alaskan Way Viaduct. Section 6 of the Ordinance is suspended pending the results of this referendum. These agreements between the City of Seattle and the State are currently in effect as they relate to preliminary design work on the proposed deep-bore tunnel. The three agreements are available on the City's website at:

<http://www.seattle.gov/leg/clerk/tunnelagreements.pdf>

In order for the agreements to be effective beyond the preliminary design phase of the project, the following must occur: (i) the Federal Highway Administration must issue a ROD selecting the deep-bore tunnel; (ii) the State must issue a notice of its decision to proceed; and (iii) the City Council must issue a notice of its decision to proceed. After issuance of the federal ROD, the City Council may decide whether to proceed with these agreements. Under present law, the City Council has the authority to make this decision only by enacting another ordinance. An ordinance is subject to potential veto and potential referendum.

3. The effect of Ordinance 123542, Section 6, if approved by the voters

Section 6 would authorize the City Council to issue the notice to proceed with the agreements beyond the initial design phase without requiring an ordinance. A decision by the City Council to issue the notice must still be made at an open public meeting after issuance of the FEIS and the federal ROD.

4. The effect of this referendum vote

If a majority of voters casting ballots in this referendum vote to **approve** Section 6 of the Ordinance, it will become law, and the City Council would have the authority to decide to proceed with the agreements beyond the preliminary design phase of the project without enacting another ordinance.

If a majority of voters casting ballots in this referendum vote to **reject** Section 6 of the Ordinance, then it will not become law, the law will remain as it is now, and the City Council would have the authority to proceed with the agreements beyond preliminary design phase of the project only by enacting another ordinance, which would be subject to a potential veto and potential referendum.