

## Let's Move Forward and WSDOT's Proposed Amendments to City Attorney's Draft Explanatory Statement for Seattle Referendum No. 1

### 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 eliminate nor choose the deep-bore tunnel as an alternative to replace the Alaskan Way Viaduct. Rather, as explained below, your vote may affect how the City Council will ~~decide~~ notify the State 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 only 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, which will appear on the August primary ballot, references an identical Section 2.3 in each of the three agreements. Section 2.3, which is already in effect, 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.

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 analyzes the environmental impacts of a proposed action and reasonable alternatives to the proposed action. The ROD for this project will be issued by the Federal Highway Administration and selects an alternative in the FEIS for purposes of federal funding.

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. Section 6 implies that the City Council may give notice to proceed with the agreements without passing another ordinance.

## 2. The law as it presently exists

The Ordinance accepted the three agreements regarding replacement of the Alaskan Way Viaduct. Only Section 6 of the Ordinance is suspended pending the results of this referendum. The 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 City Council ~~has agreed to must~~ provide notice to the State of its decision to proceed with the agreements. After evaluating the FEIS and issuance of the ROD, the City Council may consider whether or not to proceed with these agreements. Presently there is no city code provision that describes how the decision to issue the notice shall be made. Under present law, the City Council has the authority to notify the State by enacting another ordinance.

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

Section 6 ~~may~~ authorizes the City Council alone to issue the notice to proceed with the agreements beyond the preliminary design work. Section 6 provides that the City Council's decision shall be made at an open public meeting held after issuance of the FEIS. beyond the initial design phase other than by ordinance. An ordinance may be vetoed by the Mayor, requiring a further two-thirds vote of the City Council to override. Ordinances are sometimes subject to referendum. 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 FHWA's 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, then it will become law, and the City Council ~~may would~~ be able to decide to authorized to issue notice at an open public meeting that it intends to proceed with the agreements beyond the preliminary design phase of the project.

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 there will be no explicit city code provision describing how the City Council should provide notice to

proceed with the agreements beyond the preliminary design phase of the project. ~~and the City Council may be able to proceed with the agreements beyond preliminary design only by enacting another ordinance.~~