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CITY ATTORNEY

M E M O R A N D U M



DATE: March 5, 2012

TO: Mayor Denis Law
Members of City Council

CC: Jay Covington
Iwen Wang
Terry Higashiyama
Alex Pietsch

FROM: Lawrence J. Warren, City Attorney

SUBJECT: Initiative on Downtown Library

Dear Mr. Mayor and Council Members:

I have been asked to review the initiative and to comment on its legality. For an overview of the subject, see *Initiative and Referendum, Guide for Washington Cities and Charter Counties*, Municipal Research and Services Center, Report Number 28, January 2006.

My conclusion is that it is illegal for a number of reasons. In no particular order those reasons are discussed below.

1. Impairment of contract. The initiative proposes to require the downtown library improvements to be at the Cedar River site. The City has signed two contracts with the King County Library System (KCLS) to build the downtown library at a separate site, specifically at the Big 5 site. It is unconstitutional to pass a law which impairs an existing contract and this initiative, if passed, would do so. *Pierce County v. State*, 159 Wn 2d 16, 148 P 2d 1002 (2006), *Fed'n of Employees v. State*, 127 Wn 2d 544, 901 P 2d 1028 (1995).
2. Infringement of the Council's budget authority. The Council has passed two budgets and authorized a bond issue which furthered the Big 5 site. Money has been expended to buy the Big 5 site and to do certain architectural work. Also there is work to do to seismically retrofit the current library. While that work ultimately needs to be done to make the building safe, that expense may be accelerated if the building is to be converted to the new library. Also there will be the need to find temporary space for the current library while the work on the library is done. Finally there may not be enough funds in the bond issue to construct the two libraries, one over the river, and still pay for the Big 5 site and the associated architectural costs. This would force the Council to change budget decisions that have already been made and/or budget

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additional funds. Budgeting may not be done by initiative. *Priorities First v. City of Spokane*, 93 Wn App. 406, 968 P 2d 431 (1998).

3. The initiative improperly tries to direct administrative actions. The Council has acted and authorized contracts with KCLS, approved acquisition of the Big 5 site and authorized a contract with an architect. The onus now switches to the administration to execute the work authorized by the Council. In an analogous situation the court has held that an initiative may not be used to direct administrative action contrary to the decisions made by the council. In that case the Bellevue City Council established the essential framework to implement plans to construct a convention center. An initiative was filed to require voter approval before selling bonds. *Bidwell v. Bellevue*, 65 Wn App 43 (1992). In the current situation the plans are much further along, the bonds have been sold and the site for the downtown library purchased. Under the *Bidwell v. Bellevue* analysis the initiative is too late.
4. The initiative, if a legitimate topic for legislation, is really a referendum and is not timely. Along the same lines, because the initiative seeks to reverse prior Council action, including signing contracts with KCLS, it is really a referendum and not an initiative. New law is not being proposed but old actions reversed. A referendum must be filed within 30 days. RMC 1-2-2, RCW 35A.11.090 and RCW 35.17.240-360.
5. The initiative challenges elements of the election to join KCLS. Before submitting the topic of annexation to KCLS to the voters, the City negotiated an agreement with KCLS to build two new libraries at new locations in the city. KCLS had to agree to the annexation and this agreement was part of its agreement to submit the matter to the voters. It was a key element in submitting the annexation to KCLS to the voters. By challenging that agreement and seeking to compel the City to keep the library at its current location and not provide a new library at a new site, the initiative collaterally attacks the original election, long after the process is over. The challenge is illegal and untimely.
6. As proposed, the initiative is an improper attempt to set policy and not initiate an ordinance. A policy statement may not be the subject of an initiative. Rather, an initiative must seek to enact a law (an ordinance). This initiative seeks to impose a procedural requirement on the City Council (a vote of the people if using other than the current library site) which is not a law and at best a policy statement. In fact, the initiative may not even be proposing a resolution but an administrative action similar to that rejected in *Bidwell v. Bellevue* (vote of people before funding a convention center). In any event an ordinance has not been proposed.

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7. Even if the proper subject of an initiative, the language of the initiative is fatally flawed and isn't in appropriate form. Ignoring all of the previous arguments, an initiative must propose an ordinance and include a true copy thereof. RCW 35A.01.040(b). The language of the initiative petitions for "the City of Renton to adopt an ordinance...that said improvements occur only at the existing downtown library location..." In other words it is not an ordinance but an ordinance to require the adoption of an ordinance. It really isn't an initiative, which if adopted, establishes an ordinance. And it doesn't give any time limitations on the Council to adopt the ordinance and so is vague.

There are other issues presented if this matter is to proceed. The Council, if it entertains the initiative, must decide to adopt it as proposed with its limitations and ambiguities. If not adopted by the Council, as proposed, the language must go to the voters. The Council could prepare a counter measure, but both would have to be on the ballot.

If passed, the City would have to renegotiate its contracts with KCLS, if KCLS is willing to negotiate. If not, the City is almost surely in litigation with parties demanding contradictory performances. As well, the Council will have to figure out a way to fund the extra costs above the bond proceeds including election costs. I will let others provide the fiscal analysis.

There are other problems presented that are beyond the scope of this memo. As the situation develops more legal questions will likely arise.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence J. Warren". The signature is stylized with a large, flowing "L" and "W".

Lawrence J. Warren

LJW: scr