

August 3, 2015

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Ordinance No. 6246 authorizing and providing for acquisition, including through condemnation, of certain property rights required for the 120th Avenue NE Improvements Project, Stage 3, NE 12th Street to NE 16th Street – CIP Plan No. PW-R-168.

FISCAL IMPACT

The cost to acquire property rights, through negotiation or condemnation, is included in the right-of-way (ROW) budget for Stage 3 of the 120th Avenue NE Improvements project from NE 12th Street to NE 16th Street (CIP Plan No. PW-R-168). The total project budget included in the 2015-2021 CIP Plan is \$24.2 million, which is intended to fund full implementation of this project segment, including the City's widening of the roadway and the undercrossing of the East Link light rail line in this vicinity. The City's share of costs is partially funded by a State Transportation Improvement Board (TIB) grant.

As established in the Funding, Right-of-Way Acquisition and Construction Administration Agreement (Cost Sharing Agreement) between the City and Sound Transit, authorized by the Amended and Restated Memorandum of Understanding (Amended MOU), adopted by the City Council and Sound Transit Board in April 2015, the City is designated as the Lead Agency for property acquisition and is authorized to acquire all ROW necessary for the construction of this project. Each agency is responsible for their share of ROW costs as defined in the Cost Sharing Agreement.

STAFF CONTACT

Nora Johnson, Director, 452-4167
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Civic Services Department

Dave Berg, Director, 452-6468
Paul Krawczyk, Project Manager, 452-7905
Transportation Department

POLICY CONSIDERATION

Bellevue City Code/State law:

- Under Bellevue City Code 4.30.010 and RCW 8.12.040, major real property acquisitions must be approved by City Council. Chapters 8.12 and 8.25 RCW establish the authority and procedure for cities to acquire property by condemnation for streets, street improvements, and other public purposes. The statutes provide that when a city seeks to condemn property for a public purpose, the city must first provide legal notice in local newspapers as well as by certified mail to the affected property owners to addresses that can be determined by County records. The statutes further provide that the city indicate that compensation for acquisitions be made from applicable city funds or, if applicable, by special assessment upon the property benefitted by the project.

City Practice:

- The City's Real Property Policies provide that property rights necessary for public use are to be acquired through negotiation and voluntary transactions whenever possible, and, when it is necessary to exercise condemnation authority, that such property be condemned and taken subject to payment of just compensation in the manner provided by law.

- In support of these policies and property acquisition best practices, City staff are working and will continue to work with property owners to achieve voluntary, negotiated transactions both before and after Council grants condemnation authority. These efforts will continue throughout the acquisition process, including after a condemnation action has been commenced in court.

BACKGROUND

On December 1, 2014, Council authorized Ordinance No. 6209 adopting the 2015-2021 Capital Investment Program (CIP) Plan. On May 18, 2015, Council authorized Ordinance No. 6227 amending the 2015-2021 CIP Plan to implement the Amended and Restated Memorandum of Understanding (Amended MOU) between the City and Sound Transit (Resolution No. 8903 adopted on April 20, 2015), including the Cost Sharing Agreement. As part of the new amended CIP Plan, the 120th Avenue NE project, Stage 3, CIP Plan No. PW-R-168 was fully funded to complete the design, right-of-way acquisition and construction for improvements between NE 12th and NE 16th Streets. The project budget also includes the completion of final design only for improvements between NE 16th Street and Northup Way.

This project includes the widening of 120th Avenue NE to five lanes with two lanes in each direction, a center turn lane and bike lanes, curb, gutter and sidewalk on both sides of the street with retaining walls, traffic signals, illumination, landscaping, irrigation, water quality and storm detention and other utility infrastructure where needed. This project also includes a joint project with Sound Transit to elevate the roadway in the proximity of NE Spring Boulevard to accommodate the East Link light rail project guideway which will pass underneath a new bridge. The Amended MOU authorized execution of the Cost Sharing Agreement, which sets forth the roles and responsibilities of both the City and Sound Transit with respect to property acquisition, design, and construction of two joint projects on 120th Avenue NE and 124th Avenue NE. Under the Cost Sharing Agreement, the City is lead agency on the acquisitions for the 120th Avenue NE Improvements Project, Stage 3.

To help ensure grant obligation deadlines are met, staff is requesting condemnation authority through the proposed ordinance to ensure that the required property rights can be obtained in a timely manner. It is nonetheless staff's intention to negotiate with all affected property owners with the aim of arriving at agreed purchases for all needed property. If, however, negotiated acquisitions cannot be reached on a given property after a reasonable period of time, the City Attorney's Office will commence condemnation proceedings to help keep the project on schedule.

The condemnation ordinance enables property owners to sell their property to the City, by agreement, in lieu of condemnation, thus benefitting property owners by exempting their transactions from Real Estate Excise Tax (WAC 458-61A-206 - "Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain . . . or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax.").

As required by condemnation statutes, notice of the Council meeting to consider adoption of this ordinance has been mailed to the taxpayers of record of the listed properties, and has also been published in *The Seattle Times* and the *Daily Journal of Commerce*.

The table below identifies the property rights needed for construction of this stage of the 120th Avenue NE project.

Total Land Acquisition Requirements

Property Owner and Location	King County Assessor No.	Property Rights Required	Approximate Square Footage
WR-SRI 120 th LLC 1501 124 th Ave NE	067100-0030	Fee Sidewalk/Utility Easement Slope Easement Temporary Construction Easement	7,504 12,985 12,074 12,966
Auto Company XXI, Inc 1533 120 th Ave NE	109910-0011 109910-0002	Fee Sidewalk/Utility Easement Wall Easement Temporary Construction Easement	604 1,784 327 4,448
Pine Forest Properties, Inc 1425 120 th Ave NE	109910-0001	Fee Sidewalk/Utility Easement	60 258
Pine Forest Transitory 1267 120 th Ave NE	109910-0025	Fee Sidewalk/Utility, Wall Easement Wall Maintenance Easement Temporary Construction Easement	2,212 6,960 3,698 26,044

EFFECTIVE DATE

If adopted by Council, this Ordinance will become effective on August 11, 2015.

OPTIONS

1. Approve the Ordinance authorizing and providing for acquisition, including through condemnation, of property rights required for the 120th Avenue NE Improvements Project, Stage 3, NE 12th Street to NE 16th Street – CIP Plan No. PW-R-168.
2. Reject the Ordinance and provide alternative direction to staff.

RECOMMENDATION

Option 1.

MOTION

Move to approve Ordinance No. 6246 authorizing and providing for acquisition, including through condemnation, of property rights required for the 120th Avenue NE Improvements Project, Stage 3, NE 12th Street to NE 16th Street – CIP Plan No. PW-R-168.

ATTACHMENTS

Vicinity/Project Map
Illustration of Project Impacts across Subject Property
CIP Description
Copy of Publication Notice
Proposed Ordinance No. 6246