CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117581

AN ORDINANCE relating to Seattle Public Utilities' property on the northeast corner of North 140th Street and Lenora Place North, Seattle, Washington; declaring fee ownership of this property to be surplus to the City of Seattle's utility needs; authorizing Seattle Public Utilities to sell the surplus property and to execute documents and agreements necessary to complete the sale; and ratifying and confirming certain prior acts.

WHEREAS, the City of Seattle acquired King County Parcel Number 645030-4545 in 1958 in connection with the North 128th Street Sanitary Sewer Project, as accepted by Ordinance 87863; and

WHEREAS, the property was acquired in fee because the owner was unwilling to grant an easement for the sanitary sewer mainline; and

WHEREAS, an easement for the sewer across the east twelve feet of the lot would provide Seattle Public Utilities all the rights necessary for the use, maintenance, repair, and replacement of the sanitary sewer mainline; and

WHEREAS, fee ownership of the 2,040 square foot parcel is excess to Seattle's current and future needs; and

WHEREAS, the City's Real Estate Oversight Committee recommends selling the property; and

WHEREAS, Victor Fleming, the owner of the adjacent property to the north wishes to buy this lot subject to Seattle Public Utilities' reservation of an easement for the sanitary sewer mainline; and

WHEREAS, Seattle Public Utilities and Victor Fleming have negotiated the sale of the 2,040 square foot lot to Victor Fleming (documented by a Purchase and Sale Agreement with closing subject to Council approval), including the fair market value to be paid to Seattle Public Utilities, and subject to a reserved easement for a sanitary sewer mainline and a covenant releasing the City from liability resulting from the condition of the property; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Under RCW 35.94.040 and after public hearing, fee ownership of the real property legally described as Lot 26, Block 22, Plat of Overland Park, according to plat thereof recorded in Volume 26 of Plats, page 44, Records of King County, Washington (the "Property") is hereby found and declared to be no longer required for providing municipal utility service and to be surplus to the City of Seattle's needs.

Section 2. The Director of Seattle Public Utilities, or his designee, is hereby authorized to convey the Property to Victor Fleming upon payment of $26,100 to Seattle Public Utilities, subject to a reserved easement and environmental covenant, release and indemnity. The Director is authorized to convey the Property by deed substantially in the form of the Quitclaim Deed Subject to Reserved Easement and Environmental Release and Indemnity attached hereto as Attachment 1. The Director's authority in this section includes the authority to execute and record any additional agreements and documents necessary for such conveyance consistent with the terms of this ordinance.

Section 3. Any act consistent with the authority in this ordinance taken prior to its effective date is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Form of Quitclaim Deed Subject to Reserved Easement and Environmental Release and Indemnity

Pree Carpenter/pc
SPU 140th & Lenora Sale ORD ATT 1
June 5, 2012
Version #3

Attachment 1

Recording Requested By And
When Recorded Mail To:

Attention: Pree Carpenter
City of Seattle
Seattle Public Utilities
PO Box 34018
700 Fifth Avenue
Seattle, WA 98124-4018

Form of

QUIT CLAIM DEED

SUBJECT TO RESERVED EASEMENT AND ENVIRONMENTAL RELEASE AND INDEMNITY

Reference #s of Document Released or Assigned: 4990861

Grantor: The City of Seattle, Seattle Public Utilities

Grantee: Victor A. Fleming

Legal Description: Lot 26, Block 22, Plat of Overland Park, according to plat thereof recorded in Volume 26 of Plats, page 44, Records of King County, Washington.

Assessor's
Tax Parcel ID#: No. 645030-4545

QUITCLAIM DEED

THE CITY OF SEATTLE ("Grantor"), acting by and through its **SEATTLE PUBLIC UTILITIES ("SPU")**, for Ten Dollars ($10.00) and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby conveys and quitclaims to **VICTOR A. FLEMING**, a single person, ("Grantee") all right, title and interest, if any, in the following real property:

> Lot 26, Block 22, Plat of Overland Park, according to plat thereof recorded in Volume 26 of Plats, page 44, Records of King County, Washington (the "Property").

The Property is granted expressly subject to Grantor's reservations and conditions herein. Grantor makes no warrantees of any kind as to the title or condition of said lands.

Reserved Easement

1. Grantor reserves unto the City of Seattle and SPU, and its successors and assigns, an exclusive easement for utility purposes (the "Easement") over, under, across and through a portion of the Property, as depicted on Exhibit A and described as follows:

> the east 12 feet of Lot 26, Block 22, Plat of Overland Park, according to plat thereof recorded in Volume 26, page 44, records of King County, Washington.

(the "Easement Area").

2. Grantor reserves the Easement on the following terms and conditions:

A. Grantee shall not construct or place any building, structure, tree or obstruction of any kind within the boundaries of the Easement Area without prior written permission of the Director of SPU or said official's successor, which permission may be withheld, conditioned or delayed in that official's discretion.
B. Grantee shall not excavate in the Easement Area without the prior written permission of the Director of SPU or said official's successor, which permission may be withheld, conditioned, or delayed in that officials' discretion.
C. Grantee shall not install or allow to be installed any other utility facilities, such as conduits, cables, pipelines, vaults, poles or posts, whether public or private, within three (3) horizontal feet of SPU's Utilities. All utility crossings must maintain a minimum vertical clearance of twelve (12) inches from Grantor's utility pipes and infrastructure in the Easement Area.

D. Grantor's reserved Easement includes the right to enter upon the Easement Area at all reasonable times for purposes of maintenance, repair and replacement of utility infrastructure.

COVENANT, RELEASE and INDEMNITY REGARDING PROPERTY CONDITIONS AND HAZARDOUS SUBSTANCES

The Property described herein is conveyed AS-IS, WHERE-IS, WITH-ALL-FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO ITS CONDITION, ENVIRONMENTAL OR OTHERWISE, OR ITS SUITABILITY OR SUFFICIENCY FOR THE GRANTEE'S INTENDED USES AND PURPOSES. Grantee acknowledges that adverse physical, economic or other conditions (including without limitation, adverse environmental soils and ground-water conditions), either latent or patent, may exist on the Property. By acceptance of this deed, Grantee assumes Grantor's responsibility for all environmental conditions of the Property, known or unknown, including but not limited to responsibility, if any, for investigation, removal or remediation actions relating to the presence, release or threatened release of any Hazardous Substance or other environmental contamination on, under, emanating from, or otherwise relating to the Property. Grantee also releases, covenants not to sue, and shall indemnify, defend, and hold Grantor and its past, present and future officials, employees, and agents, harmless from and against any and all claims, demands, penalties, fees, damages, losses, liabilities, and expenses (including but not limited to fees and costs of regulatory agencies, attorneys, contractors and consultants) arising out of or connected with the condition of the Property, including but not limited to any alleged or actual past, present or future presence, release or threatened release of any Hazardous Substance in, on, under or emanating from the Property, or any portion thereof or improvement thereon, from any cause whatsoever; it being intended that Grantee shall so indemnify Grantor and such persons without regard to any fault or responsibility of Grantor, Grantee or such other persons. Grantee is aware of the rights it might otherwise have to seek recovery from Grantor for costs of remediation and cleanup of Hazardous Substances under applicable law, including without limitation the Washington Model Toxics Control Act ("MTCA") and the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and Grantee hereby knowingly waives all such rights, now existing or hereafter arising, and voluntarily relinquishes those rights and forever releases the Grantor from any such obligation.

For purposes of this Covenant, the term "Hazardous Substance" shall mean any substance subject to regulation under the Washington Hazardous Waste Management Act (Ch. 70.105 RCW), as amended from time to time and regulations promulgated thereunder; any "hazardous substance" under MTCA as amended from time to time and regulations promulgated thereunder;

any "hazardous substance" or "hazardous waste" as defined by CERCLA as amended from time to time and regulations promulgated thereunder; any underground or above-ground storage tanks; and any substance the presence of which is prohibited by any federal, state, or local government statute, regulation, ordinance, rule or resolution; any substance deemed hazardous, toxic, a pollutant, or contaminant, which by any federal, state, or local statute, regulation, ordinance, rule or resolution requires special handling or notification in its collection, storage, treatment or disposal, and any substance or material that is now or hereafter becomes otherwise regulated under any federal, state, or local statute, ordinance, rule, regulation, resolution or other law relating to environmental protection, contamination or cleanup.

The obligations of Grantee stated above and the acknowledgement, release and indemnification touch and concern the Property, restrict the use of the Property, and are intended to run with the land and bind Grantee and Grantee's heirs, successors in interest and assigns, and inure to the benefit of Grantor and its successors and assigns, but the rights of Grantor are not for the benefit of or appurtenant to any property of Grantor. No transfer of the Property by Grantee or any successor in interest of Grantee shall relieve such party from any obligations under this Covenant or any liability for any breach of this Covenant, whether or not then accrued, nor shall any such transfer impair the effectiveness of the release or indemnity herein as to any party. This Covenant is not intended to, nor shall it, release, discharge or affect any rights or causes of action that Grantor or Grantee may have against any other person or entity, except as otherwise expressly stated herein, and each of the parties reserves all such rights including, but not limited to, claims for contribution or cost recovery relating to any Hazardous Substance in, on, under or emanating from the Property.

Grantee's foregoing covenant, release, indemnity and obligations with respect to the condition of the Property and Hazardous Substances are referred to as the "Covenant". Notwithstanding the foregoing, Grantee's Covenant shall not apply to any claims, demands, penalties, fees, damages, losses, liabilities, and expenses (including but not limited to fees and costs of regulatory agencies, attorneys, contractors and consultants) that are solely attributable to Grantor's use of the Easement Area.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed.

//next page for signatures

THE CITY OF SEATTLE, GRANTOR

By_____
Ray Hoffman, Director
Seattle Public Utilities

Date:_____

This Deed is executed and delivered pursuant to City of Seattle Ordinance [insert].

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Ray Hoffman**, known to me (or proved to me on the basis of satisfactory evidence) to be the Director of **Seattle Public Utilities** of The City of Seattle, the municipal corporation named in and which executed the foregoing document, and stated on oath that he was authorized to execute the foregoing document on behalf of said municipal corporation and signed the same as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

_____

Print Name: _____
NOTARY PUBLIC in and for the State of Washington, residing at:

_____

_____

My commission expires: _____

ACCEPTANCE BY VICTOR A. FLEMING, GRANTEE

_____

Date:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Victor A. Fleming**, known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed and accepted the foregoing Quitclaim Deed on oath acknowledged it as his free and voluntary act for the uses and purposes mentioned in this instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of

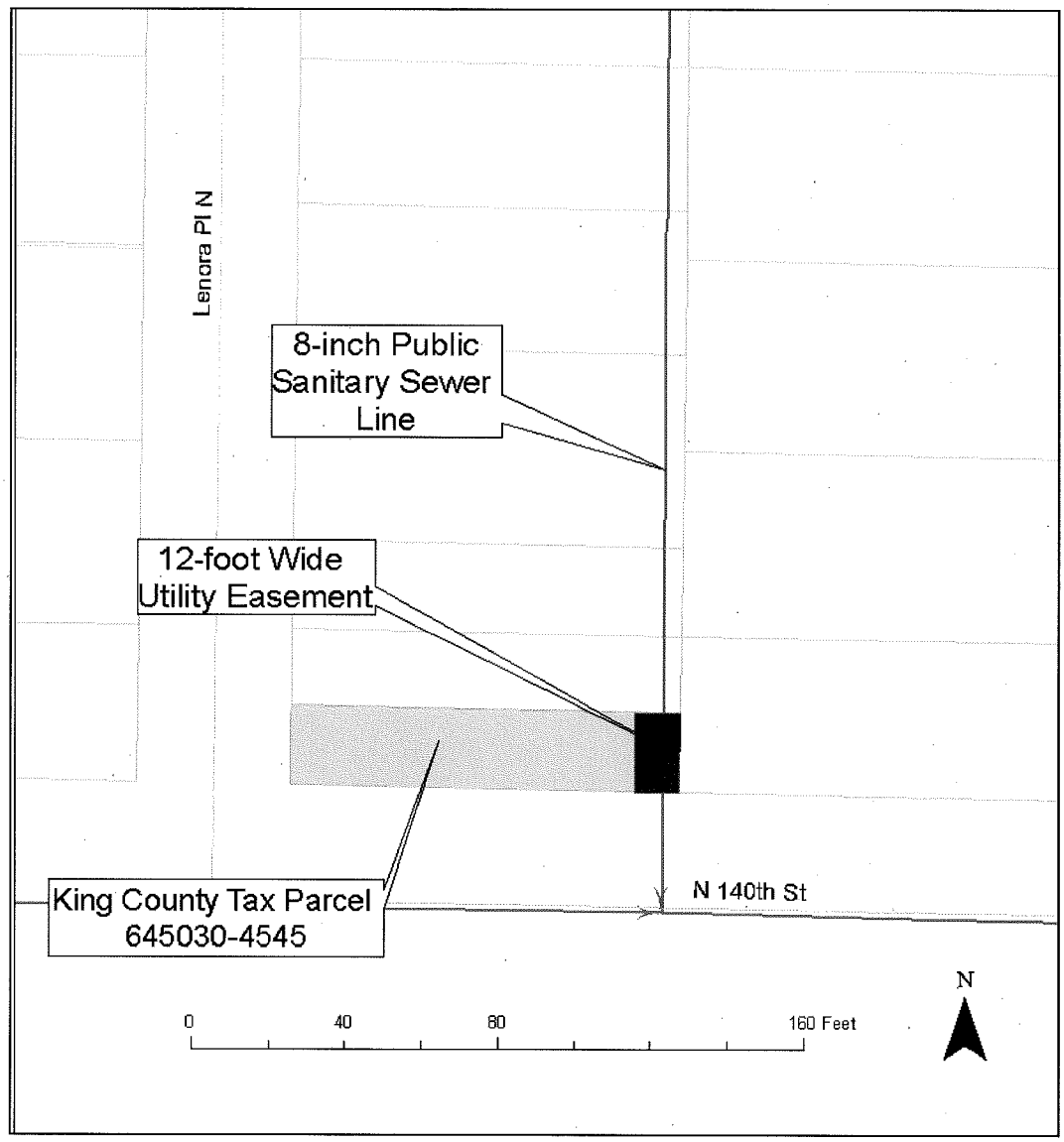
_____

residing at _____

_____

My appointment expires _____

Exhibit A
Quitclaim Deed
Subject to Reserved Easement and Condition Subsequent



Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Pree Carpenter/6-9754	Karl Stickel/4-8085

Legislation Title:
AN ORDINANCE relating to Seattle Public Utilities' property on the northeast corner of North 140th Street and Lenora Place North, Seattle, Washington; declaring fee ownership of this property to be surplus to the City of Seattle's utility needs; authorizing Seattle Public Utilities to sell the surplus property and to execute documents and agreements necessary to complete the sale; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation declares as surplus the property in north Seattle and authorizes its sale to Victor Fleming, the owner of the adjacent property, subject to a payment to SPU for the fair market value of the property and to a reserved easement permitting access by SPU to a City sewer line which crosses a portion of the property.

Background:
A 20-foot wide lot on the northeast corner of North 140th Street and Lenora Place North was acquired in 1958 in connection with North 128th Street Sanitary Sewer. The City acquired easements across the properties to the north and only needed an easement across this property. The owner of this property refused to grant an easement. The City paid $1.00 for the lot and $8.91 in delinquent back taxes. The property was accepted by Ordinance 87863.

A sanitary sewer was constructed in the eastern portion of the parcel. In 2007, a geographic information system inventory of Seattle Public Utilities' property uncovered encroachment by a neighboring property owner. As an alternative to taking legal action to remove the encroachment, SPU determined that the property could be surplussed so long as SPU received an easement and release from any environmental liability. Beginning in 2008, the City entered into negotiations with Victor Fleming, the adjoining neighbor to the north. Victor Fleming has now agreed to purchase the property for a fair market value price of $26,100, subject to the conditions that SPU will reserve an easement for the sewer line and SPU will obtain an environmental release.

This legislation includes a ratified and confirmed clause at the Law Department's recommendation because SPU has signed a purchase and sale agreement and accepted a deposit for the transaction.

Please check one of the following:

__X__ This legislation has financial implications.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Drainage and Wastewater Fund (44010)	Seattle Public Utilities	Other Non-operating revenue	$26,100	
TOTAL			**$26,100**	

Revenue/Reimbursement Notes:
Revenue from sale of property

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
City would not receive $26,100 for sale of property and would have continued legal obligations and risk as owner of the entire parcel when the City's needs are met through an easement.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Seattle Public Utilities could consider selling this property on the open market through a bidding system and receive potentially less return for the property sale.

e) **Is a public hearing required for this legislation?**
Yes. Ordinance process includes the necessary public hearing for sale of surplus utility property. Also, the neighbors within 1,000 feet of the property were notified as part of FAS' process for disposition of simple property.

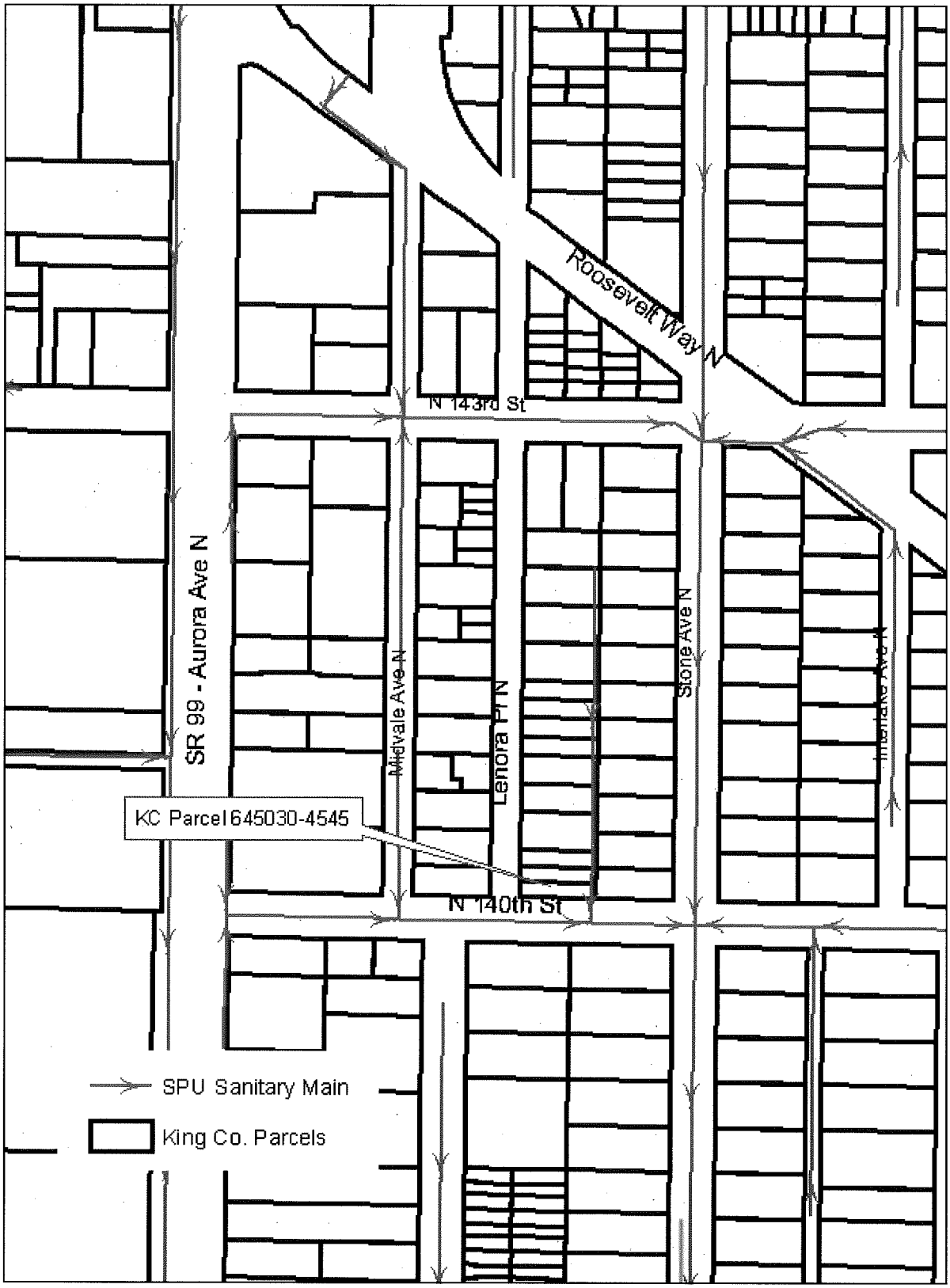
f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
Yes.

g) **Does this legislation affect a piece of property?**
Yes. A map is included as Exhibit A of Attachment 1 (the quit claim deed) to the ordinance.

h) **Other Issues:**
N/A

List attachments to the fiscal note below:
Exhibit A – Vicinity Map

Exhibit A
King County Parcel 645030-4545



0 120 240 480 Feet

This map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.

City of Seattle
Office of the Mayor

July 31, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill authorizing the sale of a narrow lot located at Lenora Place North and North 140th Street in northwest Seattle. While Seattle Public Utilities needs an easement for a sewer line across part of the parcel, the utility does not need fee ownership of the property.

The City bought the 20-foot wide corner lot in 1958 after the owner refused to grant an easement for a sewer line across the eastern edge of the property. Since that time, the City has used the property for a sewer line but an easement will meet Seattle Public Utilities' ongoing needs. In 2008, negotiations to sell the property began with the adjoining property owner to the north. That neighbor would like to buy the property. Seattle Public Utilities will reserve an easement for the sewer line.

Approving this legislation and selling this parcel will protect City infrastructure, remove an encroachment, and return this property to the tax rolls. Thank you for your consideration of this legislation. Should you have questions, please contact Pree Carpenter at 386-9754.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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TDD (206) 615-0476
mike.mcginn@seattle.gov