Ordinance No. 122913

Council Bill No. 116442

AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

CF No. _____

Date Introduced: 1-20-09	
Date 1st Referred: 1-20-09	To: (committee) Finance & Budget
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 2/17/09	Full Council Vote: 7-1
Date Presented to Mayor: 2/18/09	Date Approved: 2-23-09
Date Returned to City Clerk: 2-23-09	Date Published: T.O. ___ F.T. ✓
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: [signature]
Councilmember

Committee Action:

Pass as amended: (2) 4
Y- JG, SC, TB, RM, RC, TR
N- BH

FC 2/17/09 Passed 7-1 (BH) (JD excused)

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

LAW DEPARTMENT

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

January 13, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill, one of two that together settle the City's obligations in the 2008 court ruling, *Lane v. City of Seattle*.

In 2005, plaintiffs Arthur Lane *et al* and the firm of Helsell Fetterman brought suit against the City, claiming that our method for charging Seattle Public Utilities (SPU) customers for the cost of fire hydrants through their water bills was improper. Even before the case was filed, we had changed our method, and now pay for hydrant costs through General Fund tax revenue.

This case effectively pitted the water ratepayers of Seattle against the taxpayers of Seattle, who are almost all the same people. Plaintiffs' attorneys received 20 percent of the damages, and the Water Fund paid them $4.136 million in late 2008 to minimimze interest costs, which were accruing at almost $1500 a day. For almost everyone else, this ruling presents only costs. With this legislation and accompanying refund plan, many customers will see refunds for hydrant charges incurred in 2002-2004. However, most refunds will be smaller than the surcharge we are forced to impose to raise the revenue needed to pay the refunds, attorney's fees and other associated costs.

We have arrived at a plan that will satisfy the court ruling and properly pay our General Fund and Water Fund obligations while minimizing costs, disruption and confusion to the ratepayers. Thank you for your consideration of this legislation. Should you have questions, please contact SPU Economist David Reich at 386-4027.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

CITY CLERK

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

David Reich/DR/mm
SPU Lane Case Surcharge ORD
02-13-09
Version 7

ORDINANCE 122913

AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

WHEREAS, the City of Seattle was engaged in a lawsuit, *Lane v. City of Seattle, et al*, 164 Wn.2d 875, 194 P.3rd 977 (2008) ("*Lane*"), involving payment for fire hydrants; and

WHEREAS, the Amended Order and Final Judgment on Art and Fire Hydrant Claims (the "Order") entered in *Lane* requires Seattle Public Utilities to refund its water ratepayers the amount collected to pay the cost of fire hydrants from March 2002 through December 2004, with interest on each refund at the rate of 12% per annum until payment; and

WHEREAS, anticipated increases in City and State utility taxes on water system revenues, as well as certain other expenses that arise from the implementation of the Order, also are to be paid by the water system; and

WHEREAS, the Water Fund of Seattle Public Utilities does not have sufficient cash reserves to pay these refunds, taxes and expenses; and

WHEREAS, the 2009 adopted City budget must be amended to appropriate funds for these refunds, taxes and expenses; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code section 21.04.420 is amended to read as follows:

SMC 21.04.420 ((~~Reserved~~)) Temporary Surcharge

A temporary surcharge of ten and two tenths percent (10.2%) will be added to the cost of water service supplied to residential and commercial customers for the period March 31, 2009 through December 31, 2010.

Section 2. In order to pay for the necessary costs and expenses described in this ordinance, for which insufficient appropriations were made, the following appropriations in the City's 2009 Adopted Budget are increased as shown:

Fund	**Department**	**Budget Control Level**	**Amount**
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$6,200,000
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$16,500,000

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of February, 2009, and signed by me in open session in authentication of its passage this 17th day of February, 2009.

President _____ of the City Council

Approved by me this 23rd day of February, 2009.

Gregory J. Nickels, Mayor

Filed by me this 23rd day of February, 2009.

City Clerk

(Seal)

C.B. 116442

David Reich/DR
SPU Lane Case Surcharge FISC
02-17-09
Version 6

Form revised February 6, 2008

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	David Reich 386-4027	John McCoy 615-0768

Legislation Title:
AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

- **Summary of the Legislation:**

The proposed legislation (1) imposes a surcharge on all residential and commercial water ratepayers to pay the Water Fund's costs to implement the judgment in *Lane v. City of Seattle, et al*, 164 Wn.2d 875 (2008) (*"Lane"*) and pay associated tax increases and (2) increases 2009 Water Fund appropriations to allow these payments. The surcharge revenue will be used to pay customer refunds and interest, attorney's and plaintiff's fees, future fire hydrant costs not recovered from unincorporated King County and Shoreline.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

The legislation arose from the Amended Order and Final Judgment on Art and Fire Hydrant Claims (the "Order") in *Lane*. It requires SPU to refund to its water customers all fire hydrant costs included in water rates from March 1, 2002 through December 31, 2004 ($12,513,262), plus interest at 12 percent per year until paid. During this period, the cost of public fire hydrants was included in the water rates charged to residential and commercial water customers. The City changed the way it allocated the cost of fire hydrants in 2005 in response to a similar judgment requiring the cost of streetlights to be paid by the General Fund, not the Light Fund.

Under the Order, attorney's fees and plaintiff's expenses also must be paid by SPU. In addition, surcharge revenue will enable SPU to recover future costs of fire hydrants in the City of Shoreline and unincorporated King County, which the court did not require those localities to pay.

Under the Order, the City's General Fund is required to refund $13,553,284 (through 12/5/08) to the Water Fund, with interest accruing at the rate of 3.18% per year until payment is made. Separate legislation has been proposed that would temporarily increase the utility tax rate to recover the amount transferred from the General Fund. The proposed surcharge will provide the funds necessary for SPU to pay this increased tax and the State utility tax and Shoreline's franchise fee on SPU's increased revenues from the surcharge.

SPU plans to recover the above costs by placing a surcharge on water rates for all residential and commercial customers from March 31, 2009 through December 31, 2010 (the surcharge period). The surcharge rate will be 10.2%.

The proposed ordinance increases appropriations for the Water Fund to allow for payment of the above costs.

Please see the attachment to this fiscal note for an overall diagram of the flow of funds intended in this and related legislation.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

__X__ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2009 Appropriation	2010 Anticipated Appropriation
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$6,200,000	$8,200,000
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$16,500,000	$700,000
TOTAL			**n/a**	**n/a**

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes:
The first appropriation of $6.2 million in 2009 and $8.2 million in 2010 allows SPU to pay its increased City utility tax bill, which is raised in a related ordinance. The second allows the Water Fund to pay the customer refunds and interest (approximately $15.2M), to make higher tax and franchise payments to the State and the City of Shoreline associated with the higher billed revenue from the surcharge (approximately $1.2M split between 2009 and 2010), and to pay SPU administrative costs ($0.8M). All *Lane*-related work from multiple SPU branches (Administration, Customer Service) will be charged to an activity in the General Expense BCL for tracking purposes. A budget issue paper (BIP) will be prepared for the 2010 appropriations.

Totals are not shown because the table reflects double appropriations as the same money moves across funds.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the*

issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2009 Revenue	2010 Revenue
Water Fund (43000)	SPU	Retail water sale surcharge	$8,600,000	$12,600,000
TOTAL			**$8,600,000**	**$12,600,000**

Notes:
The revenue sources are all billed residential and commercial water service revenues. The 10.2% percent surcharge will be in effect from March 31, 2009 through December 31, 2010, and bills reflecting the surcharge will appear from March to February, 2011 depending on the billing cycle. The total surcharge is expected to recover most of the $15.2 million in refunds and interest, $4.1 million in attorney's fees, $1.4 million in unrecoverable hydrant costs from Shoreline and unincorporated King County, $1.2 million in state utility taxes and Shoreline franchise fees and $0.8 million in SPU administrative costs less approximately $1,500,000 SPU will provide by reducing costs.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact*: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2009 Positions	2009 FTE	2010 Positions*	2010 FTE*
TOTAL							

** 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.*

Notes:
No additional FTEs will be required.

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

N/A

Spending/Cash Flow*: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding*

spending that will occur in future years should be provided in the Notes section below the table.

Fund Name & #	Department	Budget Control Level*	2009 Expenditures	2010 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: N/A

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

The financial costs of not implementing this legislation would be that SPU would be required to make approximately $23,000,000 in payments and have no way to recover them. This would deplete SPU's cash balances and likely lead the utility to miss its financial target of cash contribution to the CIP, resulting in a larger bond issue in 2010.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

SPU could miss its cash to CIP target, resulting in a larger bond issue in 2010. Rates for 2011 have already been set and would not be sufficient to cover the resulting debt service, resulting in more missed financial targets in 2011.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** (*including long-term implications of the legislation*):

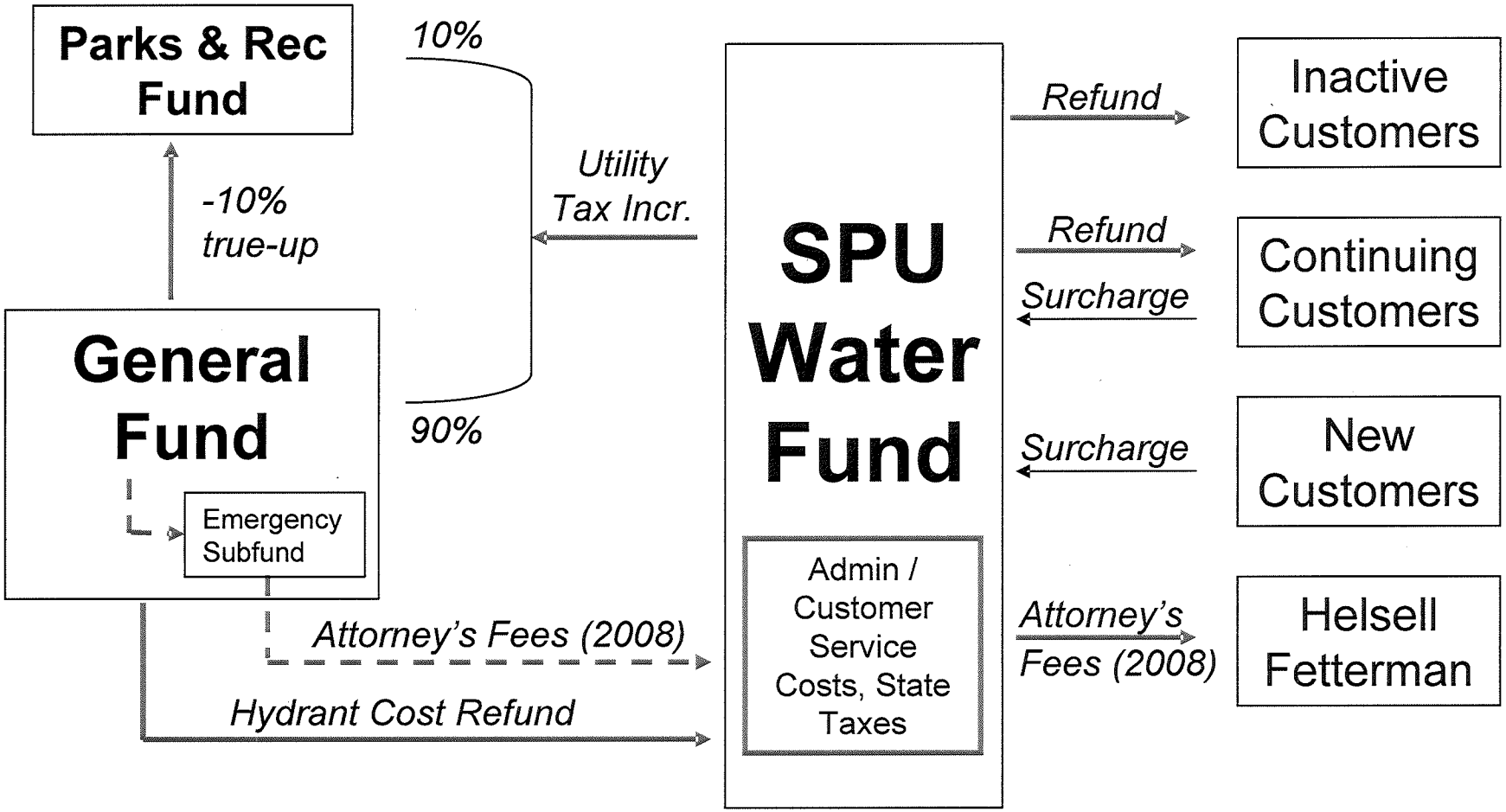
None.

Please list attachments to the fiscal note below:

Attachment 1 – Lane Case Settlement Flow of Funds

Lane Case Settlement Flow of Funds

Items in red require budget appropriation. Dashed lines are cash transfers.



Attachment 1 to SPU Lane Case Surcharge FISC and SPU Lane Case Tax FISC

ORDINANCE _____

AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

WHEREAS, the City of Seattle was engaged in a lawsuit, *Lane v. City of Seattle, et al*, 164 Wn.2d 875, 194 P.3rd 977 (2008) ("*Lane*"), involving payment for fire hydrants; and

WHEREAS, the Amended Order and Final Judgment on Art and Fire Hydrant Claims (the "Order") entered in *Lane* requires Seattle Public Utilities to refund its water ratepayers the amount collected to pay the cost of fire hydrants from March 2002 through December 2004, with interest on each refund at the rate of 12% per annum until payment is made; and

WHEREAS, anticipated increases in City and State utility taxes on water system revenues, as well as certain other expenses that arise from the implementation of the Order, also are to be paid by the water system; and

WHEREAS, the Water Fund of Seattle Public Utilities does not have sufficient cash reserves to pay these refunds, taxes and expenses; and

WHEREAS, the 2009 adopted City budget must be amended to appropriate funds for these refunds, taxes and expenses; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code section 21.04.420 is amended to read as follows:

SMC 21.04.420 ((~~Reserved~~)) Temporary Surcharge

A temporary surcharge of one-hundred and forty-three percent (143%) will be added to the cost of water service supplied to residential and commercial customers for the period March 16, 2009 through May 15, 2009.

CITY CLERK

Section 2. In order to pay for the necessary costs and expenses described in this ordinance, for which insufficient appropriations were made, the following appropriations in the City's 2009 Adopted Budget are increased as shown:

Fund	**Department**	**Budget Control Level**	**Amount**
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$14,400,000
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$17,200,000

CITY CLERK

Section 3. This ordinance shall take effect and be in force immediately upon its approval by the Mayor or, if not approved and returned by the Mayor within ten (10) days after presentation, then on the eleventh (11th) day after its presentation to the Mayor or, if vetoed by the Mayor, then immediately after its passage over his veto.

Passed by the City Council the ____ day of _____, 2009, and signed by me in open session in authentication of its passage this

_____ day of _____, 2009.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2009.

_____
Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2009.

_____
City Clerk

(Seal)

CITY CLERK

Form revised February 6, 2008

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	David Reich 386-4027	John McCoy 615-0768

Legislation Title:
AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

- **Summary of the Legislation:**

The proposed legislation (1) imposes a surcharge on all residential and commercial water ratepayers to pay the Water Fund's costs to implement the judgment in *Lane v. City of Seattle, et al*, 164 Wn.2d 875 (2008) (*"Lane"*) and pay associated tax increases and (2) increases 2009 Water Fund appropriations to allow these payments. The surcharge revenue will be used to pay customer refunds and interest, attorney's and plaintiff's fees, and future fire hydrant costs not recoverable from unincorporated King County and Shoreline.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

The legislation arose from the Amended Order and Final Judgment on Art and Fire Hydrant Claims (the "Order") in *Lane*. It requires SPU to refund to its water customers all fire hydrant costs included in water rates from March 1, 2002 through December 31, 2004 ($12,513,262), plus interest at 12 percent per year until paid. During this period, the cost of public fire hydrants was included in the water rates charged to residential and commercial water customers. The City changed the way it allocated the cost of fire hydrants in 2005 in response to a similar judgment requiring the cost of streetlights to be paid by the General Fund, not the Light Fund.

Under the Order, attorney's fees and plaintiff's expenses also must be paid by SPU. In addition, surcharge revenue will enable SPU to recover future costs of fire hydrants in the City of Shoreline and unincorporated King County, which the court did not require those localities to pay.

Under the Order, the City's General Fund is required to refund $13,553,284 (through 12/5/08) to the Water Fund, with interest accruing at the rate of 3.18% per year until payment is made. Separate legislation has been proposed that would temporarily increase the utility tax rate to recover the amount transferred from the General Fund. The proposed surcharge will provide the funds necessary for SPU to pay this increased tax and the State utility tax and Shoreline's franchise fee on SPU's increased revenues from the surcharge.

CITY CLERK

SPU plans to recover the above costs by placing a surcharge on water rates for all residential and commercial customers from March 16 through May 15, 2009 (the surcharge period). The surcharge rate will be 143%.

The proposed ordinance increases appropriations for the Water Fund to allow for payment of the above costs.

Please see the attachment to this fiscal note for an overall diagram of the flow of funds intended in this and related legislation.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.*)

__X__ **This legislation has financial implications.** (*Please complete all relevant sections that follow.*)

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2009 Appropriation	2010 Anticipated Appropriation
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$14,400,000	$0
Water Fund (43000)	Seattle Public Utilities	General Expense (N000B-WU)	$17,200,000	$0
TOTAL			**n/a**	**n/a**

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes:
The first appropriation of $14.4 million allows SPU to pay its increased City utility tax bill, which is raised in a related ordinance. The second allows the Water Fund to pay the customer refunds and interest (approximately $15.2M), to make higher tax and franchise payments to the State and the City of Shoreline associated with the higher billed revenue from the surcharge (approximately $1.2M), and to pay SPU administrative costs ($0.8M). All *Lane*-related work from multiple SPU branches (Administration, Customer Service) will be charged to an activity in the General Expense BCL for tracking purposes.

Totals are not shown because the table reflects double appropriations as the same money moves across funds.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that*

CITY CLERK

were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2009 Revenue	2010 Revenue
Water Fund (43000)	SPU	Retail water sale surcharge	$22,700,000	$0
TOTAL			**$22,700,000**	**$0**

Notes:
The revenue sources are all billed residential and commercial water service revenues. The 143 percent surcharge will be in effect from March 16, 2009 through May 15, 2009, and bills reflecting the surcharge will appear from March to July depending on the billing cycle. The total surcharge will provide revenue to pay $15.2 million in refunds and interest, $4.1 million in attorney's fees, $1.4 million in unrecoverable hydrant costs from Shoreline and unincorporated King County, $14.4 million in City utility taxes, $1.2 million in state utility taxes and Shoreline franchise fees, and $0.8 million in SPU administrative costs. The surcharge is net of $14.4 million in revenue that the General Fund pays to the Water fund.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact*: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2009 Positions	2009 FTE	2010 Positions*	2010 FTE*
TOTAL							

** 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.*

Notes:
No additional FTEs will be required.

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

N/A

Spending/Cash Flow*: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

CITY CLERK

Fund Name & #	Department	Budget Control Level*	2009 Expenditures	2010 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: N/A

- **<u>What is the financial cost of not implementing the legislation</u>?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

The financial costs of not implementing this legislation would be that SPU would be required to make approximately $23,000,000 in payments and have no way to recover them. This would deplete SPU's cash balances and likely lead the utility to miss its financial target of cash contribution to the CIP, resulting in a larger bond issue in 2010.

- **<u>What are the possible alternatives to the legislation that could achieve the same or similar objectives</u>?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

SPU could miss its cash to CIP target, resulting in a larger bond issue in 2010. Rates for 2011 have already been set and would not be sufficient to cover the resulting debt service, resulting in more missed financial targets in 2011.

- **<u>Is the legislation subject to public hearing requirements</u>:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **<u>Other Issues</u>** (*including long-term implications of the legislation*):

None.

<u>Please list attachments to the fiscal note below</u>:

Attachment 1 – Lane Case Settlement Flow of Funds

CITY CLERK

STATE OF WASHINGTON – KING COUNTY

--ss.

No.

235185
CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122913 ORDINANCE

was published on

02/25/09

The amount of the fee charged for the foregoing publication is the sum of $ 141.50, which amount has been paid in full.

Subscribed and sworn to before me on

02/25/09

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. PATZER
MY COMMISSION EXPIRES
NOTARY
PUBLIC
OCT 24, 2011
STATE OF WASHINGTON

Affidavit of Publication

State of Washington, King County

City of Seattle

ORDINANCE 122913

AN ORDINANCE relating to revenues and expenses of the City's water system in connection with implementing a court order; authorizing a temporary surcharge on water rates to provide revenue to make refunds to water ratepayers and to pay increased taxes and other expenses, amending appropriations for the Water Fund in the City's 2009 Adopted Budget in accordance therewith, and amending Seattle Municipal Code Chapter 21.04 in connection with the surcharge.

WHEREAS, the City of Seattle was engaged in a lawsuit, *Lane v. City of Seattle, et al*, 164 Wn.2d 875, 194 P.3rd 977 (2008) ("*Lane*"), involving payment for fire hydrants; and

WHEREAS, the Amended Order and Final Judgment on Art and Fire Hydrant Claims (the "Order") entered in Lane requires Seattle Public Utilities to refund its water ratepayers the amount collected to pay the cost of fire hydrants from March 2002 through December 2004, with interest on each refund at the rate of 12% per annum until payment; and

WHEREAS, anticipated increases in City and State utility taxes on water system revenues, as well as certain other expenses that arise from the implementation of the Order, also are to be paid by the water system; and

WHEREAS, the Water Fund of Seattle Public Utilities does not have sufficient cash reserves to pay these refunds, taxes and expenses; and

WHEREAS, the 2009 adopted City budget must be amended to appropriate funds for these refunds, taxes and expenses; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code section 21.04.420 is amended to read as follows:

SMC 21.04.420 ((~~Reserved~~)) Temporary Surcharge

A temporary surcharge of ten and two tenths percent (10.2%) will be added to the cost of water service supplied to residential and commercial customers for the period March 31, 2009 through December 31, 2010.

Section 2. In order to pay for the necessary costs and expenses described in this ordinance, for which insufficient appropriations were made, the following appropriations in the City's 2009 Adopted Budget are increased as shown:

Fund -- Department -- Budget Control Level -- Amount

Water Fund (43000) -- Seattle Public Utilities -- General Expense (N000B-WU) -- $6,200,000

Water Fund (43000) -- Seattle Public Utilities -- General Expense (N000B-WU) -- $16,500,000

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of February, 2009, and signed by me in open session in authentication of its passage this 17th day of February, 2009.

Richard Conlin

President of the City Council

Approved by me this 23rd day of February, 2009.

Gregory J. Nickels, Mayor

Filed by me this 23rd day of February, 2009.

(Seal) Judith Pippin

City Clerk

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