

Ordinance No. 123054

Council Bill No. 116586

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to sign and to fulfill the obligations in a Compliance Order By Consent by the United States Environmental Protection Agency for measures to control discharges from the City's Combined Sewer Overflow outfalls.

Related Legislation File:

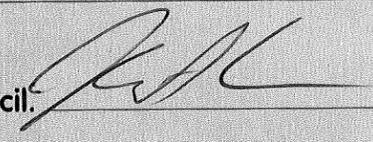
Date Introduced and Referred: 7.13.09	To: (committee): EEMU
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 8-3-09	Date Presented to Mayor: 8-3-09
Date Signed by Mayor: 8-10-09	Date Returned to City Clerk: 8-10-09
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text <input checked="" type="checkbox"/>	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Conlin

Committee Action:

Date	Recommendation	Vote
7/28/09	BO yes, Conlin, Burgess, McIver passed	

This file is complete and ready for presentation to Full Council. 

Full Council Action:

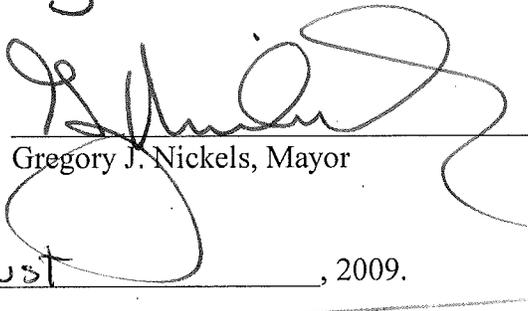
Date	Decision	Vote
8.3.09	Passed BO (Excused: Clark)	

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

4 Passed by the City Council the 3rd day of August, 2009, and
5 signed by me in open session in authentication of its passage this 3rd day of
6 August, 2009.

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10 
11 President _____ of the City Council

12 Approved by me this 10th day of August, 2009.

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14 
15 Gregory J. Nickels, Mayor

16
17 Filed by me this 10th day of August, 2009.

18
19 
20 City Clerk Interim

21 (Seal)

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23
24 ATTACHMENT 1- Request for Information and Compliance Order by Consent (Docket No.
25 CWA-10-2009-0084)



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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:) Docket No. CWA-10-2009-0084
)
)
CITY OF SEATTLE)
) **REQUEST FOR INFORMATION AND**
) **COMPLIANCE ORDER BY CONSENT**
)
Respondent.)

STATUTORY AUTHORITY

1. The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been redelegated to the Director of the Office of Compliance and Enforcement.

FINDINGS

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any



1 pollutant into the waters of the United States by any person except in accordance with other
2 specified sections of the Act, including Section 402, 33 U.S.C. § 1342.

3 3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of
4 EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”)
5 program for the discharge of any pollutant into the waters of the United States upon such specific
6 terms and conditions as the Administrator may prescribe.

7 4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), of the Act, a State
8 may administer its own NPDES permit program for discharges into navigable waters within its
9 jurisdiction upon approval by the Administrator of EPA. EPA has approved the State of
10 Washington’s NPDES permit program. Therefore, within the State of Washington, the
11 Washington Department of Ecology (“WADOE”) issues NPDES permits to point sources
12 pursuant to the Act.

13 5. Although WADOE issues NPDES permits in the State of Washington, EPA
14 retains the authority to take an enforcement action pursuant to Section 309 of the Act, 33 U.S.C.
15 § 1319. *See* 33 U.S.C. § 1342(i).

16 6. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides that the Administrator
17 may issue a compliance order when the Administrator finds that a person is in violation of any
18 permit condition that implements various sections of the Act.

19 7. The City of Seattle (“Respondent”) owns and operates a combined sewer,
20 partially separate sewer, and separate sanitary sewer collection system (“Facility”). The City of
21 Seattle Public Utilities Division is the division of the Respondent responsible for operation and
22 maintenance of the Facility. The Facility is operated remotely at 700 Fifth Avenue in Seattle,
23 Washington. Respondent is a municipality organized under the laws of the State of Washington
24 and, thus, is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).



1 8. NPDES Permit No. WA-003168-2 (“Permit”) was issued to Respondent and
2 became effective on November 30, 2005. The Permit expires on November 30, 2010. The
3 Permit specifies the conditions under which Respondent is authorized to discharge combined
4 sewer overflows (“CSOs”) from 92 permitted CSO outfalls.

5 9. The CSO outfalls that are authorized under the Permit are Outfalls 12, 13, 14, 15,
6 16, 18, 19, 20, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,
7 45, 46, 47, 48, 49, 56, 57, 59, 60, 61, 62, 63, 64, 68, 69, 70, 71, 72, 78, 80, 83, 85, 88, 90, 91, 94,
8 95, 99, 107, 111, 116, 120, 121, 124, 127, 129, 130, 131, 132, 134, 135, 136, 138, 139, 140, 141,
9 144, 145, 146, 147, 148, 150, 151, 152, 161, 165, 168, 169, 170, 171, 174, and 175 (“Outfalls”).

10 10. The Outfalls are “point sources” within the meaning of 40 C.F.R. § 122.2.

11 11. The Outfalls discharge to Lake Washington, Union Bay, Puget Sound, Salmon
12 Bay, Elliott Bay, Duwamish River, Lake Union, Portage Bay, and Salmon Bay Waterway. Lake
13 Washington, Union Bay, Puget Sound, Salmon Bay, Elliott Bay, Duwamish River, Lake Union,
14 Portage Bay, and Salmon Bay Waterway are “navigable waters” within the meaning of Section
15 502(7) of the Act, 33 U.S.C. § 1362(7), and are “waters of the United States” within the
16 meaning of 40 C.F.R. § 122.2.

17 12. From March 17 through March 21, 2007, EPA conducted a NPDES compliance
18 inspection of the Facility (“March 2007 Inspection”).

19 13. Pursuant to Section S7.5 of the Permit, Respondent is prohibited from discharging
20 from the Outfalls during dry weather. Therefore, any discharges from the CSO outfalls during
21 periods of dry weather are violations of Section S7.5 of the Permit.

22 14. Between December 2004 to November 2007, there were twenty (20) dry weather
23 overflows from Respondent’s CSO outfalls. *See* Attachment A. These dry weather overflows
24 constitute violations of Section S7.5 of the Permit.



1 15. During the March 2007 Inspection, EPA also observed a direct sanitary sewer
2 connection discharging intermittently through CSO Outfall 132 into Lake Union. This discharge
3 was in violation of Section S7.5 of the Permit.

4 16. Pursuant to Section S4.C of the Permit, Respondent is “responsible for
5 maintaining safeguards to prevent the discharge of untreated wastes or wastes not treated ...
6 during electrical power failure at the sewage lift stations either by means of alternative power
7 sources, standby generator, retention of inadequately treated wastes, by-pass pumping, or other
8 equally protective measures.”

9 17. On July 22, 2006, November 21, 2006, and November 12, 2007, Respondent had
10 dry weather overflows from pump stations due to power failure. The dry weather outfalls were
11 discharged from Outfalls 127, 64, and 88 respectively. EPA has determined that because there
12 were dry weather overflows as a result of power outages, Respondent failed to maintain adequate
13 safeguards to prevent the discharge of untreated wastes in violation of Section S4.C of the
14 Permit.

15 18. Pursuant to Section S7.1.b of the Permit, Respondent must “inspect and maintain
16 all CSO structures, regulators, pumping stations, and tide gates to minimize CSOs and prevent
17 tidal inflow.”

18 19. During the March 2007 Inspection, EPA observed that the tide gates for Outfalls
19 069, 070, 071, 072, and 111 were allowing tidal inflow to flow into the collection system in
20 violation of Section S7.1.b of the Permit.

21 20. Pursuant to Section S7.6 of the Permit, Respondent must “implement measures to
22 control solid and floatable materials in the CSOs.”

23 21. At the time of the March 2007 Inspection, Respondent had not implemented
24 measures to control solids and floatable material in violation of Section S7.6 of the Permit.



1 each year, except for the first year, when the report will be due on August 31, 2009.

2 27. By August 31, 2009, Respondent shall submit the components of the Pipe
3 Cleaning Quality Assurance/Quality Control ("QA/QC") Program Plan to WADOE and EPA.

4 28. By August 31, 2009, Respondent shall submit to EPA and WADOE a CSO
5 Control Structure Cleaning and Closed Circuit Television (CCTV) Plan. The plan shall identify
6 the locations of CSO control structures, and the inspections and maintenance frequency of each
7 structure.

8 29. By August 31, 2009, Respondent shall submit to EPA and WADOE a
9 Preventative Maintenance Data Analysis Plan. The purpose of this plan is to assign the
10 appropriate maintenance task and recurring interval to all existing preventative maintenance
11 work orders.

12 30. By December 31, 2009, Respondent shall submit to EPA and WADOE a Pump
13 Station Backup Generator Evaluation Report. This evaluation of all pump stations shall include
14 criteria for determining whether a specific pump station should have a permanent on-site
15 generator or an E-Plug connection for a temporary mobile generator. The evaluation will also
16 provide analysis regarding the criteria for determining the number of portable backup electric
17 generators that Respondent should have in its fleet.

18 31. By December 31, 2010, Respondent shall submit to EPA and WADOE a Fats,
19 Oil, and Grease (FOG) Characterization Program Plan. The FOG Characterization Program shall
20 include, but not be limited to, identification of FOG hotspots; identification of Food Service
21 Establishments (FSE) and their relationship to FOG hotspots; and CCTV in FOG hotspots to
22 identify primary FOG issue, such as, source (whether FSE, residential, or multi-family
23 residential), exacerbating maintenance issue (like roots), or structural issue (like pipe sags, off-
24 set joint, or protruding lateral).



1 32. By December 31, 2011, Respondent shall complete installation of E-plugs at
2 wastewater pump stations that currently do not have E-plugs or permanent backup generators.
3 Respondent, at the same time, shall also submit a report to EPA and WADOE detailing the work
4 that was completed.

5 33. By December 31, 2011, Respondent shall have implemented all conclusions of
6 the Pump Station Backup Generator Evaluation Report.

7 34. If EPA does not provide written comments within sixty (60) days of submittal of
8 any of the plans submitted by Respondent, Respondent shall implement the plan as written.

9 35. If EPA does provide written comments on any of the plans submitted by
10 Respondent, Respondent shall incorporate such comments into the submitted plan and shall
11 implement the revised plan as set forth in this Order.

12 36. In the event Respondent is unable to comply with the requirements of this
13 ORDER, Respondents shall, within 10 days of becoming aware of such inability, provide the
14 following:

15 a. A summary of the specific reasons why Respondent is unable to comply
16 with the requirement;

17 b. A summary of all actions taken by Respondent or others that Respondent
18 alleges demonstrates "good faith efforts" to comply with the requirement; and

19 c. The expected date and required activities by which Respondent will
20 comply with the requirement.

21 37. Submittals required by this ORDER shall be submitted to:

22 U.S. Environmental Protection Agency
23 309 Bradley Boulevard, Suite 115
24 Richland, Washington 99352
25 Attn: Robert Grandinetti



1 Washington Department of Ecology
2 Northwest Regional Office
3 3190 160th Avenue SE
4 Bellevue, Washington 98008
5 Attn: Mark Henley

6 **TERMINATION**

7 38. EPA shall terminate this Order upon completion of all work required. EPA shall
8 send a letter to the Respondent terminating the Order.

9 **SANCTIONS**

10 39. Notice is hereby given that violation of, or failure to comply with, any of the
11 provisions of the foregoing ORDER may subject Respondent to (1) civil penalties of up to
12 \$37,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2)
13 administrative penalties of up to \$16,000 per day for each violation, pursuant to Section 309(g)
14 of the Act, 33 U.S.C. § 1319(g); or (3) civil action in federal court for injunctive relief pursuant to
15 Section 309(b) of the Act, 33 U.S.C. § 1319(b).

16 40. Nothing in this ORDER shall be construed to relieve Respondent of the
17 requirements to fully comply with other applicable federal, state, or local laws and requirements.
18 EPA reserves the right to take enforcement action as authorized by law for any violation of this
19 ORDER, and for any future or past violations of the Permit or any other applicable legal
20 requirements.

21 Dated this ____ day of _____, 2009.

22
23 _____
24 Edward J. Kowalski, Director
25 Office of Compliance and Enforcement



1 AGREED AND CONSENTED TO BY:

2

3 City of Seattle

4

5

6

7 By: _____

8 Ray Hoffman
9 Acting Director

9

10

11 Date: _____

12

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14 I, _____, hereby certify that I am the Acting Director and that I have the authority to enter into
15 agreements on behalf of the City of Seattle and to otherwise legally bind City of Seattle. I
16 hereby acknowledge that I have freely and voluntarily consented to and signed this Order on
17 behalf of the City of Seattle after obtaining advice of counsel.

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ATTACHMENT A

City of Seattle's Dry Weather Overflows

Date	CSO Outfall	Volume (Gal)
12/23/2004	41B	60
12/24/2004	41B	60
12/10/2004	88	668
5/5/2005	172	3,779
5/24/2005	172	54,287
5/25/2005	172	123,461
5/16/2006	28	162
5/21/2006	28	340
7/19/2006	127	1,400
7/22/2006 ^a	127	1,538
9/26/2006	127	8,100
10/12/2006	171	15,000
11/21/2006 ^a	64	104,397
11/30/2006	47	329
12/28/2006	45A	10,831
1/8/2007 ^a	25	50,000
1/24/2007	35	125,000
3/6/2007	46	26,000
5/23/2007	150	500
11/12/2007 ^a	88	3,564



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	Frank McDonald 6-1838	John McCoy 5-0768

Legislation Title:

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to sign and to fulfill the obligations in a Compliance Order By Consent by the United States Environmental Protection Agency for measures to control discharges from the City's Combined Sewer Overflow outfalls.

• **Summary of the Legislation:**

This legislation would authorize the Director of Seattle Public Utilities to sign and to fulfill the obligations in a Compliance Order By Consent by the United States Environmental Protection Agency.

• **Background:**

In 2005, the Washington Department of Ecology (Ecology) issued the City a permit under the National Pollutant Discharge Elimination System (NPDES) specifying the conditions under which the City is authorized to discharge combined sewage overflows from 92 permitted combined sewer overflow (CSO) outfalls located in Seattle. Authority to issue NPDES Permits is delegated to Ecology by the United States Environmental Protection Agency (EPA). Last March EPA conducted an audit of the City's NPDES Permit, determining areas where the City is in violation of the permit requirements. The EPA issued a Compliance Order By Consent and Request For Information (Compliance Order), pursuant to Sections 308 and 309(a) of the federal Clean Water Act, which documents its findings and conclusions. This legislation authorizes SPU to fulfill its obligations under the Compliance Order.

• *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.)*

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
TOTAL				



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

Notes: This legislation will result in no new appropriations. However, reporting requirements associated with this agreement will cost approximately \$3.2 million per year in 2009 and 2010, work that is already budgeted in the Drainage & Wastewater Fund's Other Operating (N400B) BCL. Any further budget and FTE adjustments necessary to carry out this order will be enacted through regular budget and rates processes.

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
TOTAL				

Notes: Not applicable.

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							

** 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.*

Notes: The legislation creates no new FTEs. However, the Compliance Order requirement for a Fats Oil Grease ("FOG") Abatement Program may require additional inspectors by 2011. Any such changes will be made in the regular budget and rates process.

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

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: Not applicable.

- **What is the financial cost of not implementing the legislation?**
 Violation of, or failure to comply with, any of the provisions of the Compliance Order may subject Seattle Public Utilities to: (1) civil penalties of up to \$37,500 per day of violation; (2) administrative penalties of up to \$16,000 per day for each violation; or (3) civil action in federal court for injunctive relief.
- **Does this legislation affect any departments besides the originating department?**
 No.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
 None.
- **Is the legislation subject to public hearing requirements:**
 No.
- **Other Issues** (including long-term implications of the legislation):
 In addition to reporting requirements in 2009 and 2010, the Compliance Order requires SPU to commit to significant capital and O&M expenditures starting in 2011. Estimated impacts include:
 - \$2.5 million in annual CIP spending for CSO weir height adjustments through 2015 (already in adopted capital budget).
 - \$40,000 in average annual O&M through 2012 and \$200,000 in average annual CIP through 2014 for observation and documentation of potential floatable discharges from CSO outfalls.
 - \$250,000 in average annual O&M (in perpetuity) related to revised combined sewer control structures inspections and cleaning strategies.
 - \$475,000 in annual O&M (in perpetuity) related to revised combined sewer pipe inspections and cleaning strategies.
 - \$200,000 in average annual CIP for 2011 through 2015 for the installation of five new backup electric generators.

Please list attachments to the fiscal note below:



From: Laura Wishik
To: Moorehead, Meg
Date: 7/9/2009 12:48 PM
Subject: Re: Compliance Order C.B. 116586

Yes.
--Laura

Laura Wishik
Director, Environmental Protection Section
Seattle City Attorney's Office
P.O. Box 94769
Seattle, WA 98124-4769
Tel: (206) 684-8199

"Injustice anywhere is injustice everywhere."
--Martin Luther King, Jr.

>>> Meg Moorehead 7/9/2009 12:02 PM >>>

Because of an old e-version of the ordinance was submitted by SPU, Monday's referral calendar had the wrong title for the SPU EPA Compliance Order ordinance. A new C.B. # 116586 (attached) with the correct title will be introduced and referred on Monday. It is exactly the same as the hard-copy version 2 of C.B. 116576 that you approved earlier.

Does this look okay to you?

STATE OF WASHINGTON – KING COUNTY

--SS.

243264
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

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.

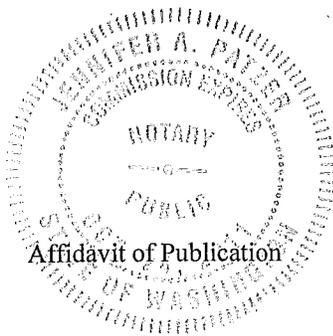
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123053-123056

was published on

08/12/09

The amount of the fee charged for the foregoing publication is the sum of \$ 70.75, which amount has been paid in full.



[Handwritten Signature]

Subscribed and sworn to before me on

08/12/09

[Handwritten Signature]

Notary public for the State of Washington,
residing in Seattle

123053
123056 (4)

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 3, 2009, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123056

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 123055

AN ORDINANCE relating to financing and refinancing of the drainage and wastewater system of The City of Seattle; adopting a system or plan of additions and better-

ments to and extensions of the drainage and wastewater system; authorizing the issuance and sale of drainage and wastewater revenue bonds, in one or more series, for the purposes of paying all or part of the cost of carrying out that system or plan, providing for the reserve requirement for the bonds, and issuing and selling the bonds; authorizing the execution of certain agreements relating thereto; providing for the terms, conditions, covenants and manner of sale of the bonds; describing the lien of the bonds; creating certain accounts of the City relating to the bonds; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123054

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to sign and to fulfill the obligations in a Compliance Order By Consent by the United States Environmental Protection Agency for measures to control discharges from the City's Combined Sewer Overflow outfalls.

ORDINANCE NO. 123053

AN ORDINANCE relating to Interlaken Park; authorizing an exchange of property to accomplish a lot boundary adjustment to correct an encroachment onto Interlaken Park; and finding that such exchange of property meets the requirements of Ordinance 118477, which adopted Initiative 42.

Date of publication in the Seattle Daily Journal of Commerce, August 12, 2009.

8/12(243264)