

Ordinance No. 123710

Council Bill No. 117255

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

Related Legislation File:

Date Introduced and Referred: <u>Aug. 8, 2011</u>	To: (committee): <u>Seattle Public Utilities and Neighborhoods</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>9.19.11</u>	Date Presented to Mayor: <u>9.20.11</u>
Date Signed by Mayor: <u>Sept. 28, 2011</u>	Date Returned to City Clerk: <u>Sept. 28, 2011</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text	
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: [Signature]

Committee Action:

Date	Recommendation	Vote
<u>9/13/11</u>		<u>Yes 1-0 (MOB)</u>

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

Full Council Action:

Date	Decision	Vote
<u>9.19.11</u>	<u>Passed</u>	<u>9-0</u>

Law Department

ORDINANCE 123710

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AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

WHEREAS, the City of Seattle, through Seattle Public Utilities, has operated a water system within City of Shoreline rights-of-way, including retail water service to a portion of the City of Shoreline, under a non-exclusive franchise agreement effective December 8, 1999, which had been previously extended and expired June 30, 2011; and

WHEREAS, the City of Shoreline and Seattle Public Utilities desire to initiate a new franchise for the continued operation of the water system for up to nine years and the City of Shoreline has granted such pursuant to Ordinance No. 606, adopted June 20, 2011;
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities is authorized to accept the new franchise agreement, a copy of which is included as Attachment 1, which the City of Shoreline granted pursuant to Ordinance No. 606, which extends the franchise for a water system in the City of Shoreline for up to nine years through June 30, 2020.

Section 2. Any act consistent with the authority of this ordinance that is taken after passage of this ordinance, but prior to its effective date is hereby ratified and confirmed.



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

4 Passed by the City Council the 19th day of September, 2011, and
5 signed by me in open session in authentication of its passage this
6 19th day of September, 2011.

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10 President _____ of the City Council

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12 Approved by me this 28th day of September, 2011.

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15 Michael McGinn, Mayor

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17 Filed by me this 28th day of September, 2011.

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20 Monica Martinez Simmons, City Clerk

21 (Seal)

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25 ATTACHMENT 1 – Water System Franchise, City of Shoreline Ordinance No. 606



1.5 Person: An entity or natural person.

1.6 Revenue: Income derived by SPU only from the sale of retail metered water to customers whose connections are within the City of Shoreline. Revenue shall not include: late fees; any type of connection charges, general facilities charges, or local facilities charges; grants; contributed assets (CIAC); loans; income from legal settlements not related to water sales; income from cellular antenna leases; income from real property or real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement (WSEA) fees and charges; equipment and materials charges; income from the sale of bidders documents and plan sets; or any other fees and charges.

1.7 Right-of-Way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

1.9 Relocation: As used herein shall mean to protect, support, temporarily disconnect, relocate or remove SPU facilities in the City right-of-way.

1.10 SPU: Seattle Public Utilities, a department of the City of Seattle, a municipal corporation, and its respective successors and assigns.

2. Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to SPU, its successors and assigns, subject to the terms and conditions hereinafter set forth, a Franchise beginning on the effective date of this Ordinance.

2.2 This Franchise shall grant SPU the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, maintain, replace, and use all necessary equipment and Facilities for a public water system, in, under, on, across, over, through, along or below the public Right-of-Way located in the City of Shoreline.

2.3 This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-Way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, Relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way or other public properties of every type and description.



1 3. **Franchise Term.** The initial term of the Franchise granted hereunder shall be three (3)
2 years commencing on the date of acceptance by SPU. At the expiration of the initial term
3 and of each succeeding term, this franchise shall be extended for two additional terms of
4 three (3) years each, unless either party gives the other written notice of intent to terminate,
5 which notice may be given without cause, but shall be given at least six (6) months before the
6 expiration date.

7 4. **Consideration.** In consideration of the rights granted to SPU by this Agreement, SPU
8 agrees to comply with the terms and conditions of operation within the City rights-of-way set
9 forth in this agreement and, as additional consideration, SPU agrees:

10 4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenue
11 generated from its water system operations within the City.

12 4.1.1 This Franchise fee shall be collected beginning upon the effective date of
13 this Franchise.

14 4.1.2 Proceeds of the Franchise fee collected shall be distributed to the City no
15 later than 30 days after the end of each calendar quarter (quarters ending at
16 the end of March, June, September and December).

17 4.2 Should SPU be prevented by judicial or legislative action from collecting a
18 Franchise fee on all or a part of the Revenues, SPU shall be excused from the
19 collection and distribution of that portion of the Franchise fee.

20 4.3 Should a court of competent jurisdiction declare, or a change in law make the
21 Franchise fee to be collected on behalf of the City invalid, in whole or in part, or
22 should a court of competent jurisdiction hold that the collection of the Franchise
23 fee by SPU is in violation of a pre-existing contractual obligation of SPU, then
24 SPU's obligation to collect and distribute a Franchise fee to the City under this
25 Section shall be terminated in accordance with and to the degree required to
26 comply with such court action.

27 4.4 SPU agrees that the franchise fee established by this Section is appropriate and
28 that SPU will not be a party to or otherwise support legal or legislative action
intended to result in judicial determinations or legislative action referred to in
Sections 4.2 and 4.3 hereof.

5. **City Ordinances and Regulations.** Nothing herein shall be deemed to direct or restrict
the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the
rights-of-way including the State Building Code and any reasonable ordinance made in the
exercise of its police powers in the interest of public safety and for the welfare of the public.
The City shall have the authority at all times to control, by appropriate regulations, the
general location and, elevation of new or relocated Facilities of SPU that are part of a public
project located within the City Right-of-way needed for the City's own use of the Right-of-
Way, which may include coordination with other utilities in the Right-of-Way. SPU shall
promptly conform with all such regulations at no charge or expense to the City, unless



1 compliance would cause SPU to violate other requirements of law. Such regulations shall not
2 unreasonably affect or modify any portion of this agreement without the approval of SPU.
3 Should SPU and City not be able to agree, they shall resolve the differences through Section
4 16 - Alternate Dispute Resolution.

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6. **Right-of-Way Management.**

6.1 Permits Required. Whenever SPU excavates in any Right-of-Way for the purpose
of installation, construction, repair, maintenance, or Relocation of its Facilities, it
shall apply to the City for a permit to do so in accord with the ordinances and
regulations of the City requiring permits to operate in the Right-of-Way, and
consistent with Section 6.6 of this Franchise. In no case shall any such work
commence within any Right-of-Way without a permit, except as otherwise
provided in this Franchise.

6.2 Abandonment of SPU's Facilities. No Facilities laid, installed, constructed, or
maintained in the Right-of-Way by SPU, except for surface facilities or mains that
are 12 inches or smaller, may be abandoned by SPU without the prior written
consent of the Director of a plan, which will not be unreasonably withheld. All
necessary permits must be obtained prior to such work. Any abandoned SPU
surface facility shall be removed by SPU within a reasonable time.

6.3 Restoration after Construction.

6.3.1 SPU shall, after any installation, construction, Relocation, maintenance, or
repair of Facilities within the Franchise area, restore the Right-of-Way to at
least the condition the same was in immediately prior to any such
abandonment, installation, construction, Relocation, maintenance or repair.
Restoration shall not require an improvement to a condition that
substantially exceeds the condition prior to SPU's activities. All concrete
encased monuments, which have been disturbed or displaced by such work,
shall be restored pursuant to all federal, state and local standards and
specifications. SPU agrees to promptly complete all restoration work and
to promptly repair any damage caused by such work at its sole cost and
expense.

6.3.2 If it is determined that SPU has failed to restore the Right-of-Way in
accordance with this Section, the City shall provide SPU with written
notice including a description of actions the City believes necessary to
restore the Right-of-Way. Any dispute over failure to restore shall be
resolved in compliance with Section 16 - Alternative Dispute Resolution.

6.4 Bonding Requirement. SPU, as a public agency, is not required to comply with the
City's standard bonding requirement for working in the City's Right-of-Way.

6.5 Emergency Work, Permit Waiver. In the event of any emergency where any SPU
Facilities located in the Right-of-Way are broken or damaged, or if SPU's



1 construction area for their Facilities is in such a condition as to place the health or
2 safety of any person or property in imminent danger, SPU shall immediately take
3 any necessary emergency measures to repair, replace or remove its Facilities
4 without first applying for and obtaining a permit as required by this Franchise.
5 However, this emergency provision shall not relieve SPU from later obtaining any
6 necessary permits for the emergency work. SPU shall apply for the permits that
7 would have been required and obtained prior to the emergency as soon as practical
8 given the nature and duration of the emergency.

6.6 Excavations.

6.6.1 SPU shall secure City rights-of-way permits to work in the public rights-of-
7 way, including but not limited to Capital Improvements Program projects,
8 water main repairs, and work involving excavation in the Right-of-Way.
9 This would include disruption of all motorized and non-motorized travel
10 portions of the Right-of-Way, including all surface water drainage
11 facilities. For all routine operations in the public rights-of-way, such as
12 flushing, painting hydrants, vegetation maintenance and work within
13 existing chambers, no permit will be required.

6.6.2 If either party plans to excavate in the public rights-of-way, then upon a
14 written request from the other, that party may share excavation upon
15 mutually agreeable terms and conditions.

6.7 Safety.

6.7.1 SPU, in accordance with applicable federal, state, and local health and
17 safety rules and regulations shall, at all times, employ ordinary care in the
18 installation, maintenance, operation, and repair of Facilities utilizing
19 methods and devices commonly accepted for public water utility
20 operations to prevent failures and accidents that are likely to cause
21 damage, injury, or nuisance to persons or property and shall accomplish
22 work in a manner that will minimize interference with traffic and use of
23 adjoining property.

6.7.2 All of SPU's Facilities in the Right-of-Way shall be constructed and
24 maintained in a safe and operational condition.

6.8 Dangerous Conditions, Authority for City to Abate.

6.8.1 Whenever Facilities or the operations of SPU cause or contribute to a
25 condition that reasonably appears to endanger any person or substantially
26 impair the use or lateral support of the adjoining Right-of-Way, public or
27 private property, SPU, at no charge or expense to the City, will take
28 actions to resolve the conflict or remove the endangerment within a



reasonable time period. The resolution of the dangerous condition requires approval of SPU Manager and the Director before the work begins.

6.8.2 In the event the Grantee fails or refuses to promptly take action as required in Section 6.8.1, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such reasonable actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the City for its reasonable costs.

6.9 Relocation of System Facilities.

6.9.1 In accordance with the following schedule, SPU agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Right-of-Way its Facilities when so required by the City, to accommodate the completion of or as a result of a public project. As used in this Section, the term "public project" is a project included in the City's adopted six-year Capital Improvement Program as amended annually by the City Council.

<u>Age of SPU Facility</u>	<u>% of Relocation by City</u>	<u>% of Relocation by SPU</u>
5 years or less	100%	0%
5-10 years	50%	50%
10 + years	0%	100%

6.9.2 This Relocation requirement shall not apply to pipelines 24 inches in diameter and larger that cannot reasonably be supported, disconnected, relocated or removed. If these Facilities are required to be moved in order to accommodate the completion of or as a result of a public project, the City shall pay 50% of the Relocation cost.

6.9.3 All Facilities utilized for providing water service within SPU's service area and within the Right-of-Way shall be considered owned, operated and maintained by SPU.

6.9.4 If the City determines that a public project necessitates the Relocation or removal of SPU's existing Facilities, the City shall:

6.9.4.1 As soon as possible, but not less than one hundred eighty (180) days prior to the commencement of such project, provide SPU with written notice requiring such Relocation or removal; and

6.9.4.2 Provide SPU with copies of any plans and specifications pertinent to the requested Relocation or removal and a proposed temporary or permanent Relocation for SPU's Facilities.



1 6.9.4.3 After receipt of such notice and such plans and specifications, SPU
2 shall complete Relocation of its Facilities at least ten (10) days
3 prior to commencement of the project according to the above cost
4 sharing described in this Section.

5 6.9.5 SPU may, after receipt of written notice requesting Relocation or removal
6 of its Facilities, submit to the City written alternatives to such Relocation.
7 The City shall evaluate such alternatives and advise SPU in writing if any
8 of the alternatives are suitable to accommodate the work that necessitates
9 the Relocation of the Facilities. If so requested by either party, SPU or
10 City shall submit additional information to assist the other party in making
11 such evaluation. The City shall give each alternative proposed by SPU full
12 and fair consideration and, if appropriate, state why SPU's proposed
13 alternatives are not satisfactory. In the event the City and SPU ultimately
14 do not agree on a reasonable alternative, SPU and City shall attempt to
15 resolve the Relocation through Section 16 - Alternate Dispute Resolution.

16 6.9.6. If the City determines that SPU's Facilities must be protected, supported,
17 temporarily or permanently disconnected, relocated or removed from the
18 Right-of-Way, City shall reimburse SPU all costs as submitted and verified
19 by SPU within forty-five (45) days of completion of the Relocation or
20 removal by SPU in accord with paragraph 6.9.1 and 6.9.2 herein.

21 6.9.7 The provisions of this Section 6.9 shall in no manner preclude or restrict
22 SPU from making any arrangements it may deem appropriate when
23 responding to a request for Relocation of its Facilities by any person or
24 entity other than the City.

25 7. Planning Coordination.

26 7.1 Growth Management. The parties agree to participate in the development of, and
27 reasonable updates to the relevant portions of each other's planning documents:

28 7.1.1 For SPU's service within the City limits, SPU will participate in a
29 cooperative effort with the City of Shoreline to develop a Comprehensive
30 Plan Utilities Element that meets the requirements described in RCW
31 36.70A.070(4). SPU will participate in a cooperative effort with the City to
32 ensure that the Utilities Element of Shoreline's Comprehensive plan is
33 accurate as it relates to SPU's operations and is updated to ensure continued
34 relevance at reasonable intervals.

35 7.1.2 SPU shall submit information related to the general location, proposed
36 location, and capacity of all existing and proposed Facilities within the City
37 as requested by the Director within a reasonable time, not exceeding sixty
38 (60) days from receipt of a written request for such information, provided



1 that such information is in SPU's possession, or can be reasonably
2 developed from the information in SPU's possession.

3 7.1.3 SPU will update information provided to the City under this Section
4 whenever there are major changes in SPU's system plans for Shoreline.

5 7.1.4 The City will provide information relevant to SPU's operations within a
6 reasonable period of written request to assist SPU in the development or
7 update of its Comprehensive Water System Plan, provided that such
8 information is in the City's possession, or can be reasonably developed
9 from the information in the City's possession.

10 7.2 System Development Information. SPU and the City will each assign a
11 representative whose responsibility shall be to coordinate planning for CIP
12 projects including those that involve undergrounding. At a minimum, such
13 coordination shall include the following:

14 7.2.1 By February 1st of each year, SPU shall provide the City with a schedule
15 of its planned capital improvements, which may affect the Right-of-Way
16 for that year;

17 7.2.2 By February 1st of each year, the City shall provide SPU with a schedule of
18 its planned capital improvements which may affect the Right-of-Way for
19 that year including but not limited to street overlays and repairs, storm
20 drainage improvements and construction, and all other Right-of-Way
21 activities that could affect SPU capital improvements and infrastructure.

22 7.2.3 SPU shall meet with the City, other franchisees and users of the
23 Right-of-Way as necessary to schedule and coordinate construction.

24 7.2.4 All construction locations, activities, and schedules shall be coordinated to
25 minimize public inconvenience, disruption, or damages.

26 7.3 Emergency Operations. The City and SPU agree to cooperate in the planning and
27 implementation of emergency operations response procedures.

28 7.4 Maps and Records. Without charge to either party, both parties agree to provide
each other with as-built plans, maps, and records that show the vertical and
horizontal location of its Facilities within the Right-of-Way, measured from the
center line of the Right-of-Way, using a minimum scale of one inch equals one
hundred feet (1"=100'). Maps shall be provided in Geographical Information
System (GIS) or other digital electronic format used by the City or SPU, and upon
request, in hard copy plan form used by City or SPU. This information shall be
provided between one hundred twenty (120) and one hundred eighty (180) days of
the effective date of this Ordinance and shall be updated upon reasonable request
by the either party. The City and SPU agree to maintain confidentiality of any



and all information received to the extent necessary to meet Homeland Security objectives and in accordance with public records laws.

8. Equivalent Service Quality. SPU shall provide the same services to customers in the City that is provided to all other customers with similar circumstances within SPU's service territory. SPU shall at all times comply with the minimum regulatory standards presently in effect or as may be amended for the operation of a public water utility.

9. Indemnification.

9.1 SPU hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards, attorneys' fees, or liability to any person arising from the negligent or intentional acts or omissions of SPU, its agents, servants, officers or employees in performing activities or failing to perform activities authorized by this Franchise, and including those claims arising against the City by virtue of SPU's exercise of rights granted herein. It is further specifically and expressly understood that the indemnification provided herein constitutes SPU's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the acts or omissions of SPU, its agents, servants, officers or employees except for claims for injuries and damages caused by the sole negligence of the City. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, SPU shall satisfy the same. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.

9.2 Inspection or acceptance by the City of any work performed by SPU at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be settled prior to the culmination of any litigation or the institution of any litigation.

9.3 In the event SPU refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and SPU's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of SPU, then SPU shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.



1 9.4 Should a court of competent jurisdiction determine that this Franchise is subject to
2 RCW 4.24.115, then, in the event of liability for damages arising out of bodily
3 injury to persons or damages to property caused by or resulting from the
4 concurrent negligence of SPU and the City, its officers, employees and agents,
5 SPU's liability hereunder shall be only to the extent of SPU's negligence. It is
6 further specifically and expressly understood that the indemnification provided
7 herein constitutes SPU's waiver of immunity under Industrial Insurance, Title 51
8 RCW, solely for the purposes of this indemnification. This waiver has been
9 mutually negotiated by the parties. The provisions of this Section shall survive the
10 expiration or termination of this Franchise.

11 9.5 The City hereby releases and agrees to indemnify and hold harmless SPU, its
12 elected officials, employees, agents, and volunteers from any and all claims, costs,
13 judgments, awards or liability to any person arising from SPU's compliance with
14 Section 4.1 of this Agreement. This indemnification is contingent upon SPU's
15 compliance with Section 4.4 hereof.

16 9.6 The City hereby releases and agrees to indemnify, defend and hold harmless SPU,
17 its elected officials, employees, agents, and volunteers from any and all claims,
18 costs, judgments, awards or liability to any person arising from City's decision to
19 issue development permits based on accurate information on fire flow and water
20 availability provided by SPU or the City's enforcement of the International Fire
21 Code.

22 10. Insurance.

23 10.1 SPU shall procure and maintain for the duration of the Franchise, insurance
24 against claims for injuries to persons or damages to property which may arise
25 from or in connection with the exercise of the rights, privileges and authority
26 granted hereunder to SPU, its agents, representatives or employees. Prior to
27 adoption of this franchise ordinance, SPU shall provide an insurance
28 endorsement, naming the City as an additional insured, and such endorsement
shall evidence a policy of insurance that includes:

10.1.1 Automobile Liability insurance for owned, non-owned and hired vehicles
with limits no less than \$2,000,000 Combined Single Limit per accident for
bodily injury and property damage; and

10.1.2 Commercial General Liability insurance, written on an occurrence basis
with limits no less than \$5,000,000 combined single limit per occurrence
and \$10,000,000 aggregate for personal injury, bodily injury and property
damage. Coverage shall include but not be limited to: blanket contractual;
products and completed operations; broad form property damage;
explosion, collapse and underground (XCU); and employer's liability.



1 10.1.3 Excess Liability in an amount of \$5,000,000 each occurrence and
2 \$5,000,000 aggregate limit. The City shall be named as an additional
insured on the Excess Liability insurance policy.

3 10.2 The coverage shall contain no special limitations on the scope of protection
4 afforded to the City, its officers, officials, or employees. In addition, the
5 insurance policy shall contain a clause stating that coverage shall apply separately
6 to each insured against whom claim is made or suit is brought, except with respect
7 to the limits of the insurer's liability. SPU's insurance shall be primary. Any
8 insurance, self insurance, or insurance pool coverage maintained by the City shall
be excess of SPU's insurance and shall not contribute with it. Coverage shall not
be suspended, voided, canceled by either party, reduced in coverage or in limits
except after thirty (30) days prior written notice has been given to the City.

9 10.3 SPU shall require all its subcontractors to carry insurance consistent with this
10 Section 10, and shall provide evidence of such insurance to the City upon request

11 10.4 SPU may satisfy the requirements of this Section by a self-insurance program.

12 11. Enforcement.

13 11.1 Both the City and SPU reserve the right to revoke and terminate this Franchise in
14 the event of a substantial violation or breach of its terms and conditions.

15 11.2 A substantial violation or breach by City or by SPU shall include, but shall not be
16 limited to, the following:

17 11.2.1 An uncured violation of any material provision of this Franchise or any
18 material rule, order or regulation of the City made pursuant to its power to
protect the public health, safety and welfare;

19 11.2.2 An intentional evasion or knowing attempt by either party to evade any
20 material provision of this Franchise or practice of any fraud or deceit upon
21 SPU or upon the City;

22 11.2.3 Failure to provide the services specified in Sections 6.9 and 8 of the
Franchise;

23 11.2.4 Misrepresentation of material fact during negotiations relating to this
24 Franchise or the implementation thereof;

25 11.2.5 An uncured failure to pay fees associated with this Franchise.

26
27 11.3 No violation or breach shall occur which is without fault of SPU or the City, or
28 which is as a result of circumstances beyond SPU's or the City's reasonable



control. Neither SPU, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees.

11.4 Except in the case of termination pursuant to Paragraph 11.2.5 of this Section, prior to any termination or revocation, the City, or SPU, shall provide the other with detailed written notice of any substantial violation or material breach upon which it proposes to take action. The party who is allegedly in breach shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the City or SPU reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default and may terminate this Agreement in accord with this Section, which declaration must be in writing.

11.5 The City or SPU may, in its discretion, provide in writing additional time to remedy any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.

11.6 Either party may remedy any material violation existing for a period of greater than 60 days (or greater than any additional time allowed in writing according to section 11.5 above) to protect public health, safety or property at the violating party's expense.

12. Survival. All of the provisions, conditions and requirements of Sections 6.3 Abandonment Of SPU's Facilities, 6.4 Restoration After Construction, 6.6 Excavation, 6.8 Dangerous Conditions, Authority For City To Abate, 6.9 Relocation Of System Facilities, and 9 Indemnification of this Franchise shall be in addition to any and all other obligations and liabilities SPU may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to SPU for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of SPU and all privileges, as well as all obligations and liabilities of SPU shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever SPU is named herein.

13. Assignment. This franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary merger, consolidation or otherwise, without the written approval of the City which shall not be unreasonably withheld. Any costs associated with the City's review of any transfer proposed by the Grantee shall be reimbursed to the City by SPU.

13.1 Except as otherwise provided herein, SPU shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of SPU's utility. Every change, transfer, or acquisition of control of SPU's utility shall cause a



1 review of the proposed transfer. In the event that the City denies its consent and such
2 change, transfer or acquisition of control has been effected, the Franchise is terminated.

3 14. Notice. Any notice or information required or permitted to be given to the parties under this
4 Franchise may be sent to the following addresses unless otherwise specified:

5 Seattle Public Utilities Director
6 Seattle Municipal Tower
7 700 Fifth Avenue, Ste. 4900
8 PO Box 34018
Seattle, WA 98124-4018
Phone: (206) 684-5851
Fax: (206) 684-4631

Director of Public Works
City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133-4921
Phone: (206) 801-2700
Fax: (206) 546-7868

9 15. Non-Waiver. The failure of either party to enforce any breach or violation by the other
10 party of any provision of this Franchise shall not be deemed to be a waiver or a continuing
11 waiver by the non-breaching party of any subsequent breach or violation of the same or any
other provision of this Franchise.

12 16. Alternate Dispute Resolution. If the parties are unable to resolve disputes arising from
13 the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties
14 shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the
parties. Unless otherwise agreed between the parties or determined herein, the cost of that
process shall be shared equally.

15 17. Entire Agreement. This Franchise constitutes the entire understanding and agreement
16 between the parties as to the subject matter herein and no other agreements or
17 understandings, written or otherwise, shall be binding upon the parties upon execution and
acceptance hereof.

18 18. Severability. If any Section, sentence, clause or phrase of this Ordinance should be held
19 to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
20 unconstitutionality shall not affect the validity or constitutionality of any other Section,
21 sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add,
replace, or modify any provision of this Franchise to preserve the intent of the parties as
expressed herein prior to any finding of invalidity or unconstitutionality.

22 19. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward
23 certified copies of this ordinance to SPU set forth in this ordinance. SPU shall have sixty
24 (60) days from receipt of the certified copy of this ordinance to accept in writing the terms of
the Franchise granted to SPU in this ordinance.

25 20. Publication Costs. In accord with state law, this ordinance shall be published in full by
26 the City. SPU shall reimburse the City for the cost of publishing this Franchise ordinance
27 within sixty (60) days of receipt of an invoice from the City.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Judi Gladstone 684-4642	Karen Grove 684-5805

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

Summary of the Legislation: The proposed legislation would continue a recently expired franchise agreement with the City of Shoreline for SPU to operate a water system within the City right-of-way.

Background: Seattle Public Utilities was first granted a franchise to operate a water system in the City of Shoreline, west of Interstate 5, in December, 1999. That initial franchise agreement was renewed seven times. The last extension was in 2009 and provided for a June 30, 2011, expiration date. This proposed ordinance would authorize SPU to enter into a new, three year franchise agreement, with automatic renewal allowed at two subsequent three year intervals.

Like the previous agreement, this agreement includes a franchise fee of 6% of Shoreline water revenues. SPU builds the franchise fee into the rates charged retail customers within the City of Shoreline and remits the collected funds to the City of Shoreline. The new franchise agreement also includes cost sharing on relocation of infrastructure, based on the age of the infrastructure, when the City of Shoreline asks SPU to relocate its facilities to accommodate a public capital improvement project in Shoreline.

X This legislation has financial implications.

This proposed Bill would continue a legal framework that provides SPU the certainty of franchise rights when it operates a Water System in part of the City of Shoreline. SPU's 2011 Adopted Budget and the 2012-2014 proposed Water Rates assume that SPU continues this franchise with the associated operational and capital costs and related rate-based revenue. In addition, approval of this proposed Bill will allow SPU to continue to charge its customers in Shoreline a franchise fee of 6%, as specified by the City of Shoreline, and remit all franchise fees collected to the City of Shoreline. The financial impacts of the continued franchise will be included in the development of the 2012 Proposed Budget and the revenue tables included with the budget document. There are no position impacts associated with this proposed Bill.

What is the financial cost of not implementing the legislation?

If the ordinance is not approved, SPU would discontinue collecting the 6% franchise fee for the City of Shoreline and would continue selling water to those customers without the certainty of



franchise rights. Discontinuing the franchise fee would result in SPU incurring administrative costs. Since there would be inadequate time to change the rates for Shoreline customers, SPU would over-collect fees until whenever a new rates ordinance was adopted. The over-collected funds would potentially need to be refunded to Shoreline customers. In addition, when a franchise fee is reinstated, those fees would have to be reinstated at additional administrative cost.

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:

None

List attachments to the fiscal note below:

None



City of Seattle
Office of the Mayor

August 2, 2011

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

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing Seattle Public Utilities to enter into a franchise agreement with the City of Shoreline to operate in the City of Shoreline public right-of-way.

SPU has had a franchise agreement to operate a water system in the City of Shoreline west of Interstate 5 since December 1999. Since then the agreement has been extended seven times. The most recent agreement became effective in 2009 and expired on June 30, 2011.

This ordinance would authorize SPU to enter into a new, nine-year agreement with terms essentially identical to those in the most recent franchise. Like the previous agreement, this proposed new franchise includes a franchise fee of 6% on Shoreline water revenues. The new agreement also includes cost sharing on relocation of infrastructure based on the age of the infrastructure.

By approving this agreement, we will avoid costs that would result from disrupting collection of a City of Shoreline franchise fee from retail customers that reside in the City of Shoreline. Thank you for your consideration of this legislation. Should you have questions, please contact Judi Gladstone at 684-4642.

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

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcgin@seattle.gov



STATE OF WASHINGTON – KING COUNTY

--SS.

277017
CITY OF SEATTLE, CLERKS OFFICE

No. 123709,710,711,712,713

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.

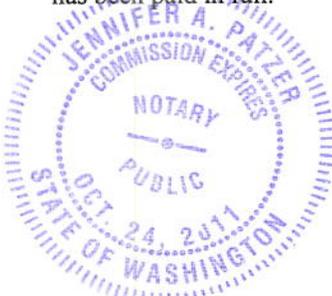
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCE

was published on

10/06/11

The amount of the fee charged for the foregoing publication is the sum of \$ 88.73, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

10/06/11

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle Title Only Ordinance

The full text of the following legislation, passed by the City Council on September 19, 2011, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 123709

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of real property commonly known as 3656 34th Avenue South and 3640 35th Avenue South; authorizing accep-

tance and recording of deeds for open space, park, and recreation purposes; and increasing appropriations to the Department of Parks and Recreation in the 2011 Budget; all by a three-fourths vote of the City Council.

ORDINANCE NO. 123710

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123711

AN ORDINANCE relating to land use and zoning, adding a new Section 23.61.016 to facilitate the use of development agreements authorized by RCW Chapter 36.70B for transit oriented development within the Capitol Hill Station Area Overlay District.

ORDINANCE NO. 123712

AN ORDINANCE relating to the charging of electric vehicles; authorizing the Director of Finance and Administrative Services, the Director of the Seattle Center Department, the Superintendent of Parks and Recreation, and the Seattle City Librarian to set per-session fees for public use of electric vehicle charging stations in parking facilities owned or controlled by each of their respective departments; making it an infraction and imposing a monetary penalty for an unauthorized vehicle to park in a space reserved for electric vehicle parking while charging; amending Sections 3.39.020, 11.31.121, 17.04.030, and 18.28.010 of the Seattle Municipal Code; adding new Section 11.72.125 to the Seattle Municipal Code; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123713

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

Date of publication in the Seattle Daily Journal of Commerce, October 6, 2011.

10/6(277017)