Andrew Lee
SPU I-42 Genesee 43 ORD
December 17, 2012
Version #5

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117687

AN ORDINANCE relating to the Department of Parks and Recreation and Seattle Public Utilities; transferring partial jurisdiction of a portion of Lake Washington Boulevard located beneath, adjacent to, and across Lake Washington Boulevard South from a parking lot at 53rd Avenue South, from the Department of Parks and Recreation to Seattle Public Utilities for maintenance, repair and operation of a combined sewer overflow underground storage tank, associated underground pipes and electrical lines, and limited surface ancillary facilities; and finding that transfer of partial jurisdiction meets the requirements of Ordinance 118477, which adopted Initiative 42.

WHEREAS, by Washington State Session Laws, 1913, Chapter 183, portions of the shorelands and bed of Lake Washington were reserved for public uses and granted and donated to the City of Seattle for public park, parkway and boulevard purposes; and

WHEREAS, a parking lot near Lakewood Moorage (Parking Lot) and lands adjacent to and across Lake Washington Boulevard South to the west from the Parking Lot all exist within the boundaries of the park boulevard known as Lake Washington Boulevard near 53rd Avenue South; and

WHEREAS, the City of Seattle, operating through Seattle Public Utilities (SPU), owns and operates a combined sewer system that overflows during heavy rain events; and

WHEREAS, the combined sewer system overflows (CSOs) are governed by the State of Washington under the terms of a National Pollutant Discharge Elimination System (NPDES) permit; and

WHEREAS, based on the volume of overflows and their impact on water quality in Lake Washington, Basin 43, which is upland of the Parking Lot, has been identified in the NPDES permit as a priority for CSO reduction, including regulatory milestones for completion of a capital improvement project; and

WHEREAS, after nearly two years of study and discussions with residents and other interested stakeholders, SPU has determined that constructing an underground storage tank beneath the Parking Lot will address, in part, the reduction in CSOs required by the NPDES permit; and

WHEREAS, the Department of Parks and Recreation (DPR) and SPU have determined that a transfer of partial jurisdiction of the areas to be occupied by the underground storage tank, associated underground pipes and electrical lines, and limited surface ancillary facilities from DPR to SPU is appropriate because of the permanent nature of the tank and ancillary facilities and to facilitate efficient on-going maintenance, repair and operation of the underground storage tank and ancillary facilities by SPU; and

WHEREAS, DPR and SPU have communicated with or received correspondence from the State Attorney General's Office, the Washington State Recreation & Conservation Office and the National Park Service, and DPR and SPU are satisfied that they have taken all necessary steps to confirm that SPU's CSO reduction project does not violate applicable conditions and restrictions of the donation of the property and grant funding; and

WHEREAS, the City Council has held a public hearing in accordance with the requirements of Section 3 of Ordinance 118477, adopting Initiative 42; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council hereby finds that the transfer of limited and partial jurisdiction of a portion of Lake Washington Boulevard, as described in Section 2 below, from the Department of Parks and Recreation (DPR) to Seattle Public Utilities (SPU) for the maintenance, repair, and operation of a combined sewer overflow underground storage tank, associated underground pipes and electrical lines, and limited surface ancillary facilities (CSO Facility) to reduce combined sewer system overflows into Lake Washington, meets the requirements of Ordinance 118477, adopting Initiative 42, as follows: (a) the proposed use is necessary because there is no reasonable and practical alternative location for the CSO Facility; (b) transfer of limited and partial jurisdiction for maintenance, repair, and operation of the CSO Facility is equivalent to a subsurface or utility easement, as permitted by Section 3 of Ordinance 118477; and (c) the CSO Facility is compatible with park use because it is compatible with the current use of the property for parking and landscaping.

Section 2. Effective as of the date of completion of the CSO Facility (which shall be constructed pursuant to authorization and terms and conditions of a permit for non-park use of park property issued by DPR), such limited and partial jurisdiction of the real property legally described and depicted in Attachment 1, attached hereto and incorporated herein (Use Area) as shall be necessary for the maintenance, repair, and operation of the CSO Facility is transferred from the DPR to SPU on the conditions that (a) SPU shall give the DPR at least 5 days notice of intent to access the Use Area for maintenance and repair, except in case of emergency, and shall coordinate with DPR to avoid time periods when heavy use of public parking is anticipated; (b) after any maintenance and repair, SPU will restore the Use Area, at SPU's expense, to at least the condition existing immediately prior to such maintenance and repair; and (c) SPU shall not use any park land outside of the Use Area, except for access purposes permitted in Section 3 below, for such maintenance and/or repair without the prior written approval of the DPR. Both SPU and DPR understand that notwithstanding the legal descriptions in Attachment 1, all of the Use Area except that portion occupied by limited surface ancillary facilities is subsurface.

Section 3. In order to reach the Use Area, SPU shall have reasonable pedestrian access across the adjacent park land, or vehicular access if required for maintenance or repair, but only on the paved parking lot. SPU shall restore any park land, vegetation or improvements damaged by such access, at SPU's expense, to at least the condition existing immediately prior to such maintenance and repair.

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

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Use Area

Andrew Lee
SPU I-42 Genesee43ATT1
December 7, 2012
Version #3

ATTACHMENT 1

PARTIAL TRANSFER OF JURISDICTION

FOR UNDERGROUND UTILITIES

LAND DESCRIPTION

THAT PORTION OF THE SW QUARTER OF THE SW QUARTER OF SECTION 14, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M UNDER THE JURISDICTION OF THE SEATTLE DEPARTMENT OF PARKS AND RECREATION AS GRANTED TO THE CITY OF SEATTLE FOR PARK, PARKWAY AND BOULEVARD PURPOSES PURSUANT TO CHAPTER 183, SESSION LAWS OF 1913 AND CITY ORDINANCE 26273 DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF SOUTH ALASKA STREET AND 53RD AVENUE SOUTH; THENCE N 00° 45' 48" E ALONG THE CENTERLINE OF 53RD AVENUE SOUTH A DISTANCE OF 257.54 FEET TO A CONCRETE MONUMENT AT THE CENTERLINE OF VACATED LAKESIDE AVENUE SOUTH; THENCE N 27° 22' 43" W A DISTANCE OF 26.34 FEET TO THE FACE OF A CONCRETE CURB AND THE POINT OF BEGINNING;

THENCE LEAVING THE FACE OF THE CONCRETE CURB N 64° 25' 42" W A DISTANCE OF 13.96 FEET;

THENCE N 05° 43' 19" E A DISTANCE OF 39.82 FEET;

THENCE N 37° 51' 01" E A DISTANCE OF 14.06 FEET TO THE FACE OF A CONCRETE CURB AND THE BEGINNING OF A NON TANGENT 16.30 FOOT RADIUS CURVE WHICH RADIUS BEARS S 71° 26' 19" W;

THENCE SOUTHERLY ALONG SAID CONCRETE CURB A DISTANCE OF 6.20 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21° 47' 01" TO THE END OF THE CURVE;

THENCE CONTINUING ALONG THE FACE OF SAID CONCRETE CURB S 00° 55' 52" W A DISTANCE OF 50.66 FEET TO THE POINT OF BEGINNING.

CONTAINING 531 SQ. FT., MORE OR LESS.

Andrew Lee
SPU I-42 Genesee 43 ORD
December 17, 2012
Version #7

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Andrew Lee/6-9754 Donald Harris/4-8018	Karl Stickel/4-8085 Jeff Muhm/4-8049

Legislation Title:
AN ORDINANCE relating to the Department of Parks and Recreation and Seattle Public Utilities; transferring partial jurisdiction of a portion of Lake Washington Boulevard located beneath, adjacent to, and across Lake Washington Boulevard South from a parking lot at 53rd Avenue South, from the Department of Parks and Recreation to Seattle Public Utilities for maintenance, repair and operation of a combined sewer overflow underground storage tank, associated underground pipes and electrical lines, and limited surface ancillary facilities; and finding that transfer of partial jurisdiction meets the requirements of Ordinance 118477, which adopted Initiative 42.

Summary of the Legislation:
This legislation would transfer partial jurisdiction for the subsurface of part of a parking lot property at 53rd Avenue South and Lake Washington Boulevard South, as well as a small surface area and the subsurface of certain landscaped areas across Lake Washington Boulevard South to the west of the parking lot, within the boundaries of the park boulevard known as Lake Washington Boulevard, from the Department of Parks and Recreation (Parks) to Seattle Public Utilities (SPU). SPU needs to use the subsurface area to maintain, repair, and operate an underground sewage/stormwater storage tank and associated pipes and electrical lines, and a small surface area for limited surface ancillary facilities to comply with state and federal water quality regulations.

The legislation includes findings that the transfer of partial jurisdiction meets the requirements of Ordinance 118477 (Initiative 42). Specifically, (a) the proposed use is necessary because there is no reasonable and practical alternative location for the underground storage tank and associated facilities; (b) transfer of limited and partial jurisdiction for maintenance, repair, and operation of the tank and associated facilities is equivalent to a subsurface or utility easement, as permitted by Section 3 or Ordinance 118477; and (c) the tank, pipes, electrical lines, and limited surface ancillary facilities are compatible with park use because they are compatible with the current use of the property for parking and landscaping.

Background:
The City's combined sewer overflow (CSO) discharge permit from the Washington State Department of Ecology (Ecology) requires SPU construct facilities to reduce CSO discharges into Lake Washington. The State Department of Ecology identifies the Genesee Basin 43, which is upland of the parking lot, as a priority to construct a CSO reduction project by 2015. Through

a comprehensive siting analysis and public involvement process, SPU determined the only practical and reasonable alternative to reducing CSOs in this basin is to construct an underground storage tank in the parking lot located at 53rd Avenue South. This parking lot is within the boundaries of the park boulevard known as Lake Washington Boulevard.

Ordinance 118477 does not require replacement property for transfer or change of use for subsurface or utility easements compatible with park use. The proposed transfer of partial and limited jurisdiction is equivalent to a subsurface or utility easement and the installation of an underground tank, associated pipes and electrical lines, and limited surface ancillary facilities are compatible with park use because they are compatible with the current use of the property for parking and landscaping.

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

The capital project to construct the underground storage tank is included in the 2013-2018 Adopted Drainage and Wastewater Fund capital appropriations (S. Genesee Combined Sewer Overflow – Project C3608, within the Combined Sewer Overflows Budget Control Level (BCL) (C360B). There is no direct charge for the partial transfer of jurisdiction from Parks to SPU authorized under this legislation. SPU and Parks are negotiating the terms of a revocable use permit because of temporary construction impacts to the site. SPU has set aside approximately $50,000 for the revocable use permit in the project's capital budget. No additional appropriations are being requested due to this legislation.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
SPU and Parks are negotiating the terms of a revocable use permit, because of the temporary construction impacts to the parking lot site. SPU has set aside approximately $50,000 for the revocable use permit in the project's budget, which is part of the adopted budget for the Drainage and Wastewater Fund, Combined Sewer Overflows BCL.

b) **What is the financial cost of not implementing the legislation?**
Limited alternatives exist for reducing CSOs in the Genesee Basin 43. Aside from the proposed alternative, SPU could implement one of the following alternatives: (1) violate the requirements of the NPDES permit and pay fines of up to $10,000 per day; (2) construct an underground storage tank in an open green space at 54th Ave South and South Alaska Street (also part of Lake Washington Boulevard); or (3) purchase multiple private properties along Lake Washington Boulevard and constructing the underground storage tank on the private parcel.

c) Does this legislation affect any departments besides the originating department?
Yes. The legislation will have operational impacts on the Department of Parks & Recreation, since the parking lot site will be unavailable for use during the year long construction period of the underground tank. After construction is completed, Parks' operations will be minimally impacted.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?
There are no alternatives to the legislation.

e) Is a public hearing required for this legislation?
Yes, pursuant to Ordinance 118477 a public hearing is required. The target date for a public hearing regarding this legislation is January 17, 2013. The public hearing will be held at the City Council's Parks & Neighborhoods Committee meeting.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
Yes, notice of the legislation and the public hearing will be published in *The Daily Journal of Commerce* two weeks prior to the public hearing date.

g) Does this legislation affect a piece of property?
Yes, the legislation affects the parking lot at 53rd Avenue South and Lake Washington Boulevard South and land adjacent to and across the boulevard to the west of the parking lot, within the boundaries of the park boulevard known as Lake Washington Boulevard. A map of the project area is attached.

h) Other Issues:
The parking lot property was donated to the City of Seattle for park, parkway and boulevard purposes by the State of Washington in 1913. The grant prohibits "diversion of attempted diversion of such lands so donated from such purpose", or the property ownership will revert to the State. SPU and Parks are satisfied that they have taken all necessary steps to confirm that SPU's project does not violate applicable conditions and restrictions of the donation of the property.

The bike path running alongside the parking lot was the recipient of a State grant in 1969. Construction of the underground storage tank will impact the bike path and require temporary closure and/or rerouting of the bike path. The City received correspondence from the Washington State Recreation & Conservation Office (RCO) in May 2011, approving the project and its temporary impacts to the bike path.

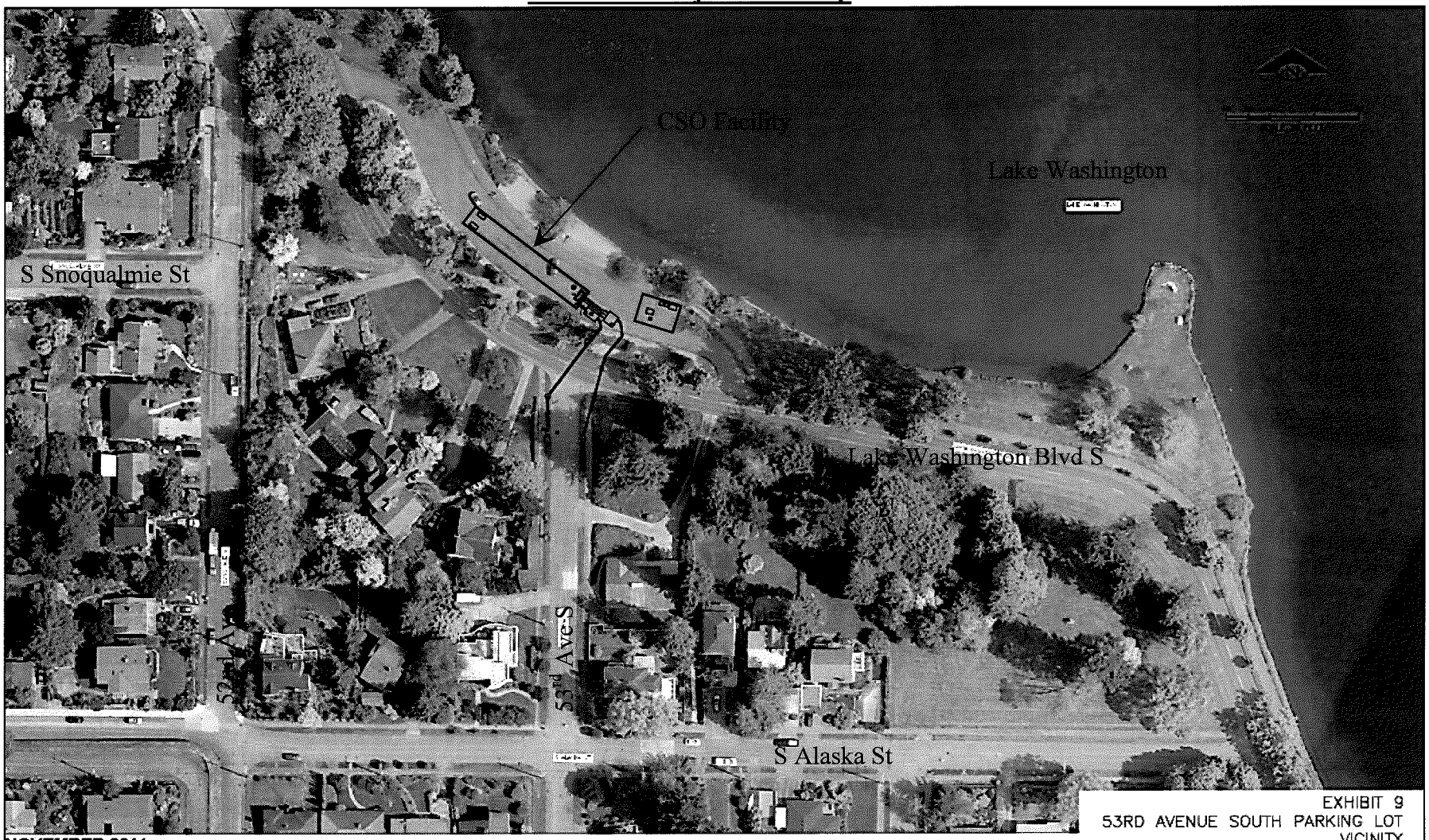
The parking lot is protected by a federal Urban Park and Recreation Recovery (UPARR) grant from the Department of Interior in 1983. There are no additional requirements pertaining to the UPARR grant as long as (a) SPU does not construct above-ground

facilities within the UPARR protected area and (b) continuous closure of the parking lot is limited to one year. SPU plans to meet both of these conditions.

List attachments to the fiscal note below:

Exhibit A – Project Area Map

Exhibit A: Project Area Map



City of Seattle
Office of the Mayor

December 26, 2012

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

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which would authorize the partial transfer of property jurisdiction from the Department of Parks and Recreation to Seattle Public Utilities for an underground sewage storage tank at a parking lot at 53rd Avenue South and Lake Washington Boulevard South.

During heavy rains, the City of Seattle's sewer system lacks the capacity to contain the large volumes of stormwater runoff and sanitary sewage, and as a result, millions of gallons of the combined sewage are discharged into Lake Washington each year. The City of Seattle, acting through Seattle Public Utilities, must reduce combined sewage overflows into Lake Washington in order to meet the terms of a National Pollutant Discharge Elimination System (NPDES) permit. The proposed underground storage tank will retain combined sewage until the downstream system empties and it can be sent to a King County treatment plant for processing.

This project will enable the City to improve its sewage system, reduce flows of diluted sewage into Lake Washington, and meet the terms of its NPDES permit. Thank you for your consideration of this legislation. Should you have questions, please contact Andrew Lee (Seattle Public Utilities) at 733-9066 or Don Harris (Seattle Parks & Recreation) at 684-8018.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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