

**FINANCIAL IMPACT STATEMENT
For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Randy Stenquist		2. Telephone Number 503-823-6000		3. Bureau/Office/Department OMF/Risk Management	
4a. To be filed (date) April 7, 2011	4b. Calendar (Check One) Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> 4/5ths <input type="checkbox"/>			5. Date Submitted to FPD Budget Analyst March 30, 2011	

1) **Legislation Title:** *Pay Claim of Priscilla Seaborg, Involving the Bureau of Environmental Services.

2) **Purpose of the Proposed Legislation:** This ordinance will close OMF Risk Management File No. G2009-0236-01 for a total of \$105,000.

3) Revenue:

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.

This legislation will have no impact on City revenue.

4) Expense:

What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required)

Cost to the City is \$105,000. The source of funding is \$50,000 from the City's Insurance and Claims Fund and \$55,000 from BES Capital Projects Fund 600000 / Account 563300 / Project #E10275. All costs of the settlement are in the current fiscal year.

Staffing Requirements:

5) **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.)**

No.

6) **Will positions be created or eliminated in future years as a result of this legislation?**

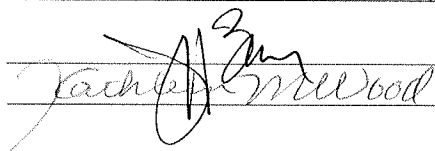
No.

Complete the following section only if an amendment to the budget is proposed.

7) Change in Appropriations (If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Center Code column if new center needs to be created. Use additional space if needed.)

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Amount

Jeff Baer, Director, BIBS
Kate Wood, Risk Manager





CITY OF PORTLAND, OREGON

Office of Management and Finance Risk Management Services

Sam Adams, Mayor
Kate Wood, Risk Manager
1120 S.W. Fifth Avenue, Room 709 • Portland, OR 97204-1912
Phone: 503-823-5101 • Fax: 503-823-6120
www.portlandonline.com

DATE: March 25, 2011

TO: Mayor Sam Adams

FROM: Randy Stenquist
503-823-6000

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

RE: *Pay Claim of Priscilla Seaborg Involving the Bureau of Environmental Services (emergency)

1. INTENDED THURSDAY FILING DATE: April 7, 2011
2. REQUESTED COUNCIL AGENDA DATE: April 13, 2011
3. CONTACT NAME & NUMBER: Randy Stenquist, 503-823-6000
4. PLACE ON: CONSENT REGULAR
5. BUDGET IMPACT STATEMENT ATTACHED: Y N N/A
6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED: Yes No N/A

7. BACKGROUND/ANALYSIS

Priscilla Seaborg owns a property at 1338 SW Upland Drive. In November 2008, she reported a sinkhole in the yard adjacent to her home. BES performed a dye test and video inspection, confirming a dropped joint in a portion of a storm sewer pipe that traversed the lot. Seaborg approached the City to have it make repairs, but the City's records indicated the pipe was not a City installed or maintained facility, and it would be Seaborg's responsibility to make the repairs. While disputing the City's position, Seaborg had no real alternative to hiring her own contractor to make the necessary repairs in July 2009. The contractor Seaborg chose for this job is one who has had extensive experience working with the City and BES on sewer-related construction projects. Seaborg filed a claim with Risk Management, and, unable to reach an acceptable resolution, later filed a lawsuit to recover her expenses. Through the litigation process, her attorney expanded the claims to include negligence, trespass, nuisance, damage to the house structure, diminution in value of the property, and an inverse condemnation claim for the 'taking' of a portion of her property as a result of the presence and malfunction of the pipe. The inverse condemnation claim was a considerable concern for the City, in that it was not subject to the limitations of the Oregon Tort Claims Act, and it provided for recovery of attorney fees should Seaborg prevail in court.

Risk's investigation revealed the twelve-inch storm sewer pipe was installed in 1962, likely by Multnomah County, before the area was annexed into the City (1964) and before the Seaborg house was built (1968). The pipe was installed as part of a County road improvement project and its purpose was to collect natural surface drainage from neighborhood's uphill areas, along with stormwater runoff collected from a street catch basin, and send it further downstream toward a larger creek bed at the rear of the Seaborg property. Although the pipe extended significantly onto the private property, there was no easement for it, as would be expected with a public facility. There had never been any City inspections or maintenance on the pipe until Seaborg's November 2008 notification of the sinkhole. Risk could locate very few building records with the Bureau of

Please notify the City of Portland no less than five (5) business days prior to events for ADA accommodation at 503-823-5101, TTY at 503-823-6868, or by the Oregon Relay Service at 1-800-735-2900.

Development Services that would shed light on what, if anything, the City knew about the presence of this pipe on the property before building permits were issued in 1967-68 for the house construction. A portion of the house had been constructed immediately adjacent to, if not on top of, the buried pipe.

Despite the City's initial assertions that the drainage pipe was not owned or maintained by the City, the City was, nonetheless, obtaining a benefit from this pipe. The pipe provided for the removal of storm water runoff from SW Upland through the catch basin across the street from Seaborg. It also carried natural surface drainage from properties on the hillside above the Seaborg property, as well as street runoff collected in catch basins in another City street, SW Fairhaven on the hill above SW Upland. Providing such a public benefit with no compensation to the private property owner whose land housed the pipe (without an easement) put the City in a precarious legal position, laying the foundation for an inverse condemnation claim. With no cap on the recovery of damages in an inverse condemnation claim, along with the corresponding attorney fee recovery allowed by law, the City's financial exposure was significant. While the City had no incentive to acquire from Seaborg a malfunctioning pipe, once the repairs had been made to it in 2009, there was little reason to not add it to the City's inventory of sewer assets.

While mounting a vigorous defense of the lawsuit, Risk Management, BES, and the City Attorney's Office were also open to discussions about a reasonable settlement that all of the parties might find acceptable. In June 2010, the parties attended a court-ordered mediation session, but because Seaborg and the City were too far apart in terms of the dollar value of a settlement, the session ended with no agreement. A trial was set for February 2011. Depositions had been taken, and expert witnesses had been retained. In January 2011, the parties were again brought together by the Presiding Judge of the Multnomah County Circuit Court in one last attempt to reach a settlement before trial. While no agreement was reached at this meeting, the City agreed to keep its latest offer open for one week. The following week, after additional negotiations between the City Attorney and Seaborg's attorney, a final settlement agreement was reached, with the City agreeing to pay Seaborg a total of \$105,000, and she, in exchange, would grant the City an easement across her property for the pipe, with the City then taking over the responsibility for all future maintenance of the pipe. The settlement also compensated Seaborg for most of her out of pocket expenses, including attorney fees and costs.

Funding for this settlement will come from two sources: \$55,000 from a BES capital projects account and \$50,000 from the Risk Management's Insurance and Claims Fund.

8. FINANCIAL IMPACT

Approval of the settlement would result in a payment of \$50,000 from the Insurance and Claims Fund and \$55,000 from BES Capital Projects Fund 600000 / Account 563300 / Project #E10275.

9. RECOMMENDATION/ACTION REQUESTED

Approve settlement of Priscilla Seaborg's claim in the sum of \$105,000.