

File No. 130465

Committee Item No. 3

Board Item No. 18

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee Date: 05/22/2013

Board of Supervisors Meeting Date: 6/4/2013

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date May 17, 2013

Completed by: Victor Young Date 5/30/13

1 [Settlement of Claims, Litigation, and Appropriation - SFPUC Water Pipeline Break - 15th  
2 Avenue and Wawona Street - Not to Exceed \$4,000,000]

3 **Ordinance authorizing the Public Utilities Commission (SFPUC) and the City Attorney's**  
4 **Office to approve settlements of claims or litigation arising out of the February 27,**  
5 **2013, accidental break of the SFPUC's water transmission pipeline on 15<sup>th</sup> Avenue**  
6 **between West Portal Avenue and Wawona Street in San Francisco for amounts**  
7 **exceeding \$25,000 per claim, notwithstanding Administrative Code, Section 10.22**  
8 **et.seq., subject to a total amount not to exceed \$4,000,000 if the Controller certifies**  
9 **availability of funds, and subject to periodic reporting to the Board of Supervisors**  
10 **Rules Committee; and appropriating \$4,000,000 from the Water Enterprise fund balance**  
11 **for such purpose.**

12 NOTE: Additions are *single-underline italics Times New Roman*;  
13 deletions are *strike-through italics Times New Roman*.  
14 Board amendment additions are double-underlined;  
15 Board amendment deletions are ~~strikethrough-normal~~.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings. On February 27, 2013, at approximately 3 AM, a San Francisco  
18 Public Utilities Commission (SFPUC) 16" water transmission pipeline, located between West  
19 Portal Avenue and Wawona Street, ruptured in front of 2733 15th Avenue, and approximately  
20 twenty-five residential properties were affected when the water flow overwhelmed catch  
21 basins in the area, resulting in damage to personal and/or real property (the "February 27<sup>th</sup>  
22 Accident"). The purpose of this legislation is to establish an expedited settlement procedure  
23 to facilitate the timely resolution of claims or litigation arising from the February 27<sup>th</sup> Accident  
24 to enable prompt payment to those affected.  
25

1 Section 2. Notwithstanding San Francisco Administrative Code Sections 10.22 et.  
2 seq., which require Board of Supervisors approval of each settlement of a litigated or  
3 unlitigated claim in excess of twenty five thousand (\$25,000), the Board hereby authorizes  
4 litigated or unlitigated claims arising out of the February 27<sup>th</sup> Accident to be settled and  
5 compromised on the written recommendation of the San Francisco Public Utilities  
6 Commission, with the written approval of the City Attorney, for settlement amounts in excess  
7 of \$25,000. The total amount may not exceed four million (\$4,000,000) dollars for all such  
8 settlements; provided, however, that the Board of Supervisors may by resolution increase the  
9 \$4,000,000 limit. In all cases, the Controller must first certify that sufficient funds are available  
10 from the proper funds or appropriation to pay each claim as compromised and settled. At  
11 least once every six (6) months, the SFPUC and City Attorney shall submit periodic reports to  
12 the Board of Supervisors Rules Committee on the settlement of claims or litigation arising out  
13 of the February 27<sup>th</sup> Accident, and the SFPUC and City Attorney shall make additional reports  
14 at such times as directed by the Chair of the Rules Committee.

15 Section 3. The Board herein appropriates four million (\$4,000,000) dollars from the  
16 Water Enterprise fund balance for use by the SFPUC for purposes of settlement of claims or  
17 litigation arising out of the February 27<sup>th</sup> Accident.

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1 Section 4. Effective Date. This ordinance shall become effective 30 days from the  
2 date of passage.

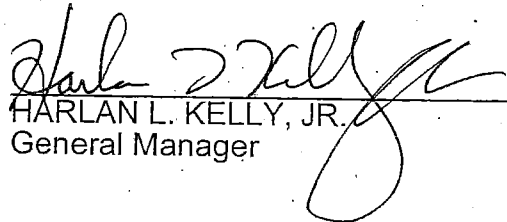
4 APPROVED AS TO FORM AND  
5 RECOMMENDED:

6 DENNIS J. HERRERA  
7 City Attorney

8   
9 NOREEN AMBROSE  
10 Utilities General Counsel

RECOMMENDED:

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

11   
12 HARLAN L. KELLY, JR.  
13 General Manager

FUNDS AVAILABLE:

14   
15 BEN ROSENFELD  
16 Controller

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**Item 3**  
**File 13-0465**

**Departments:**  
Public Utilities Commission (PUC)  
Department of Building Inspection (DBI)  
City Attorney's Office

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed ordinance would (1) authorize the PUC and the City Attorney's Office to approve settlement of claims or litigation resulting from the February 27, 2013 water main break that exceed \$25,000 per claim without Board of Supervisors approval; (2) appropriate \$4,000,000 from the PUC's Water Enterprise fund balance to pay these costs; and (3) require the PUC and City Attorney to submit a report to the Board of Supervisors Rules Committee at least once every six months on the settlement of claims or litigation resulting from the February 27, 2013 water main break.

### Key Points

- On February 27, 2013, a 16-inch water transmission main pipe under the jurisdiction of the San Francisco Public Utilities Commission (PUC) broke on 15<sup>th</sup> Avenue between Wawona Street and West Portal Avenue, damaging 25 homes and various vehicles on the 2600 and 2700 blocks of 15<sup>th</sup> Avenue and the 400 block of Wawona Street.
- Under the proposed ordinance, the Board of Supervisors would authorize future litigated or unlitigated claims arising from the February 27, 2013 accident that exceed \$25,000 to be settled based on the written recommendation of the PUC, with the written approval of the City Attorney, without obtaining future approval of each claim from the Board of Supervisors.

### Fiscal Impacts

- The proposed ordinance would appropriate \$4,000,000 to settle future litigated or unlitigated claims with revenues from the PUC's Water Enterprise fund balance. As of the writing of this report, the PUC could not estimate the total costs that would be incurred from the subject claims resulting from the February 27, 2013 accident. Mr. Jacobo advises that the Water Enterprise's undesignated fund balance is projected to total \$51.9 million at the end of FY 2012-13.
- The PUC's estimated cost to repair the broken and adjacent water mains on Wawona Street and 15<sup>th</sup> Avenue as well as replace the aging sewer lines on Wawona Street between 15<sup>th</sup> and 16<sup>th</sup> Avenues is approximately \$1,000,000, to be funded with FY 2012-13 previously appropriated Water Enterprise Renewal and Replacement funds.

### Recommendation

- Approval of the proposed resolution is a policy decision for the Board of Supervisors.

**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

Administrative Code Section 10.22 requires Board of Supervisors approval by resolution to settle any unlitigated claims against the City that exceeds \$25,000, subject to certification by the Controller that funds are available to pay the claim.

**Background**

On February 27, 2013, a 16-inch water transmission main pipe under the jurisdiction of the San Francisco Public Utilities Commission (PUC) broke on 15<sup>th</sup> Avenue between Wawona Street and West Portal Avenue. As a result, 25 homes located in the 2600 and 2700 blocks of 15<sup>th</sup> Avenue and the 400 block of Wawona Street and several private vehicles experienced water damage. Because of the water damage resulting in related soil and foundation problems, the Department of Building Inspection (DBI) has (a) “yellow-tagged” three homes, allowing residents to remain in their homes but with restricted access to certain areas of their homes or yards, and (b) “red-tagged” three homes, designating these homes as unsafe for occupancy.

PUC performed a temporary fix to the broken 16-inch water main pipe, permanently replaced a smaller 8-inch water pipe and repaired sewer lateral pipes and cleaned catch basins immediately following the break in the water main.

On March 15, 2013, the President of the PUC declared an emergency on behalf of the PUC related to the subject water main break, explaining that the broken water main inundated the area with water and mud flows, impacting the street and nearby homes, with resultant soil subsidence. The PUC’s emergency request enables the PUC to expeditiously repair the broken and adjacent water mains as well as replace the aging water and sewer lines on Wawona Street between 15<sup>th</sup> and 16<sup>th</sup> Avenues to ensure that the shifting soil does not cause other water or sewer pipe ruptures. The PUC estimates the cost of such emergency repairs at \$1,000,000. In accordance with Section 6.60 of the City’s Administrative Code, City emergency work that exceeds \$250,000 is subject to approval by the Board of Supervisors. Mr. Carlos Jacobo of the PUC advises that a proposed resolution authorizing this emergency and the related work to be performed is currently being prepared by the PUC for submittal to the Board of Supervisors.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would (1) authorize the PUC and the City Attorney’s Office to approve settlement of claims or litigation resulting from the February 27, 2013 water main break that exceed \$25,000 per claim without obtaining future Board of Supervisors approval; (2) appropriate \$4,000,000 from the PUC’s Water Enterprise fund balance to pay these costs; and (3) require the PUC and City Attorney to submit a report to the Board of Supervisors Rules Committee at least once every six months on the settlement of claims or litigation resulting from the February 27, 2013 water main break and to provide additional reports as directed by the Chair of the Rules Committee.

As noted above, City Administrative Code Section 10.22 requires Board of Supervisors approval by resolution to settle any unlitigated claim against the City that exceeds \$25,000<sup>1</sup>. The proposed ordinance would waive this Administrative Code provision relative to the February 27, 2013 break in the PUC's water main pipes. Instead, under the proposed ordinance, the Board of Supervisors would authorize future litigated or unlitigated claims arising from the February 27, 2013 accident that exceed \$25,000 to be settled based on the written recommendation of the PUC, with the written approval of the City Attorney, without obtaining future approval of each claim from the Board of Supervisors.

## FISCAL IMPACTS

The proposed ordinance would appropriate \$4,000,000 to settle future litigated or unlitigated claims with revenues from the PUC's Water Enterprise fund balance. As of the writing of this report, the PUC could not estimate the total costs that would be incurred from the subject claims resulting from the February 27, 2013 accident. Mr. Jacobo advises that the Water Enterprise's undesignated fund balance is projected to total \$51.9 million at the end of FY 2012-13.

Expenditures exceeding \$4,000,000 would be subject to future approval of supplemental appropriation ordinances by the Board of Supervisors. However, the proposed ordinance also specifically authorizes the Board of Supervisors to increase the \$4,000,000 limit by resolution. Ms. Noreen Ambrose, General Counsel for the PUC advises that this provision is intended to enable the Board of Supervisors to continue to waive the City's Administrative Code provisions regarding approval of individual claims over \$25,000, if the total amount exceeds \$4,000,000, subject to approval by resolution of the Board of Supervisors.

As noted above, the PUC's estimated cost to repair the broken and adjacent water mains on Wawona Street and 15<sup>th</sup> Avenue as well as replace the aging sewer lines on Wawona Street between 15<sup>th</sup> and 16<sup>th</sup> Avenues is approximately \$1,000,000, to be funded with FY 2012-13 previously appropriated Water Enterprise Renewal and Replacement Program funding.

## POLICY CONSIDERATIONS

According to a May 13, 2013 memorandum from the PUC General Manager to the Board of Supervisors, the purpose of the proposed ordinance is to expedite the claims process for those San Francisco residents affected by the recent water main break. Ms. Ambrose advises that the Board of Supervisors has never previously been requested to waive this Administrative Code provision requiring Board of Supervisors approval for each unlitigated claim over \$25,000. However, Ms. Ambrose also notes that there has not been a similar water main break, that due to geography and circumstances, caused damage to such a large number of San Francisco residents.

<sup>1</sup> In accordance with Administrative Code Section 10.22-2, all claims under \$25,000 may be settled with the written approval of the City Attorney, with the approval of the department head which has jurisdiction over the matter, subject to certification by the Controller that funds are available to pay such settlements.

According to the May 13, 2013 memorandum, the City Attorney's Office will prepare a confidential report to the Board of Supervisors prior to the Budget and Finance Committee hearing on the proposed ordinance that will provide further analysis of the City's liability, response to date, and the anticipated claims adjustments for the affected properties.

**RECOMMENDATION**

Approval of the proposed resolution is a policy decision for the Board of Supervisors.





**TO: Olivia Scanlon, Office of Supervisor Yee  
Jason Elliot, Office of Mayor Ed Lee**

**FROM: Harlan L. Kelly, Jr., General Manager**

**DATE: May 13, 2013**

**SUBJECT: Authorization for Settlement of Claims and Litigation for SFPUC  
Water Pipeline Break at 15<sup>th</sup> Avenue and Wawona Street**

Thank you for sponsoring this ordinance, which would create an expedited process for settlement of claims arising from the February 27, 2013 water main break near 15th Avenue and Wawona Street. There were approximately 25 residential properties damaged, including several properties that were "red-tagged" or "yellow tagged" by the Department of Building Inspection. For various reasons, many of these property owners' insurance companies have not responded by providing financial assistance for immediate restoration of the properties. Damage to some of these properties is such that the owner must pay out funds for consultants and/or construction contractors in order to obtain permits for repairs, and cannot obtain those funds through property loans because of the condition of the property.

Through this Ordinance, the Board would authorize the San Francisco Public Utilities Commission and the City Attorney to approve claim settlement payments to the affected property owners above the usual \$25,000 limit, without requiring that each individual claim settlement then be approved by a separate Board ordinance. This ordinance would approve an appropriation of \$4 million in Water Enterprise reserve funds to be used for the purposes of claim settlement payments. The Board would exercise oversight of the settlement process through periodic reports to the Board Rules Committee.

The City Attorney's Office will prepare a confidential memorandum to the Board members, to be distributed prior to committee and full Board hearing on the proposed ordinance that will provide further analysis of the City's liability, the response to date, and the anticipated claims adjustment prospects for the affected properties.

You can contact Radhika Fox, SFPUC Director of Policy and Legislative Affairs, or Matthew Rothschild, head of the City Attorney's Office claims division, for further information.

cc: Ben Rosenfield, Controller

**Edwin M. Lee**  
Mayor

**Anson Moran**  
President

**Art Torres**  
Vice President

**Ann Moller Caen**  
Commissioner

**Francesca Vietor**  
Commissioner

**Vince Courtney**  
Commissioner

**Harlan L. Kelly, Jr.**  
General Manager



President, Board of Supervisors  
District 3



City and County of San Francisco

DAVID CHIU  
邱信福  
市參事會主席

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 MAY 17 AM 9:08

TO: Angela Calvillo, Clerk of the Board  
FROM: Supervisor David Chiu  
DATE: May 16, 2013  
RE: Waive 30 day hold on items 130465, 130465, 130417, 130415 and 130416

Madam Clerk,

I hereby waive the 30-Day Rule on the following file:

130465 Settlement of Claims, Litigation, and Appropriation - SFPUC Water Pipeline Break - 15th Avenue and Wawona Street - Not to Exceed \$4,000,000

130465 – Appropriation - \$1,697,907 for the San Francisco Airport Commission – FY2013-2014; Sponsor: Mayor; introduced 05/07/13 under the 30 day rule.

130417 – Public Employment – Amendment to the Annual Salary Ordinance, FYs 2012-2013 and 2013-2014 – San Francisco Airport Commission] Sponsor: Mayor; introduced 05/07/13 under the 30 day rule

130415 – Public Employment – Amendment to the Annual Salary Ordinance, FYs 2012-2013 and 2013-2014 – Port of San Francisco; Sponsor: Mayor; introduced 05/07/13 under the 30 day rule.

130416 – Appropriation - \$3,857,224 for the Port of San Francisco – FY2013-2014; Sponsor: Mayor; introduced 05/07/13 under the 30 day rule.

Thank you for your prompt assistance in this matter.

###

*David Chiu*

orig B/F  
Rules Clerk  
COB, Leg Dep

President, Board of Supervisors  
District 3



City and County of San Francisco

DAVID CHIU  
邱信福  
市參事會主席

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 MAY 17 AM 10:20

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TO: Angela Calvillo, Clerk of the Board

FROM: Supervisor David Chiu *David Chiu*

DATE: May 17, 2013

RE: Transferring File No. 130465 from Rules Committee to Budget and Finance Sub-Committee

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Madam Clerk,

Please transfer the following file from Rules Committee to Budget and Finance Sub-Committee.

No. 130465 Ordinance authorizing the Public Utilities Commission (SFPUC) and the City Attorney's Office to approve settlements of claims or litigation arising out of the February 27, 2013, accidental break of the SFPUC's water transmission pipeline on 15<sup>th</sup> Avenue between West Portal Avenue and Wawona Avenue in San Francisco for amounts exceeding \$25,000 per claim, notwithstanding Administrative Code, Section 10.22 et.seq., subject to a total amount not to exceed \$4,000,000 if the Controller certifies availability of funds, and subject to periodic reporting to the Board of Supervisors Rules Committee; and appropriating \$4,000,000 from the Water Enterprise fund balance for such purpose.

Thank you for your prompt assistance in this matter.

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