

ORDINANCE NO. 2016-961

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, ESTABLISHING A NEW CHAPTER 13.12 OF THE DEER PARK MUNICIPAL CODE RELATING TO WATER RIGHT TRANSFERS; AND AMENDING SECTION 13.04.010 OF THE DEER PARK MUNICIPAL CODE DECLARING THE CITY TO BE THE SOLE PURVEYOR OF WATER WITHIN THE CITY; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City staff has studied the issue of whether properties annexed to the City and connecting to the City water system or already in the City and proposed for development should provide water rights or payments in lieu of water rights to the City water utility as part of the consideration to be provided to the City for connection to the City water utility and determined that the provisions set forth in this Ordinance are fair, appropriate and reasonable; and

WHEREAS, the City Council has reviewed the recommendation of staff and this Ordinance and determined that adoption of the new Chapter 13.12 of the Deer Park Municipal Code is in the best interest of the public health, safety and welfare of the citizens of the City of Deer Park and will serve to extend the life of the City water utility and keep water rates affordable; and

WHEREAS, City staff recommends revisions to Section 13.04.010 of the Deer Park Municipal Code to clearly state that the City is declared to be the sole purveyor of water in the City and the City Council concurs that this recommendation is in the best interest of the public health, safety and welfare of the citizens of the City of Deer Park; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON DO
ORDAIN AS FOLLOWS:**

Section 1. A new Chapter 13.12 of the Deer Park Municipal Code is hereby added to read as follows

**Chapter 13.12
WATER RIGHT TRANSFERS**

- 13.12.010 Purpose.**
- 13.12.020 Types of Water Rights.**
- 13.12.030 Annexations.**
- 13.12.040 Short Plats, Subdivisions, Binding Site Plans, Planned Developments, and Other Permits.**
- 13.12.050 Amount of Water and Payment in Lieu.**
- 13.12.060 Payments Made by the City.**
- 13.12.070 Payments Received by the City.**
- 13.12.080 Form of Transfer and Conveyance of Water Right.**

13.12.010 Purpose.

The purpose of this chapter is to provide for city water rights to support new development. This purpose shall be achieved through the transfer of water rights to the city or the payment of fees to the city to be used to acquire additional water rights as a condition of connection to the city's municipal water system. The purpose for requiring a transfer of water rights or payment in lieu thereof is to enhance the public health, safety, and welfare through a provision designed to enable the city to meet the future water service needs of property subject to this chapter and in the city urban growth area in general.

13.12.020 Types of Water Rights.

This chapter shall apply to all of the various types of water rights or rights to water that are appurtenant to or associated with the real property that is subject to this chapter and shall include all associated real and personal property interests in and to the water rights at issue. For example, the various types of water rights subject to this chapter include, but are not necessarily limited to, the following: permits, certificates, and claims issued by or on file with the Washington State Department of Ecology, or any of its predecessors.

13.12.030 Annexations.

Prior to approval of any annexation of land to the city through a petition method of annexation, water rights associated with the property proposed for annexation shall be transferred to the city, subject to the provisions of Section 13.12.050. Alternatively, the city and the annexation property owners may enter into an agreement, at the election of the city, for the transfer to the city of the water rights associated with the annexing property at such future point in time as the city determines appropriate. The purpose of the future transfer provision is to accommodate potential delays encountered in the process to transfer the water rights to the city, the submission of an application within the scope of Section 13.12.040, or continued use of water rights associated with uses in existence at the time of annexation and anticipated to continue until further development of the annexation area property occurs. As part of the agreement, the city may require (a) the property owners to acquire adequate water rights and transfer the same to the city, and/or (b) the property owners to deposit an amount into the city water fund equal to the payment in lieu of transfer provided in Section 13.12.050, which sum is refundable to the extent of the successful transfer of the water rights.

13.12.040 Short Plats, Subdivisions, Binding Site Plans, Planned Developments, and Other Permits.

- A. Upon application for a short plat, subdivision, binding site plan, or planned development, the owner of the property that is the subject of the application shall transfer water rights associated with the property to the city, subject to the provisions in Section 13.12.050. Alternatively, at the election of the city, the owner and city may enter into an agreement to transfer the water rights to the city at a later time. The purpose of this deferment provision is to accommodate (1) potential delays encountered in the process to transfer the water rights to the city, or (2) the continued use of the water rights associated with uses in existence at the time of the application and anticipated to continue until further development of the property that is the subject of the application. As part of the agreement, the city may require (1) the property owners to acquire adequate water rights and transfer the same to the city, and/or (2) the property owners to deposit an amount into the city water fund equal to the payment in lieu of transfer provided in Section 13.12.050, which sum is refundable to the extent of the successful transfer of the water rights.
- B. Upon application for a building permit (except for a single-family residence) on an existing lot of record, the owner of the property shall transfer water rights consistent with subsection A of this section, or, alternatively, the city may forgo the water right transfer and require a payment in lieu of the water right as set forth in Section 13.12.050.
- C. As part of the determination made pursuant to this section, the city shall take into consideration and provide appropriate credit for property that previously complied with the provisions of this chapter.

13.12.050 Amount of Water and Payment in Lieu.

- A. Water Use Determination. The amount of water rights to be transferred to the city pursuant to Sections 13.12.030 and 13.12.040 shall be sufficient to serve the estimated equivalent residential units (“ERUs”) of anticipated water usage for the area that is the subject of the annexation or application based upon the city’s regulations applicable to (or, in the case of an annexation, will be applicable to) development of the property in effect at the time of the petition for annexation or application for the short plat, subdivision, binding site plan, planned development, or building permit is submitted. This determination shall be made by the community services director and the determination communicated in writing to the applicant property owner(s) within twenty days of the city’s receipt of the Section 13.12.030 petition for annexation or the Section 13.12.040 application for approval. In the case of an annexation, in no event shall the ERUs of anticipated water usage be less than the number of ERUs required for development in the R-1A zoning district. In the calculation of the amount of water rights that must be transferred to the city, credit shall be provided for any existing and previously approved connections to the city’s municipal water system that are currently in use on the subject property. In addition, if the owners of property subject to the application of the provisions of this chapter have an exempt well or wells and desire to transfer the water rights associated with said wells, as currently provided for in RCW 90.44.105, then credit shall also be provided for the water use associated with said wells to the extent the water rights associated with said wells are successfully transferred to the city.
- B. Excess Water Rights. To the extent the water rights associated with the subject property exceed the anticipated water usage for the subject property as determined pursuant to subsection A of this section, the city in its sole discretion may (1) require the owner(s) of the subject property to transfer any amount of the excess water rights to the city and the city shall pay the owner(s) of the excess water rights for the excess water rights to be transferred to the city an amount representing the then current market value of the excess ERUs as determined by the community services director, or (2) allow said owner to transfer the excess water rights to the city in exchange for credits to be applied to other property owned by said owner within the city limits of the city, subject to the provisions of Section 13.12.040 and subsection E of this section. In the event the city acquires the excess water rights, the transfer will be processed simultaneously with and part of the transfer process outlined in Section 13.12.080, and the city shall be responsible for the proportionate share of the transfer costs attributable to the excess water rights.
- C. Payment in Lieu. In the event (1) no water rights are associated with the property that is the subject of a Section 13.12.030 annexation or a Section 13.12.040(A) application, or (2) the water rights associated with said property are less than the community services director determines to be sufficient to serve the estimated ERUs of anticipated water usage for the area that is the subject of the annexation or application as determined by the community services director pursuant to subsection A of this section, or (3) the water rights successfully transferred to the city are less than the community services director

determines to be sufficient to serve the estimated ERUs of anticipated water usage for the area that is the subject of the annexation or application as determined by the community services director pursuant to subsection A of this section, or (4) a building permit application is sought and the city does not require water rights to be transferred as set forth in Section 13.12.040(B), then the city may elect to have the owner(s) of the subject property pay to the city, at the then current market value as determined by the community services director, such sum that represents the current market value of the water rights the city estimates will be necessary to serve the property as determined in subsection A of this section.

- D. Payment of Costs. The owner(s) of property subject to the application of the provisions of this chapter shall pay the city for all costs associated with (1) the city's determination of the anticipated water usage for the subject property and current market value of an ERU of water and all costs associated with the transfer of water rights to the city, and (2) the costs associated with completing the transfer and acquisition of the water rights. The owner(s) of property required to make payment to the city in lieu of transfer of water rights to the city shall also pay the city's estimated costs of processing the transfer and acquisition of the water rights. The term "costs" as used in this sub-section shall include, but is not limited to, city staff time, engineering fees, attorneys' fees, application fees, publication fees, and any other fees or charges associated with processing and recording the transfer and acquisition of water rights.
- E. Commitment by City. Effective upon the date the water rights are successfully transferred and conveyed to the city as required by this chapter and for a period of ten years thereafter, the city shall make available to the transferor property water usage in amounts at least equal to the amount of water usage transferred to the city by the transferor property. The requirement of the city to make available this water usage shall not be construed to require the city to construct any city water system extensions or improvements that may be necessary to serve the transferor property. Any such city water system extensions or improvements shall be constructed by the owner of the transferor property at owner's expense. Nothing herein precludes the city from making commitments to provide municipal water service as part of an annexation agreement, when the owner of property subject to the annexation is required to pay some sum to the city as set forth in subsection C of this section. In the event (1) a building permit is denied solely because of water unavailability, and (2) the property for which said building permit is sought was previously subject to the provisions of this chapter resulting in a transfer and conveyance of water rights or the payment in lieu thereof to the city, then the building permit applicant, as the sole and exclusive remedy, shall receive a payment equal to the ERU(s) originally attributed to said property at the value established at the time of the original application (all as determined by the community services director), without interest from the date of the original application.
- F. Appeal. Any decision committed to the community services director will be reviewed by the mayor; provided, the affected property owner serves a written notice to the city requesting the review within fourteen calendar days of the issuance of the written

recommendation of the community services director. If a written notice requesting review is not timely served upon the city, then the community services director's recommendation shall be the final decision of the city. If a written notice requesting review is timely served on the city, the mayor shall review the recommendation of the community services director and issue a final decision within twenty calendar days of the service of the notice requesting review on the city. Any final decision within the limited scope of this subsection F may be appealed for abuse of discretion by filing an appeal in the Spokane County superior court within twenty-one calendar days of the date of the final decision.

13.12.060 Payments Made by the City.

All money paid by the city to owners pursuant to the application of this chapter shall be paid by the city water fund. Those water rights purchased pursuant to this chapter shall become assets of the city domestic water utility and part of the city's water system.

13.12.070 Payments Received by the City.

All money paid to the city pursuant to this chapter shall be paid to the city water fund. All money paid to the city pursuant to this chapter shall be used by the city water utility for the purchase of water rights and to process applications for new water rights for the city to be added to the city domestic water utility system. Alternatively, to the extent permitted by the laws of the state of Washington, the city may use the money deposited into the city water fund pursuant to this chapter to finance water conservation measures that have the same effect of expanding the city's municipal water system capacity.

13.12.080 Form of Transfer and Conveyance of Water Right.

The transfer of water rights pursuant to this chapter shall be in such forms as may be approved by the city. Owners of property transferring water rights pursuant to this chapter shall execute all documents required by the city and/or any other governmental entity that may be necessary to achieve the purposes of this chapter. Those documents may include, but are not limited to, change in point of diversion, change in place of use, change in purpose of use, and any other documents or forms. The city will diligently pursue approval of the water right transfer. In order for a water right transfer to be completed, the water right transfer must (a) ultimately be approved by the Department of Ecology and all appeal periods must have expired without challenge, and (b) be changed to a municipal water right. The owner(s) of the property transferring water rights pursuant to this chapter must convey the water right to the city by statutory warranty deed or other appropriate conveyance instrument, as determined by the city, upon completion of the water right transfer; provided, however, that the actual conveyance may be delayed to coincide with the city's approval of the petition for annexation or application described in this chapter, or as otherwise set forth in an agreement between the property owner(s) and the city.

Section 2. Section 13.04.010 of the Deer Park Municipal Code is hereby amended to read as follows:

13.04.010 Water Utility Established - - City as Sole Purveyor.

There is established a water utility of the City which shall be known as the Water Department of the City for the purpose of supplying water within the City and such areas outside the City as provided for in this chapter. Unless provided otherwise by a specifically enacted Ordinance of the City which contains findings in support of the Ordinance, the City Water Department shall be the sole purveyor of water within the City of Deer Park and no private wells shall hereafter be permitted to be drilled or used within the City.

Section 3. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 4. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

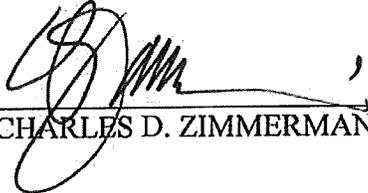
APPROVED:


MAYOR ROBERT WHISMAN

ATTEST/AUTHENTICATED:


DEBY CRAGUN, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY: 
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK :
PASSED BY THE CITY COUNCIL :
PUBLISHED :
EFFECTIVE DATE :
ORDINANCE NO. :

May 13, 2016
June 1, 2016
June 3, 2016
June 10, 2016
2016-961

SUMMARY OF ORDINANCE NO. 2016-961

of the City of Deer Park, Washington

On the _____ day of _____, 2016, the City Council of the City of Deer Park, Washington, passed Ordinance No. 961. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON, ESTABLISHING A NEW CHAPTER 13.12 OF THE DEER PARK MUNICIPAL CODE RELATING TO WATER RIGHT TRANSFERS; AND AMENDING SECTION 13.04.010 OF THE DEER PARK MUNICIPAL CODE DECLARING THE CITY TO BE THE SOLE PURVEYOR OF WATER WITHIN THE CITY; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 2016.

CITY CLERK-TREASURER, DEBY CRAGUN