

**CITY OF DEER PARK**  
**WATER SYSTEM**  
DEER PARK, WASHINGTON

CONSTRUCTION  
STANDARDS

April 2019

**Prepared For:**

City of Deer Park

Deer Park, WA

Contact: Mr. Roger Krieger

## **2019 Revision Notes Made to the 2007 Version;**

This 2019 Version of the Construction Standards includes the following Revisions to the 2007 Construction Standards.

1. Appendix for Deer Park Municipal Code 12.10 was added.
2. New format and changes to consistent measurements verbiage. (2-inches vs. 2-")

## TABLE OF CONTENTS

### I General Requirements

General .....	1
References .....	1
Underground Utilities & Clearances .....	1
Environmental Impact .....	2
Alignment and Staking .....	2
Order of Construction .....	3
Inspection & Tests .....	3

### II Construction Standards

Trench Excavating, Backfilling, & Compacting .....	5
Sheeting & Shoring .....	7
Dewatering.....	7
Ductile Iron & Pipe Installation .....	7
Fire Hydrants .....	8
Valves.....	8
Services .....	9
Vaults.....	10
Boring & Jacking Steel Casing.....	10

### III Close Out

Hydrostatic Test .....	13
Sterilization & Flushing of Water Mains.....	13
Connection to Existing Water Main .....	14
Adjust Existing Structures to Grade.....	15
Abandoning Facilities .....	16

### Appendix

Deer Park Municipal Codes 12.10; Telecommunications, Cable,  
Municipal Authorization to use Right-of-Way

# GENERAL REQUIREMENTS

# I General Requirements

## General

All construction shall be as shown on the plans and in accordance with these Standards. Equipment shall be installed in compliance with specifications of the manufacturer, except where a higher standard of workmanship is required by the plans. All materials and work shall be in strict accordance with any applicable regulations of the State, County and local authorities. The Contractor shall arrange for inspection by these agencies as may be required and shall document evidence of their approval.

## References

References are made to the standards, specifications, or other published data of the various regional or local organizations. Following acronyms or abbreviations shall have the meaning as indicated:

ANSI	American National Standards Institute, Inc.
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
OSHA	Occupational Safety and Health Administration
WISHA	Washington Industrial Safety and Health Act
WSDOT	Washington State Department of Transportation

## Underground Utilities & Clearances

The plans show the approximate locations of various existing utilities known to the engineer, such as gas lines, water mains, storm drainage, power lines, telephone lines, television cables, and other obstructions based on information obtained from various sources. This information is not guaranteed to be accurate, and the Contractor is directed to check for interferences and obstructions by inquiry from the different utilities and by underground exploration ahead of his regular excavation.

The Contractor shall request field locates and notify the owners of underground facilities about the scheduled commencement of excavation through a one-call number (800-424-5555).

If the Utility is not included in the one-number locator service, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation.

Notice shall be made to the owners of underground utilities not less than two (2) business days or more than ten (10) business days prior to scheduled date of commencement of excavation.

The Contractor shall excavate around and under service pipes with special care and shall support and maintain them in service. Where it is necessary to cut, move or reconnect any service lines, arrangements shall be made with the respective utility.

### **Highway and Railroad Crossings**

Interstate, state, or county highway and railroad crossings require the placing of steel, cast iron or concrete pipe casing by jacking or tunneling and laying the carrier pipe within the casing.

## **Environmental Impact**

The Contractor is required to implement water pollution controls and maintain these until the project is accepted by the City of Deer Park Water Department. The Contractor shall familiarize himself with the requirement of the Department of Ecology and other regulatory agencies having jurisdiction over such matters.

The following list of requirements is a summary of the construction activity requirements of the Department of Ecology and is provided as a guide to the Contractor. The Department of Ecology may have additional requirements with which the Contractor shall comply.

### **Dust Control**

The contractor shall sprinkle water as necessary to keep the dust down. This sprinkling shall be maintained until the project is accepted. Sprinkling shall be kept to a minimum and shall not produce runoff from the site. On paved streets, if dust becomes a nuisance when backfilling is completed, the Contractor shall vacuum sweep the portions of streets being used for traffic. Flushing of streets shall not be permitted without prior approval.

### **Chlorine Residual from Water Main Testing or Disinfection**

Water with chlorine residual shall be dechlorinated prior to disposal through sanitary sewers, storing and aerating or percolation into the ground. Water containing a chlorine residual shall not be disposed of into the sanitary sewer, storm drainage system or any waterway.

## **Alignment & Staking**

All work done under a project shall be to the lines shown on the plans or to approved revisions.

## Construction on Easements

All work on easements shall be performed strictly in accordance with easement provisions. Easements shall be restored equal to or better than original condition. The Contractor shall do no work on easement areas until specifically authorized by the Engineer.

## Order of Construction

Restoration of trenches shall closely follow installation and testing of pipe. The Engineer will inspect and observe the hydrostatic test of the pipe within 24-hours after notification by the Contractor that a section is ready for inspection and test. The Contractor shall contact the Engineer at least 24-hours in advance of the completion of sterilization and flushing and his representative shall be present when the Engineer takes water samples.

## Inspections & Tests

- A. The Engineer shall, at all times, have access to the work for the purpose of inspecting and testing, and the Contractor shall provide proper facilities for such assess and such inspection and testing.
- B. If any work is covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for inspection.
- C. Before a performance test is to be observed by the Engineer the Contractor shall make whatever preliminary tests are necessary to assure that the material and/or equipment are in accordance with the plans.
- D. Written notice of deficiencies, adequately describing the same, shall be given to the Contractor upon completion of each inspection and the Contractor shall correct such deficiencies within seven (7) days of the notice and before final inspection will be made by the Engineer, unless otherwise approved.

# CONSTRUCTION STANDARDS

## II Construction Standards

### Trench Excavating, Backfilling, & Compaction

#### Trench Excavation

Before commencement of trenching provide sediment protection for all downhill storm drain catch basins. Plastic sheeting must be available on-site. In case of rain any stockpiled material must be covered and secured.

Clearing and grubbing limits may be established by the Engineer for certain areas and the Contractor shall confine his operations within those limits. Debris resulting from the clearing and grubbing shall be disposed of by the Contractor.

Trenches shall be excavated to the line and grade designated by the Engineer and in accordance with the Standard Details. Trenches shall comply with OSHA and WISHA requirements regarding worker safety. The trench width at the top of the pipe shall be I.D. plus 12-inches for pipe up to and including 15-inch diameter, and 1.5 x I.D. plus 18-inches for pipes 18-inches and larger. Where higher strength pipe or special bedding is required because of excess trench width, it shall be furnished.

The trench shall be kept free from water until joining has been completed. Surface water shall be diverted so as not to enter the trench. The Contractor shall maintain sufficient pumping equipment on the job to ensure that these provisions are carried out. The Contractor shall perform all excavation of every description and of whatever substance encountered as part of his trench excavation cost. Unsuitable material below the depth of the bedding shall be removed and replaced with satisfactory materials as determined by the Engineer.

Trenching operations shall not proceed more than 100-feet in advance of pipe laying except with written approval of the Engineer.

When trenching operations take place in the public right-of-way, the pavement, and all other improvements, shall be restored as required by the "Right-of-Way Use Permit" in Deer Park Municipal Codes 12.10. **Appendix A.**

#### Trench Backfill and Compaction

All backfill material shall be free from cinders, ashes, refuse, vegetable or organic material, boulders, rocks or stones, frozen soil, or other unsuitable material. Compaction of the backfill shall, at the minimum, meet the requirements of the Governmental Agency having final jurisdiction.

Backfill shall be deposited in the trench in any manner which will damage or disturb the pipe or the initial backfill. Compaction of the backfill may be obtained by tamping, rolling, or

otherwise, as specified by the Engineer. The Contractor shall pay for the services of a testing laboratory employed by the Engineer and the City to perform in place density tests to show that the specified density has been obtained. The approval of the compaction method and the achievement of the specified density shall, in no way, relieve the Contractor of responsibility for all repairs caused by settlement of the backfill prior to acceptance and during the one (1) year period after acceptance of the project.

Where the excavated material has a California Bearing Ratio for compacted and soaked sample of less than seven (7) or, for other reasons, cannot be compacted as specified, the Contractor shall replace the excavated material with approved imported gravel.

Compaction of backfill material may be accomplished by mechanical tamper, by vibrating, or by a combination of these methods, as approved by the Governmental Agency having jurisdiction and the Engineer.

Unless otherwise provided, compaction of backfill shall meet the following requirements:

### **Paved Areas**

- A. Trench restoration shall be either by a patch or overlay method as required and noted on the permit. When a patch method is used the trench limits shall be sawcut prior to the final patch.
- B. All trench and pavement cuts shall be made by sawcuts. The sawcuts shall be a minimum of 1-foot outside the trench width. If the permit requires an overlay, then the Contractor may use a jackhammer for the cutting of the existing pavement.
- C. All trenching shall be backfilled with either crushed surfacing materials, pit run, or suitable native material. All trench backfill materials shall be compacted to 95% maximum dry density, as determined by ASTM D-1557.

If the existing material is determined by the Engineer to be suitable for backfill, the Contractor may use the native material.

When the trench is perpendicular to the traveled lane or any driveways, the full depth shall be backfilled with crushed surfacing top course material. When the trench is parallel, only the top 4-feet must be backfilled with crushed surfacing top course material.

Backfill compaction shall be performed in 8 to 12-inch lifts. The Developer shall perform compaction tests in 4-foot increments maximum. The test results shall be given to the Engineer for review and approval prior to paving.

Tests shall be performed at a maximum interval of 50-feet along the length of the trench.

### **Unimproved Areas**

The backfill shall be compacted to a minimum of 90% of maximum dry density, as determined by ASTM D-1557.

## **Sheeting & Shoring**

The Contractor shall provide and install sheeting and shoring as necessary to protect workmen, the work and existing utilities and other properties in compliance with OSHA and WISHA requirements. All sheeting and shoring above the pipe shall be removed prior to backfilling. Sheeting below the top of the pipe may be cut off and left in place.

Removal of the sheeting and shoring shall be accomplished in such a manner that there will be no damage to the work or to the other properties.

## **Dewatering**

When water is encountered to a degree that a successful trenching and pipe laying operation is hampered, dewatering will be the responsibility of the Contractor. Determination of the method to be used to dewater trenched areas will be the responsibility of the Contractor, but any method used must be in accordance with the specifications and requirements of the Washington State Department of Ecology and the Local Jurisdiction.

## **Ductile Iron & PVC Pipe Installation**

Work shall be accomplished in accordance with AWWA Standards and the manufacturer's recommendation.

The bottom of the trench shall be finished to grade in such a manner that the pipe will have bearing along the entire length of the barrel. Bolts on mechanical pipe and fittings shall be tightened uniformly with a "Torque" wrench which measures the torque for mechanical joints shall be as follows:

2-inch to 3-inch pipe size 5/8-inch Bolts	40 – 60 ft-lbs torque
4-inch to 24-inch pipe size 3/4-inch Bolts	60 – 90 ft-lbs torque

Installation of push-on-joint (Tyton) pipe shall be in accordance with manufacturer's instructions. All buried ductile iron pipe and adjacent valves and fittings shall be encased with 8-mil polyethylene.

## **Polyethylene Encasement**

Installation of Polyethylene Encasement shall be in accordance with the latest AWWA Standard C105. All ductile iron pipe and fittings shall be wrapped except as specifically excluded on the plans.

## **Concrete Blocking**

All bends and tees and valves shall be blocked in accordance with the Standard Details. All poured in place blocking shall have a minimum measurement of 12-inch between the pipe and the undisturbed bank. The Contractor shall install blocking which is adequate to withstand full test pressure, as well as, to continuously withstand operating pressures under all conditions of service. All concrete shall be mechanically mixed.

## **Fire Hydrant Installation**

Fire hydrants shall be set as shown in the Standard Details and AWWA Standard C600. Hydrant and gate valve must have lugs. The tee on the main line shall not be considered as part of the assembly. The portion of the hydrants above the ground shall be painted with two coats of Rust-Oleum high gloss yellow paint. The hydrant run shall be restrained with MEGALUG restrainer at M.J. end on hydrant and gate valve. If more than one pipe is required on hydrant run, connect pipes with mechanical joint sleeve and MEGALUG restrainers.

Guard posts shall be installed according to the minimum dimensions shown in the Standard Details and painted traffic yellow.

## **Valves**

### **Gate Valves**

Before installation, valves shall be cleaned of all foreign material. Such blocking as the Engineer may deem necessary shall be provided. The valve and valve box shall be set plumb with the valve box centered on the valve. Where valve operating nut is more than 3-feet below finished grade, a stem extension conforming to the Standard Detail must be installed. Tapping valves shall be water tested prior to tapping water main.

The top of the valve box base section shall be located a minimum of 6-inch and maximum of 9-inch below finished grade. A polyethylene sheet, 8-mils thick, shall be placed between the top and base valve box sections to prevent metal to metal contact where the sections overlap.

Valve box top sections shall be adjusted flush with the finished pavement and, in those areas to be excavated for future roadway grades, enough adjustment shall be provided in the valve box to allow the top of the box to be adjusted to the required grade.

### **Air/Vacuum Valve Installation**

Installation shall be shown as on the Standard Detail.

Iron piping and fittings shall be galvanized. Location of the air release valve as shown on the plans is approximate. The installation shall be set at the high point of the line. The water line must be constructed so the air release valve may be installed in a convenient location.

## **Services**

### **New Service Installations**

Service installation shall be as shown on the Standard Details.

Tapping of polyethylene encased ductile iron pipe shall be performed by wrapping three layers of polyethylene compatible adhesive tape completely around the pipe to cover the area where the direct tapping machine and chain will be mounted.

Where a saddle is used in lieu of direct tapping, make a cut in the taped area large enough to accommodate the gasket directly in contact with the ductile iron pipe. Make necessary repair for damaged encasement.

### **Reconnecting Existing Services**

Install service connections as shown on the Standard Detail and plans. Damages to existing facilities shall be repaired by Contractor. Provide 5-foot minimum cover on service lines. Install service at 90-degrees horizontally to the main to intercept the existing meters. Blow off service prior to connection to meter.

Service connections shall not be transferred to the new main until it has been successfully flushed, disinfected and tested. When transferring services from the existing main to the new main, the Contractor shall take all precautions to protect the potable water supply in both the existing and new mains.

The Contractor shall submit for approval a sketch and a list of proposed bushings, adapters, etc. The sketch shall show proposed fittings, (by brand name) for single meter hookups, and connection to existing pipe of various diameter. Multi-meter hook-ups are not allowed, when existing multi-meter hook-ups are encountered, the Contractor shall convert them to single meter hook-ups.

All new service line shall be soft annealed copper. Plastic pipe shall not be allowed except to reconnect portions of existing polyethylene service line, otherwise service line shall be copper from watermain to water meter.

No reconnection to sub-standard service lines shall be allowed.

Substandard plastic service pipe is usually 80 psi polyethylene pipe. The Engineer shall decide if existing service lines are substandard.

## **Vaults**

Vaults for water facilities (services, backflow devices, etc.) shall be constructed at the locations shown in the plan and as staked. It should be constructed as shown in the plans and according to the standard details.

The excavation shall have minimum 1-foot clearance between the vault outer surface and the earth bank. The vault shall be placed on firm soil. If the foundation material is inadequate, the contractor shall use foundation gravel or bedding concrete to support the vault. The vault shall be plumb and watertight. The access cover shall be seated properly to prevent rocking and shall be adjusted to match the finished grade.

Vault floor shall drain to daylight, or to location shown on the plan. Drain pipe shall be minimum 4-inch diameter.

Where knockout locations for pipe do not coincide the locations of pipe penetration into the vault, the contractor shall core drill opening for pipe.

## **Boring & Jacking Steel Casing**

The Contractor shall verify the vertical and horizontal location of existing utilities. If required to avoid conflicts and maintain clearances, adjustment shall be made to the grade of the casing.

The pipe shall be bored and jacked where indicated. The Contractor shall remove or penetrate all obstructions encountered. If groundwater is found to be a problem during boring operations, the Contractor shall do all that is necessary to control the flow sufficiently to protect the excavation, pipe and equipment so that the work is not impaired. Any pipe damaged during the boring and jacking operation shall be repaired by the Contractor in a manner approved by the Engineer.

Special care shall be taken during the installation of the bored and jacked pipe to ensure that no settlement or caving be caused to the above surface. Any such caving caused by the placement of the pipe shall be the Contractor's responsibility and he shall repair any area so affected as directed by the Engineer.

During the jacking operations, particular care shall be exercised to prevent caving ahead of the pipe which will cause voids outside of the pipe. If voids exist, the Contractor shall drill through the wall of the pipe and fill the voids with a pumped cement grout. All voids shall be filled to the satisfaction of the Engineer.

The carrier pipe shall be installed in the casing as shown on the drawings. The Contractor shall support carrier pipe with casing spacers as shown in the Standard Detail. The casing pipe shall not be backfilled with sand and grout. The casing ends shall be sealed with asphaltic material 1-foot minimum on each end, or with manufactured rubber end seal device.

Boring pits shall be backfilled with select native material and compacted to 95% maximum dry density as determined by ASTM D-1557. The contractor shall provide sufficient select backfill material to make up for the rejected material.

All disturbed ground shall be restored to its original condition or better.

# CLOSE OUT

### **III Close Out**

#### **Hydrostatic Tests**

Prior to acceptance of the work, the installation shall be subjected to a hydrostatic pressure test of 200 psi for 15-minutes at the high point in the line and any leaks or imperfections developing under said pressure shall be remedied by the Contractor before final acceptance of the work. No air will be allowed in the lines. The mains shall be tested between valves. Insofar as possible, no hydrostatic pressure shall be placed against the opposite side of the valve being tested. Test pressure shall be maintained while the entire installation is inspected. The Contractor shall provide all necessary equipment and shall perform all work connected with the test. Tests shall be made after all valved connections have been made. At unvalved connection points, a temporary plug (or 2-inch blow-off assembly on lines without hydrants) shall be installed at the end of the new main. This shall include concrete blocking necessary to withstand pressures encountered during the hydrostatic test.

Once the new line is successfully tested and disinfected, the plug (blow-off) shall be removed and the connection to the existing main completed. Insofar as it is practical, tests shall be made with pipe joints, fittings and valves exposed for inspection. For approval, pressure shall not drop more than 10 psi for 15-minutes. The Contractor shall perform the test to assure that the equipment to be used for the test is adequate and in good operating condition, and the air in the line has been released before requesting the Engineer to witness the test. The Engineer shall witness the test; if the test does not pass inspection for any reason, additional trips required to witness the test shall be done at the Contractor's expense.

The contractor shall provide special equipment necessary to complete the testing satisfactorily.

#### **Sterilization & Flushing of Water Mains**

Sterilization of water mains shall be accomplished by the Contractor in accordance with the requirements of the Washington State Department of Health (DOH) and in a manner satisfactory to the Engineer. The section to be sterilized shall be thoroughly flushed at maximum flow established by the Engineer prior to chlorination. Flushing period must be approved by the City of Deer Park Water Department. Sections will ordinarily be sterilized between adjacent valves unless, in the opinion of the Engineer, a longer section may be satisfactorily handled. Chlorine shall be applied by solution feed at one (1) end of the section with a valve or hydrant at the opposite end open sufficiently to permit a flow through during chlorine application. The chlorine solution shall be fed into the pipeline already mixed by an automatically proportioning applicator so as to provide a steady application rate of not less than 60 ppm chlorine. Hydrants along the chlorinate section shall be open during application until the presence of chlorine has definitely been detected in each hydrant run. When a

chlorine concentration of not less than 50 ppm has been established throughout the line, the valves shall be closed, and the line left undisturbed for 24-hours.

As an alternative, the Contractor may use granulated chlorine. Granulated chlorine (dry calcium hypochlorite at 65% - 70% chlorine) shall be placed in the pipe to yield a dosage of not less than 50 ppm. The number of ounces of 65% test calcium hypochlorite required for 20-foot length of pipe equal  $.008431d$ , in which "d" is the diameter in inches. The line shall be thoroughly flushed and water samples taken for approval by local health agency. Flushing period must be approved by the City of Deer Park Water Department. The Contractor shall exercise special care in flushing to avoid damage to surrounding property and to environment.

Should the initial treatment result in an unsatisfactory bacteriological test, additional chlorination using the first procedure shall be repeated by the Contractor until satisfactory results are obtained. The Contractor shall be responsible for dechlorination of treated water flushed from mains at no time shall chlorinated water from a new main be flushed into a body of fresh water. This is to include lakes, rivers, streams, storm drainage systems, and any and all other waters where fish or other natural water life can be expected. Disposal may be made to any available sanitary sewer provided the rate of disposal will not overload the sewer.

## **Connection to Existing Watermain**

Points of connection to existing water mains shall be exposed prior to trenching of the new line, and not less than 48-hours prior to the anticipated connection time. The contractor shall notify the City of Deer Park Water Department 48-hours in advance prior to any watermain shut-off or connection. The Contractor shall ensure that the existing fittings are in accordance with the Plans and that the connection can be made in accordance with the Plans. The Contractor shall immediately notify the Engineer if the connection cannot be made in accordance with the plans in order that the connection detail may be revised.

Connection to the existing main shall take place only after the new main is flushed, disinfected, and satisfactory bacteriological sample results are obtained. An approved backflow prevention assembly shall be installed between the existing and new water lines during disinfection and flushing of new main. All connections to the existing system and all testing of the new line must be with the authorization of, and in the presence of, the authorized representative of the City of Deer Park Water Department. Opening and closing of valves and use of water from the City system will be done only by the City of Deer Park Water Department. The backflow preventer and supply hose must be disconnected during hydrostatic pressure testing of new main.

Connections may be made to existing pipes under pressure with a tapping machine by determining the size and type of pipe and installing tapping tee to fit complete with tapping gate valve. Tapping tees shall be installed as shown on the Standard Details. Where cut-ins are permitted to be made in existing pipes, the work shall be conducted at such a time and in such a manner as to minimize the interruption of service. Cut-in time must be expressly approved by the City of Deer Park Water Department in Writing.

Necessary pipe, fittings, and gate valves shall be assembled at the site ready for installation prior to shutting-off of water in the existing main. Once the water has been shut off, the work shall be prosecuted vigorously and shall not be halted until the line is restored to service.

The interiors of all pipe and fittings to be used in final connection shall be swabbed or sprayed with a 1% available chlorine solution.

Unless specifically provided for elsewhere in these standards, the Contractor shall have the responsibility of giving at least 48-hour notice to the City of Deer Park Water Department and affected water services of intention to disrupt service.

## **Adjust Existing Structure to Grade**

### **Valve Cover Adjustment**

Existing vault covers affected by a pavement overlay, or adjustment in surface grade, shall be adjusted to grade within three (3) working days.

### **Valve Box Adjustment – Pavement Overlay and Sidewalks**

- A. Raising the existing valve box cover less than 2-inch shall be accomplished by adjusting the existing top section of the valve box.
- B. Raising the existing valve box cover 2-inch or more, shall be accomplished by either adjusting the existing top section or by inserting a valve box paving riser into the existing valve box top. The paving riser shall be epoxied to the valve box.
- C. If the valve box base section needs to be extended, the contractor shall install a 4-inch diameter cast iron soil pipe, with bell-end of the soil pipe inserted over the top of the existing valve box base section. The spigot-end of the soil pipe shall be located a minimum of 6-inch and maximum of 9-inch below finished grade. The valve box top section shall be slipped over the soil pipe and adjusted to final grade. A polyethylene sheet, 8-mils thick, shall be placed between the valve box and soil pipe to prevent metal to metal contact where the sections overlap.

Final box adjustment shall leave the top of the valve box no higher than final grade, and no lower than 1/2-inch below final grade.

In asphalt concrete pavement overlay areas, excavation of the valve box to be raised shall be accomplished by sawcutting or neat-line jackhammering the pavement a minimum of 12-inch around the perimeter of the valve box.

Final adjustment of valve boxes shall be made within 20-calendar days following the final overlay.

### **Valve Box Adjustment – Unimproved Areas**

Adjustment of valve box covers located outside paved areas or sidewalks can be accomplished using a 12-inch valve box adjusting sleeve inserted into the existing valve box top section.

## **Abandoning Facilities**

### **Abandoning Pipe in Place**

The Contractor shall plug the open ends of all pipes, fittings, etc. to be abandoned with end cap coupling on asbestos cement or steel pipe, with mechanical joint cap or plug on cast or ductile iron pipe.

### **Abandoning Structures**

Abandonment of structures shall be completed only after piped systems have been properly abandoned. Structures within the public right-of-way, a public easement or which are part of the publicly-owned and maintained system must be:

- ~ removed completely; or
- ~ abandoned provided no conflicts with new utilities or improvements arise.

# APPENDIX

## Chapter 12.10

### TELECOMMUNICATIONS, CABLE – MUNICIPAL AUTHORIZATION TO USE RIGHT-OF-WAY

#### Sections:

- 12.10.010 Definitions.
- 12.10.020 Purpose.
- 12.10.030 Permission required — Master permit, use permit.
- 12.10.040 Master permit application — Contents.
- 12.10.050 Permit procedures.
- 12.10.060 Use permit, expedited consideration.
- 12.10.070 Use permit, advance notice, restrictions on denials.
- 12.10.080 Conditions of occupancy or use of the right-of-way.
- 12.10.090 Exemption, preemption.
- 12.10.100 State law provisions.
- 12.10.110 Restriction on moratoriums.
- 12.10.120 Relocation.
- 12.10.130 Facilities for city use.
- 12.10.140 Fees and charges.
- 12.10.150 Authority of administering officer.
- 12.10.160 Appeals.
- 12.10.170 Other users, occupants — Outside right-of-way.

#### 12.10.010 Definitions.

The definitions in this section apply throughout this chapter unless otherwise stated or the context clearly requires otherwise.

- A. “City” means the City of Deer Park and its legal successors.
- B. “Administering Officer” means the designated municipal official responsible for administering this chapter.
- C. “Cable Television Service” means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video or other programming service.
- D. “Facilities” of a service provider means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances

necessary or incidental to the distribution and use of telecommunications services and cable television services. For parties other than service providers, “facilities” means any physical plant installed or maintained in the right-of-way by such parties.

E. “Municipal Infrastructure” means the road bed and road area, street and sidewalk paving, curbing, associated drainage facilities, bike paths and other construction or improvements pertaining to public travel. It further includes municipal water and sewer lines or other municipal utility facilities, as well as municipal traffic signals, street lighting and communications facilities in the right-of-way or other areas or easements open for municipal use. It further includes street trees, plants, shrubs, lawn and other ornamental or beautification installations owned by the City in the right-of-way or other ways open for public travel or municipal use, and accepted for municipal management or control as such. The definition is intended to encompass any municipal physical plant, equipment, fixtures, appurtenances or other facilities located in or near the right-of-way or areas or easements opened and accepted for municipal use.

F. “Permit” refers to a grant of municipal permission or authority to an application to use the right-of-way to locate facilities and perform related activities therein. This chapter identifies two levels of permits, a master permit and a use permit.

1. A “master permit” confers general permission to enter, use, and occupy the right-of-way locate facilities. The term does not apply to cable operators because they must obtain a cable franchise in lieu of a master permit. A franchise operates as master permit, but is negotiated under informal procedures.
2. A “use permit” conveys more limited permission to enter and use a specified area or location in the right-of-way for a specific purpose such as installing, maintaining, repairing, or removing identified facilities.

G. “Personal Wireless Services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

H. “Right-of-way” means land acquired by or dedicated to the City for public roads and streets, but does not include:

1. State highways;

2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trusts lands;
5. Lands owned or managed by the state parks and recreation commission; or,
6. Federally granted railroad rights-of way acquired under 43 U.S.C. Section 912 and related provisions of federal law that are not open for motor vehicle use.

I. "Service Provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing telecommunications service or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, person, city, or town.

J. "Telecommunications Service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale "to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over the-air transmission of broadcast television or broadcast radio signals. (Ord. 756 § 3, 2001)

**12.10.020 Purpose.**

- A. The purposes of this chapter are:
1. To protect the general public health and safety;
  2. To preserve and maintain the primary purpose of the right-of-way and other areas of like use as a means of public access and travel and emergency vehicle access;
  3. To comply with requirements of applicable federal or state laws, including Chapter 83, Laws of 2000, reserving as well as all applicable municipal authority with respect to use and occupancy of the right-of-way and other areas of like use;
  4. To preserve the value of public investment in the right-of-way and other areas of like use, maximize the useful life of street, curbing,

- and sidewalk paving, and to maintain the integrity and quality of the paving;
5. To support municipal utility and other municipal infrastructure needs as a priority use of the right-of-way and other areas of like use, and the value of municipal infrastructure investment; and,
6. To promote a healthy urban environment and the public convenience and aesthetics.

B. The purposes stated govern questions of interpretation and enforcement of this chapter, as implemented in the sound discretion of the administering officer. Notwithstanding any other provision, nothing in this chapter or any municipal action or inaction relating thereto is intended to create or expand municipal tort liability for any purpose. This provision shall control all others in the event of conflict or ambiguity. (Ord. 756 § 3, 2001)

**12.10.030 Permission required – Master permit, use permit.**

A. A service provider or any other party must obtain a master permit or city franchise to enter, use and occupy the right-of-way or like areas, including utilities easements, to locate facilities therein. If this requirement is determined to be preempted by state law, as in Section 3(1), Chapter 83, Laws of 2000, or for any other reason, the requirement applies as a request, but only to the extent of such preemption.

B. Master permits or franchises are granted by ordinance, on recommendation of the administering officer. In addition, in the exercise of discretion, the administering officer may grant a temporary master permit, up to 90 days, renewable once for up to an additional 90 days. Parties placing facilities in or on host facilities of others in locations subject to this chapter are bound by conditions applicable to the host facilities, and may also be required to obtain a separate franchise.

C. In addition to a master permit or franchise, a service provider must obtain permission to enter and use a specified right-of-way or other areas or like use to install, maintain, repair or remove identified facilities by means of a use permit. Unless ordered by the administering officer or otherwise provided by ordinance, a use permit is granted in the form of a street obstruction permit issued under DPMC 12.04.080. For special circumstances, incidental or temporary purposes not otherwise addressed, the administering officer may grant revocable permission on such conditions as deemed

proper, considering DPMC 12.10.020, but the provisions in DPMC 12.10.080 also apply, except insurance requirements may be adjusted on recommendation of the insurance carrier of the City.

D. Utilities or agencies of the City of Deer Park are exempt from master permit, franchise, or use permit requirements, but the administering officer may specify conditions of use or occupancy, including the condition of user city departments to coordinate work in the right-of-way by giving appropriate notice to the municipal office issuing use permits. The administering officer resolves any conflicts among municipal users. (Ord. 756 § 3, 2001)

### **12.10.040 Master permit application – Contents.**

A. To obtain a master permit, a written application is filed with the administering officer, in such form as required by said official. General information requested may include, but is not limited to:

1. Applicant's true name, address, telephone, fax, and e-mail, together with an identification of the true ownership of the applicant, including the names and addresses of all persons with 10 percent or more ownership interest. For a corporation or other business organization, the state of incorporation or organization and a certificate of incorporation or other proof of legal status should be included;
2. A statement of whether the applicant, or any entity controlling the applicant, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States Title 11 of the United States Code, had an involuntary petition against it pursuant to the bankruptcy code, or been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors;
3. A statement of whether the applicant or any entity controlling the applicant has had a master permit, franchise, or similar right-of-way use or occupancy permission ever suspended or revoked in any other jurisdiction;
4. A statement of whether the applicant or any entity controlling the applicant has been

found guilty, by any federal, state or municipal court or administrative agency in the United States of:

- a. A violation of a security, antitrust or tax laws; or,
  - b. A felony or any other crime involving fraud, theft, or moral turpitude. If so, the application shall identify any such person and fully explain the circumstances;
5. A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed telecommunications services facility;
  6. A description of the physical facility proposed, including capacity, the area to be served, a description of technical characteristics, and a map of the proposed system service area and distribution scheme;
  7. A description of how any construction will be implemented, identification of areas having aboveground or below ground facilities, the proposed construction schedule, and a description (where appropriate) of how service will be converted from any existing facility to a new facility. The construction plan shall be coordinated with the city water, sewer, street, and other improvement plans and municipal infrastructure needs as may be further ordered by the administering officer;
  8. A description of the services to be provided over the system;
  9. The proposed rates to be charged, including rates for each service offered to the public, as appropriate, and charges for installation, equipment, and other services, and whether such rates are subject to regulatory or informational tariff or other rate regulation requirements from any other jurisdictional agency;
  10. Verification that the proposal is designed to be consistent with all federal and state requirements;
  11. In the case of an application by an existing telecommunications service provider for renewal, a verification that said service provider has complied with all terms of the existing master permit or franchise and with applicable law;
  12. Other information that the administering officer may request of the applicant;

13. The signature, under penalty of perjury, by the applicant or duly authorized agent thereof, certifying, in a form acceptable to the City, the truth and accuracy of the information contained in the application and acknowledging the enforceability of this chapter; and,
  14. Payment of an application fee as established by resolution.
- B. With narrow exceptions, Washington State's open public records law precludes the City from honoring requests for confidentiality. (Ord. 756 § 3, 2001)

### **12.10.050 Permit procedures.**

#### **A. Master Permits for Use of the Right-of-Way (Non-cable Service Providers).**

1. This section states a formal process for the consideration of requests for master permits, but any applicant may agree to proceed under an informal process; provided, either the City or the applicant can invoke formal procedures at any time. In such event, the time of invoking formal procedures shall be regarded as the filing date of the application for purposes of further time limits in this section.
2. On receipt of an application and application fee from a service provider, the administering officer may notify the applicant of expected costs. For purposes of satisfying the requirements for publication in the official newspaper of the City of Deer Park has declared that the Spokesman Review is the official newspaper. The administering officer may also publish a summary of a franchise or master permit in like manner in a newspaper of general circulation, costs to be paid by the applicant.
3. An applicant must deposit costs as notified with the administering officer within 10-days of notification as a condition of further consideration of an application. Any unexpended monies after the application process are refunded or additional costs billed by the administering officer, to be paid within 30-days of billing. If an applicant fails to file a completed application, furnish requested information, or pay required amounts on time, the administering officer cancels the application process and

notifies the applicant. No refund is allowed for the application fee.

4. Within 90-days of the filing of a complete application and payment of required fees by a service provider, the administering officer negotiates a master permit with the applicant or determines it should be denied. If the administering officer approves the application, the master permit is forwarded for passage by the city council. If the master permit is denied, the administering officer explains the reasons for denial, which shall be supported by a written record based on substantial evidence.
  5. The administering officer may require the service provider to attend and participate in any hearing or other fact finding process to determine whether to grant the permit; provided, that extensions of time for the hearing and final action by the City beyond 120-days of the date a service provider filed a complete application requires the service provider's consent unless legislative approval of the city council cannot reasonably be obtained within such period.
  6. In the event time otherwise expires, the administering officer may grant a temporary master permit, upon conditions as may be specified by said officials, pending further proceedings.
  7. A service provider adversely affected by the final action denying a master permit, or by an unreasonable failure to act on a master permit in accord with this section may commence an action within 30-days to seek relief in a court of competent jurisdiction, which shall be limited to injunctive relief. Venue of such a proceeding shall be in Spokane County. Upon timely appeal, the administering officer certifies the record and delivers the same to the court where filed. Said official may require a deposit of funds by the appealing party in an amount estimated necessary to prepare the record as a condition of certifying the record.
- B. Use Permits for Specific Use of the Right-of-Way.
1. The City must act upon a request for a use permit from a service provider relating to a use of the right-of-way within 30-days of receipt of a completed application and any application fee by the official designated to

issue such permits, unless a service provider consents to a different time period or the service provider has not obtained a master permit or franchise from the City. A use permit may not be denied to a service provider with an existing state-wide grant to occupy the right-of-way for wireline facilities on the basis of failure to obtain a master permit.

2. For the purposes of this section, “act” means that the City makes the decision to grant, condition, or deny the use permit, or notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for this time period.
3. A service provider adversely affected by the final action denying a use permit may commence an action within 30-days in a court of competent jurisdiction to seek relief, which shall be limited to jurisdiction to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a use permit, the standard for review and burden of proof shall be as set forth in RCW 36.70C.130. Municipal action is not final until the service provider has appealed any dispute to the city council as provided in this chapter and a decision issued therefrom.

C. In addition to any other applicable reasons, a master or use permit for placement of facilities of personal wireless services may further be denied consistent with the provisions of RCW 35.21.860(1)(e). (Ord. 756 § 3, 2001)

#### **12.10.060 Use permit, expedited consideration.**

Where a service provider does not have a master permit or franchise containing procedures to expedite use permit approvals and the service provider requires action in less than 30-days, the service provider shall advise the issuing official in writing of the reasons why a shortened time period is necessary and the time period within which action by the City is requested. The City shall reasonably cooperate to meet the request where practicable. (Ord. 756 § 3, 2001)

#### **12.10.070 Use permit, advance notice, restrictions on denials.**

A. In order to facilitate the scheduling and coordination of work in the right-of-way, the administering officer shall provide as much advance notice to a service provider as reasonable of plans to open the right-of-way to those service providers who are current users of the right-of-way or who have filed notice with the city clerk within the past 12-months of their intent to place facilities in the City. This obligation may be satisfied by listing such projects in the official newspaper of the City of Deer Park or any other reasonable means as ordered by the administering officer, including posting notice on the City’s official website.

B. Service providers shall subscribe to the official newspaper at their expense and are further responsible to survey the City of Deer Park official website for notices relating to this chapter. Service providers are further responsible to maintain on file with the administering officer, a current work email address.

C. The City is not liable for damages for failure to provide notice under this section. Where the City has failed to provide notice of plans to open the right-of-way to a service provider consistent with this section, a use permit to such service provider may not be denied on the basis that the service provider failed to coordinate with another project. (Ord. 756 § 3, 2001)

#### **12.10.080 Conditions of occupancy or use of the right-of-way.**

The following requirements apply as minimum conditions of installing, locating, using, maintaining, abandoning or removing facilities in the right-of-way or other permitted areas, whether by a service provider or any other user. They are a basis of negotiation of any franchise or master permit. Service providers or other users must accept the requirements, so long as any use or occupancy continues, regardless of whether a master or use permit or franchise has been issued, revoked or expired;

A. Users must comply with all applicable federal and state laws relating to operations in the City of Deer Park, including safety laws and standards, as well as local ordinances, this chapter, and the policies and standards of the City, construction codes, regulations, and orders of the administering officer, compliance all being further subject to audit or verification by the City at the users’ expense.

B. Users must obtain all permits required by the City for the installation, maintenance, repair, or removal of facilities in the right-of-way and pay all permit and filing fees, costs, charges and penalties within 30-days of billing or as otherwise specified by the administering officer.

C. Users must always act in good faith and fair dealings with the public and must provide safe, reliable service to the public. Users must cooperate with the City to ensure their facilities are installed, maintained, repaired, and removed within the right-of-way or other permitted areas in compliance with the purposes of this chapter and in such a manner and at such points so as not to inconvenience the public use or to adversely affect the public health, safety, and welfare.

D. Users must provide information and plans the City requires to enable the City to comply with and enforce this chapter, including provision of advance planning information pursuant to the procedures established by the administering officer. Users must keep the administering officer fully informed of any changes to information required to be supplied with any master permit or franchise or any use permit.

E. Users must provide advance notice of long- and short-range needs for access to the right-of-way or other permitted areas as may be ordered by the administering officer, and otherwise, as much as reasonable in order to facilitate the scheduling and coordination of work in the right-of-way or other permitted areas.

F. Users must obtain the written approval of the facility or structure owner, if they do not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way or other permitted areas, and construct, install, operate, and maintain their facilities at their sole expense and liability except as otherwise provided by law or agreement.

G. The City must not be exposed to any loss, liability or expenses because of another's use or occupancy of the right-of-way or other permitted areas. Users must fully indemnify and hold harmless the City, its officers, agents and employees, from all loss or liability in connection with their use or occupancy of such areas. Operations in or near the right-of-way or other permitted areas should be conducted to minimize or avoid hazard to the public or interfere with the priority of municipal infrastructures needs. Users must further pay for loss or damage to municipal assets or injury to municipal personnel. If the City nonetheless is exposed to risk or loss, users must protect and defend the City to

the maximum extent permitted by law. Minimum insurance requirements pending any use or occupancy of the right-of-way or other permitted area are \$500,000.00 per occurrence and \$1,000,000.00 aggregate, with the City of Deer Park as an additional named insured or as otherwise ordered by the administering officer with the advice of the city insurance carrier.

H. The City is not responsible for construction or maintenance of any facilities placed and has no duty to modify the right-of-way or other permitted areas to accommodate such facilities. All areas utilized must be accepted "as is," without express or implied assurances of suitability of any area for facilities placed. Users must assume all risk of facility placement and occupancy, including risks now or hereafter arising because of lack of municipal resources to maintain the municipal infrastructure or any component in current or better condition. Users must waive any claim against the City for loss or liability arising from acts or omissions of other users, occupants or the public, because unstable earth or road bed, changes in groundwater conditions or other natural or artificial conditions rendering the right-of-way or other permitted areas unsuitable for use for facilities placed or any other problem. This does not affect the applicability of Chapter 19.122 RCW, Washington State's underground utilities statute.

I. There is no warranty of any municipal title or interest to confer permission to use or access any area. Permission is in the nature of a quitclaim authorization, subject to any other underlying interests as may be established. The City further reserves the right to vacate or abandon any permitted area at no cost or liability to the City. Municipal infrastructure needs to have first priority in all cases except and only so far as shown to be otherwise required by a preemptive right.

J. There is no duty or liability to the City to any third-party tenant in or on a user's facilities in the right-of-way or other permitted areas, or to any direct or indirect customers or third-party beneficiaries of a user. The City disclaims any such duty or responsibility. Users must accept sole responsibility for claims of their direct or indirect third-party tenants, customers or third-party beneficiaries.

K. Nothing in this chapter limits or restricts any requirement, duty or obligation heretofore arising to the benefit of the City as a result of any municipal contract, permit, or franchise, but such provisions are supplemental and in addition to this chapter. The provisions of this chapter are supplemental and

in addition to other applicable municipal ordinances, standards, and requirements. Nothing in this chapter impairs any obligation of contract in violation of the Constitution of the State of Washington or the United States.

L. Any damage or disturbance to the right-of-way or other permitted or surrounding areas must be promptly restored. A patch must be thereafter maintained by the responsible party as determined by the administering officer until the area is repaved. The administering officer may require the responsible party to repave an entire lane within a cut or disturbed location, or greater area, if deemed affected. Common trenching and coordination of access needs by the user is required to avoid unnecessary cuts or damage to the right-of-way or other permitted areas.

M. Access may be limited by the administering officer at a location, considering the purpose of this chapter, where there is inadequate space or other special limitations in an area, subject also to DPMC 12.10.110. Minimum underground horizontal separation is 5-feet from city water or wastewater facilities and 10-feet from above ground city water facilities, subject to the administering officer's review and further determination.

N. Any assignment of use or occupancy privileges require consent of the City in the manner originally granted. This does not apply to minor stock transfers. No capital stock may ever be issued based on any permission to use or occupy the right-of-way or other permitted areas or the value thereof. In any condemnation proceeding brought by the City, no grantee of any permission, permit or franchise under this chapter or otherwise shall ever be entitled to receive any return thereon, or its value. (Ord. 756 § 3, 2001)

#### **12.10.090 Exemption, preemption.**

Anyone asserting a claim of preemption or exemption from a requirement of this chapter, permit, franchise, or order shall first present the same to the administering officer, with any supporting factual or legal arguments. The administering officer may resolve the question under such procedures as deemed efficient or may refer the matter to the city council for resolution through the hearings process in like manner as an appeal. The intent of this provision is to provide a quick and efficient means of understanding and resolving problems arising with the respect to any permit or use or occupancy of the right-of-way or other permitted areas, consistent

with the purpose of this chapter and other applicable laws. (Ord. 756 § 3, 2001)

#### **12.10.100 State law provisions.**

A. For convenience, this section recites certain restrictions on municipal authority from Chapter 83, Laws of 2000. For complete text, the reader is referred to Section 4(1) thereof. Such restrictions, which do not apply to preexisting franchises or permits, state that the City may not adopt or enforce regulations specifically relating to the use of the right-of-way by a service provider which:

1. Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;
2. Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;
3. Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law; or,
4. Unreasonably deny the use of the right-of-way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services.

B. In addition, section 4(2) of Chapter 83, Laws of 2000 preserves certain areas of municipal authority. Consistent therewith, nothing in this chapter limits the authority of the City or its officials to regulate the placement of facilities through its local zoning or police power, if the regulations do not otherwise;

1. Prohibit the placement of all wireless or of all wireline facilities within the City;
2. Prohibit the placement of all wireless or of all wireline facilities within City right-of-way; or,
3. Violate Section 253 of the Telecommunications Act of 1996, P.L. 104-104 (110 Statute 56).

C. These provisions do not amend, limit, repeal, or otherwise modify the authority of cities or towns to regulate cable television services pursuant to federal law. (Ord. 756 § 3, 2001)

### **12.10.110 Restriction on moratoriums.**

A. To the extent required by state law, the City shall not place or extend a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any facilities for personal wireless services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the Federal Communications Commission's Local and State Government Advisory Committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the American Mobile Telecommunications Association.

B. Should such a moratorium be implemented, the administering officer shall, on receipt of a written request of a service provider impacted by the moratorium, participate with the service provider in the informal dispute resolution process included with the guidelines for facilities siting implementation. Any costs of municipal participation shall be payable in advance by the service provider. (Ord. 756 § 3, 2001)

### **12.10.120 Relocation.**

A. The administering officer may require service providers to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety as provided in Chapter 83, Laws of 2000.

B. The administering officer shall notify service providers as soon as practicable of the need for relocation and shall specify the date by which relocation in the right-of-way shall be completed. Notice may be given by posting the same on the City's website, publication in the official newspaper, or any other means. In calculating the date that relocation must be completed, the administering officer shall consult with affected service providers and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation.

C. Service providers shall complete the relocation by the date specified, unless the administering officer, or a reviewing court, establishes a later

date for completion, after a showing by the service provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

D. Service providers may not seek reimbursement for their relocation expenses from the City requesting relocation under subsection A of this section except:

1. Where the service provider had paid for the relocation cost of the same facilities at the request of the City within the past 5 years, the service provider's share of the cost of relocation will be paid by the City when it is requesting the relocation;
2. Where aerial to underground relocation of authorized facilities is required by the City under subsection A of this section, for service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the City requiring relocation; and,
3. Where the City requests relocation under subsection A of this section solely for aesthetic purposes, unless otherwise agreed to by the parties.
4. No relocation reimbursement is paid by the City for other permitted areas outside the right-of-way where not otherwise required by Chapter 83, Laws of 2000.

E. Where a project in subsection A of this section is determined by the administering officer to be primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Service providers will not be precluded from recovering their costs associated with relocation required under subsection A of this section; provided, that the recovery is consistent with subsection C of this section and other applicable laws. The City has no obligation to secure the collection or payment of any funds not owed by the City.

F. The administering officer may require the relocation of facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare.

G. For users other than service providers, such parties shall relocate any facilities as ordered by the administering officer and no right of reimbursement

from the City will ever be recognized. (Ord. 756 § 3, 2001)

### **12.10.130 Facilities for City use.**

A. The administering officer may require that a service provider that is constructing, relocating, or placing ducts or conduits in public rights-of-way provide the City with additional duct or conduit and related structures necessary to access the conduit, provided that;

1. The City enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the service provider. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the service provider. The service provider shall state both contract rates in the contract. The administering officer shall inform the service provider of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.
2. Except as otherwise agreed by the service provider and the City, the City agrees that the requested additional duct or conduit space and related access structures will not be used by the City to provide telecommunications or cable television service for hire, sale, or resale to the general public.
3. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.
4. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.
5. This section shall not affect the provision of an institutional network by a cable television provider under federal law. Additional requirements may apply as determined by the City in other permitted areas, outside the right-of-way.

B. Except where preempted by state or federal law, the City reserves the right to require provision of facilities for City use or impose other conditions on users of the right-of-way or other permitted areas. (Ord. 756 § 3, 2001)

### **12.10.140 Fees and charges.**

RCW 35.21.860 addresses limitations on the City's power to impose franchise or other fees on some service providers and other entities specified, including site-specific charges pursuant to agreements with a service provider of personal wireless services as provided therein. Except as may be preempted by state or federal law, the City reserves the right to require compensation for use of the right-of-way as a condition of granting permission to use and occupy the right-of-way or other permitted areas. (Ord. 756 § 3, 2001)

### **12.10.150 Authority of administering officer.**

A. The administering officer interprets and enforces this chapter, resolves conflicts and determines disputes arising under this chapter or permits or franchises issued in connection therewith. The administering officer has authority to issue general regulatory orders affecting all service providers or other users, as well as specific orders in specific cases or circumstances as deemed necessary. General regulatory orders are published in the official newspaper of the City of Deer Park at least 20-days prior to taking effect unless otherwise ordered by the administering officer because of exigent circumstances. In such event, reasonable effort shall be made to notify affected parties. General or specific orders may be issued on application of an affected service provider or any other user.

B. Orders and decisions of the administering officer are guided by the purpose of this chapter. Prior to issuance of an order, the administering officer may give such advance notice and opportunity for hearing as deemed proper, or may provide for a hearing upon request to review an order or specific application of a party arising after issuance. The officer shall collect a filing fee as established by council resolution for consideration of any petition for action or determination by a regulated party or other person.

C. An order may include provision for penalty of not more than \$500.00 per violation. In case of a continuing violation, each day may be specified to

be an additional and separate violation. No penalty for failure to comply with any administrative order may be assessed except after notice and opportunity for hearing for the affected party. Failure to pay a penalty is a violation of this chapter, and a breach of permit conditions and grounds for permit revocation by the administering officer after notice and opportunity for hearing for the permittee. (Ord. 756 § 3, 2001)

### **12.10.160 Appeals**

A. Any party feeling aggrieved by an order or decision of the administering officer or other municipal official relating to this chapter may appeal the same by filing notice of appeal with the city council of the City of Deer Park within 30-days of the date of mailing or transmittal to said party or such order or decision appealed from. Included with the notice of appeal must be a statement of reasons for the appeal and copies of any pertinent documents or information and proof of delivery in such time limit of such submittals to the administrative officer and city attorney. A filing fee for appeal as established by resolution must also be paid to the City at the time of filing, but no filing fee is required for municipal appeals.

B. Upon receipt of a notice of appeal, where any penalty or charge is concerned, the administrative officer shall determine the amount of any accrued penalty or charge and notify the appealing party. The appealing party must post with the city council a bond, cash deposit or other suitable form of security as ordered by the administrative officer within 10-days of notification as a condition of further prosecuting any appeal. If the appeal is sustained, the security shall be returned. If the appeal is denied, the security shall be applied to any accrued penalty or charge. No appeal shall stay the accrual of any continuing penalty except upon showing the appeal had reasonable merit and was taken in good faith, and not for purposes of delay.

C. The city council shall conduct a hearing on the appeal within 30-days of filing of the notice of appeal, and issue a decision thereafter within 20-days of the hearing. The city council's decision is final, subject to appeal in a court of competent jurisdiction by either party with a notice of appeal filed within 30-days, copies to be served upon the city council, and adverse party. If a city official is the responding party, a copy shall also be served on city attorney within such time.

D. An order or decision of the administering officer shall be sustained by the city council or a reviewing court unless found to be arbitrary and capricious. Upon timely appeal to a reviewing court, the city attorney certifies the record and delivers the same to the court where filed. The city attorney may require a deposit of funds by the appealing party in an amount estimated necessary to prepare the record as a condition of certifying the record. (Ord. 756 § 3, 2001)

### **12.10.170 Other users, occupants – Outside right-of-way.**

Whether or not otherwise expressly provided in this chapter, the administering officer is authorized to adapt this chapter, considering its purposes, in the exercise of sound discretion in dealing with users other than service providers, or with respect to service providers in other permitted areas outside the right-of-way, recognizing that the State Legislature chose to limit the effect of Chapter 83, Laws of 2000 to service providers and a defined right-of-way area, but no waiver of any municipal requirement is binding unless in writing and notwithstanding any statement therein, any such waiver remains revocable at all times. (Ord. 756 § 3, 2001)