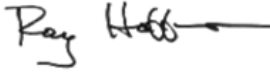


Title Incidental Use of Real Property	Number FFM-510.1	Rev. no. 0
Responsibility Facilities and Real Property Services	Supersedes N/A	Pages 3
SPU Director's Approval  Ray Hoffman	Effective Date December 5, 2012	

1. PURPOSE

This Director's Rule provides guidance for Seattle Public Utilities when considering incidental use of SPU real property and establishes prerequisites for the permitting process. The rule conforms to policy FFM-510, Incidental Use of Real Property.

2. DEFINITIONS

Real Property: Land, buildings, and the structures permanently affixed to the land under the jurisdiction of Seattle Public Utilities. Also referred to as "property."

Incidental Use: A temporary and revocable utilization of SPU property by other City departments, government agencies, businesses, or the public that are for non-utility purposes.

Permittee: A party that has received an incidental use permit from SPU.

3. RULE

A. Conditions for Incidental Use Permits

An incidental use permit will consist of some type of written agreement. Depending on the nature of the permit, this may be a short form-issued permit, short-term lease, memorandum of agreement, or other type of agreement detailing the terms and conditions of the incidental use. Any permit authorizing incidental use of a utility property should include, but is not limited to, the following conditions:

1) *Use is Temporary and Revocable*

Permittee's use of the property is always temporary and revocable, and the use does not grant or convey any permanent property rights or change SPU's rights in any way. SPU may revoke the permit if the property becomes needed for utility purposes. The term of the permit will be determined on a case-by-case basis. Permittee will work with SPU to develop and implement measures, such as information signs or ongoing public outreach, to ensure that the public or other interested stakeholders are always aware that their incidental use is of a temporary nature.

2) *Subject to Permit Fees*

Incidental uses of SPU property may be subject to some form of compensation or consideration for SPU which may be in the form of an incidental use permit fee. SPU will

not expend utility funds for activities or costs related to the Permittee's incidental use unless a prior agreement has been reached. If SPU agrees, the costs, including any use fees and administrative costs, will be reimbursed by the Permittee in the form of an incidental use permit fee. SPU may offset its costs by the reasonable value of any true and substantive benefits to SPU that arise from the incidental use.

3) *Other Permit Provisions*

The incidental use permit will include any other provisions that SPU determines are necessary or appropriate for the circumstances to protect the utility purposes of the property and the utility ratepayers' interests. These may include constraints on the number of people permitted on a utility property or requirements for a Permittee to develop a public outreach plan for SPU's approval. SPU may revoke the permit immediately for any violations of permit conditions and requirements that are not corrected by the Permittee within an SPU stipulated timeframe.

B. Requirements and Responsibilities of a Permittee

- 1) Permittees must meet all of the following requirements:
 - i. The authority and resources to provide control of the incidental use.
 - ii. The assurance of appropriate, continuous monitoring of the incidental use.
 - iii. The ability and resources to rectify any damage or harm to utility property.Failure to fulfill any of the requirements at any time may result in revocation of the permit.
- 2) Permittee must comply with all applicable federal, state, and local laws, ordinances, codes, rules and regulations, including but not limited to health, safety and environmental laws.
- 3) Permittee will correct at its expense any damages to the utility system, property or facility that arise out of the incidental use. Permittee will indemnify SPU for all damages, liabilities and expenses arising out of the incidental use and will provide any required insurance policies as determined by SPU.
- 4) Permittee will be responsible for constructing, operating, maintaining and repairing its own facilities and for conducting its own activities at its own expense, including repairs that may be caused by SPU's operation, management, or control of the property.
- 5) During the term of the permit and upon notification by SPU, Permittee will be responsible for relocating or removing any of its permitted structures or improvements. Permittee may also be required to pay SPU for installation, relocation or removal of improvements to protect SPU property from the incidental use (e.g. security fences, bollards, water meter service) or for any increased maintenance or operational costs incurred by SPU that are caused by the incidental use. If agreed to by SPU, Permittee may directly perform the maintenance or operational work.
- 6) Any property improvements proposed by a Permittee must be pre-approved by SPU. SPU will review and approve any designs for allowable structures or improvements, or plans for allowable activities, and may require that the design or plans include preventative measures to protect water quality in utility systems, receiving waters, or other sensitive areas, as well as the security and physical integrity of the utility property. The preventative measures may include, but is not limited to denial of certain structures or activities, adjustments or corrections to designs or plans, and specific ongoing monitoring and oversight.

C. Applying for Permits

- 1) Prospective permittees must contact SPU Facilities and Real Property Services to apply for an incidental use permit.
- 2) Upon receipt of a written request for an incidental use permit, Facilities and Real Property Services will notify and coordinate with the appropriate utility line of business before issuing the permit.

D. Permits for other City Departments or Government Agencies

- 1) To allow incidental uses by other City departments or government agencies, SPU will enter into a memorandum of agreement with those entities.
- 2) To indirectly allow incidental uses by the general public, SPU may enter into a memorandum of agreement with other City departments or government agencies. SPU may delegate the permitting of incidental uses to these entities and require them to monitor and control incidental uses by the general public under terms specified by SPU.

E. Priority of Permit Requests and Approvals

SPU will consider written requests for incidental uses generally on a first-come, first-serve basis. If conflicting requests are made, the SPU Director may revoke an existing permit if there is an over-riding interest or greater benefit for approving a later-requested incidental use. As appropriate, City and public uses may be given priority over private and commercial uses. An existing permit is not a guarantee of future continued use.

F. Applicability

This Director's Rule is intended to be general. If another more specific rule, agreement, or policy regarding incidental use applies to a particular property, this rule will apply only to the extent it is consistent.

4. AUTHORITY/REFERENCES

- RCW 43.09.210, State Accountancy Act
- SPU Director's Rule FIN-210.2, Standard, Connection, and Administrative Charges — Water Services