

**CITY OF STANWOOD
Stanwood, Washington**

ORDINANCE 1390

**AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON,
REPEALING CHAPTER 5.20 CATV FRANCHISE AND ADOPTING A
NEW CHAPTER 5.20 CABLE SYSTEM REGULATIONS**

WHEREAS, the City wishes: (i) to promote the availability of high-quality and diverse Cable Services to residents, the City and other public institutions; (ii) to promote the availability of diverse information resources to the community; (iii) to promote competitive Cable Services and rates; (iv) to take advantage of technologies; (v) to enhance educational opportunities throughout the community and provide opportunities for building a stronger community; and (vi) to allow flexibility to respond to changes in technology, Subscriber interests and competitive factors within the cable television industry that will positively affect the health, welfare and well-being of the community;

WHEREAS, the City, pursuant to applicable federal law, is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain Cable Systems within the City; and

WHEREAS, because of the complex and rapidly changing technology associated with Cable Systems, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers that should be vested in the City. It is further the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public. It is the further intent of this Chapter to establish regulatory provisions that permit the City to regulate Cable System Franchises to the maximum extent permitted by federal and state law, including, but not limited to, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, applicable Federal Communications Commission regulations and Washington law.

NOW, THEREFORE, The City Council of the City of Stanwood, Washington do ordain as follows:

Section 1. Chapter 5.20 Stanwood Municipal Code "CATV Franchise" is hereby repealed.

Section 2. A new Chapter 5.20 Stanwood Municipal Code entitled "Cable System Regulations" is hereby enacted, reading as follows:

**CHAPTER 5.20
CABLE SYSTEM REGULATIONS**

Sections

- 5.20.010 Short Title**
- 5.20.020 Definitions**
- 5.20.030 Franchise Grant**
- 5.20.040 Franchise Purposes**
- 5.20.050 Nonexclusive Franchise**
- 5.20.060 Application**
- 5.20.070 Pole or Conduit Agreements; Regulatory Permits; Right of Way Permits**
- 5.20.080 Other Authorizations; Franchise**
- 5.20.090 Rules and Regulations of the City**
- 5.20.100 Applicability**
- 5.20.110 Severability**

5.20.010. Short Title. This Chapter shall constitute the “Cable System Regulations” of the City of Stanwood and may be referred to as such.

5.20.020. Definitions.

For the purposes of this Chapter, the following words, terms, phrases and their derivations have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the singular number include the plural number and words in the plural number include the singular number.

1. “Affiliate,” when used in connection with the Franchisee, means any person who owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

2. “Applicant” means any person or entity that applies for an initial Franchise.

3. “Cable Act” means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as any of them may be amended.

4. “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

5. “Cable System” means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public Right-of-Way; (C) a facility of a common

carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility system.

6. "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

7. "City" means the City of Stanwood, a municipal corporation of the State of Washington, and all of the area within its boundaries, as such may change from time to time.

8. "City Council" means the Stanwood City Council, or its successor, the governing body of the City.

9. "Franchise" means an Agreement that authorizes a person or entity to construct, operate, maintain or reconstruct a Cable System. Upon the written acceptance by a Franchisee, the Agreement constitutes a contract between the City and Franchisee.

10. "Franchisee" means the person, firm, corporation or entity to whom or which a Franchise, as hereinabove defined, is granted by the City Council under this Chapter and the lawful successor, transferee or assignee of said person, firm, corporation or entity.

11. "Person" means any individual, sole proprietorship, partnership, association, government or corporation, or any other form of entity or organization.

12. "Right-of-Way" or "Rights-of-Way" means all of the following which have been dedicated or otherwise conveyed to the public or are hereafter dedicated or conveyed to the public whether in fee or as a right of way and maintained under public authority or by others and are located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas.

13. "Subscriber" means any person who or which elects to subscribe to, for any purpose, Cable Service provided by a Franchisee by means of or in connection with the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Franchisee's Cable System.

5.20.030. Franchise Grant.

It is unlawful to engage in or commence construction, operation, or maintenance of a Cable System in the City without a Franchise issued under this Chapter. The City Council may, by ordinance, issue a nonexclusive Franchise to construct, operate and maintain a Cable System within all or any portion of the City to any person or entity, whether operating under an existing franchise or not, who applies for authority to furnish Cable Service which complies with the terms and conditions of this Chapter, and provided that such person or

entity also agrees to comply with all of the provisions of the Franchise. However, this authority shall not be deemed to require the grant of a Franchise to any particular person or entity. The City Council may restrict the number of Franchisees should it determine such a restriction would be in the public interest.

5.20.040. Franchise Purposes.

A Franchise granted by the City under the provisions of this Chapter shall:

A. Permit the Franchisee to engage in the business of operating a Cable System and providing Cable Service within the City;

B. Permit the Franchisee to erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of the Cable System in, on, over, under, upon, along and across Rights-of-Way within the City;

C. Permit the Franchisee to maintain and operate said Cable System for the origination, reception, transmission, amplification and distribution of cable television signals and for the delivery of Cable Service; and

D. Set forth the obligations of the Franchisee under the Franchise.

5.20.050. Nonexclusive Franchise.

Any Franchise granted pursuant to this Chapter shall be nonexclusive, shall not preclude the City from granting other or future Franchises or permits, shall not preclude the City from using any Rights-of-Way or other public properties, and shall not affect its jurisdiction over them or any part of them, or limit the full power of the City to make all necessary changes, as the City in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all Rights-of-Way and thoroughfares and other public properties of any type.

5.20.060. Application.

A. An Applicant for an initial Franchise shall submit to the City a written application in a format provided by the City, at the time and place specified by the City for accepting applications, and accompanied by the designated application fee. An application fee as set by resolution or as set forth in the City's adopted fee schedule shall accompany the application to cover costs associated with processing the application, including, without limitation, costs of administrative review, financial, legal and technical evaluation of the Applicant, the costs of consultants, notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the Applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs. Conversely, if such costs are less than the application fee, the City shall refund the difference to the Applicant.

B. Application - Contents. An application for an initial Franchise for a Cable System shall contain, at a minimum:

1. A statement as to the proposed Franchise and information relating to the characteristics and location of the proposed System;
2. A resume of prior history of the Applicant, including the expertise of the Applicant in the Cable System field;
3. Information demonstrating the Applicant's legal, technical and financial ability to construct and operate the proposed System;
4. A list of the partners, general and limited, of the Applicant, if a partnership, members, if a limited liability company, or the percentage of stock owned or controlled by each stockholder having a five percent (5%) or greater interest, if a corporation;
5. A list of officers, directors and key employees of the Applicant, together with a description of the background of all such persons;
6. The names and addresses of any parent entity or subsidiary of the Applicant or any other business entity owning or controlling the Applicant in whole or in part, or owned or controlled in whole or in part by the Applicant;
7. A proposed construction and service schedule;
8. Any other reasonable information that the City may request.

The City shall be allowed the opportunity to ask relevant follow-up questions and obtain further information from whatever source. A refusal by an Applicant to cooperate or provide requested information is sufficient grounds for the City acting through its Community Development Director or designee to deny an application.

C. Consideration of Initial Franchise.

1. Upon receipt of an application for an initial Franchise and after obtaining any additional information the City in its sole discretion deems appropriate from any source, a public hearing shall be scheduled to allow public comment. At the public hearing, the City Council shall receive public comment regarding the following:
 - a. Public Benefit. Whether the public will benefit from granting a Franchise to the Applicant;
 - b. Qualifications. Whether the Applicant appears to have adequate legal, financial and technical qualifications and capabilities to build, operate and maintain a Cable System in the City;
 - c. No Conflicting Interests. Whether the Applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the City;

d. Compliance with the Franchise and Local Laws. Whether the Applicant will comply with all of the terms and conditions placed upon a Franchisee by the Franchise, this Chapter, and other applicable local laws and regulations;

e. Compliance with Other Requirements. Whether the Applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation and maintenance of the Cable System.

D. Within sixty (60) days after the close of the hearing, the City Council shall decide whether to grant a Franchise and on what conditions. The City Council's decision shall be based upon the application, any additional information submitted by the Applicant or obtained by the City from any source, and public comments. The City Council may grant one (1) or more Franchises, or may decline to grant any Franchise. Any final action shall be taken in accordance with the requirements of RCW 35A.47.040.

E. The means, methods and processes for Franchise renewal or Franchise transfer shall be set out in the Franchise Agreement subject to any applicable requirements of Federal or state law.

5.20.070. Pole or Conduit Agreements; Regulatory Permits; Right of Way Permits.

No Franchise shall relieve Franchisee of any of its obligations in obtaining pole or conduit agreements from any department of the City, any utility company, or from others maintaining facilities in the Rights-of-Way. No Franchise shall relieve Franchisee of any of its obligations in obtaining building or similar regulatory permits or approvals and no Franchise shall relieve Franchisee of any of its obligations to obtain a Right of Way permit for construction within Rights of Way where applicable.

5.20.080. Other Authorizations; Franchise.

Franchisee shall comply with and obtain, at its own expense, all permits, licenses and other authorizations required by federal, state and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted. The provisions of this Chapter shall not limit or restrict the terms, conditions or provisions the City may require in a Franchise.

5.20.090. Rules and Regulations of the City.

In addition to the inherent powers of the City to regulate and control any Franchise it issues, the authority granted to it by the Cable Act, and those powers expressly reserved by the City, or agreed to and provided for in a Franchise, the right and power is reserved by the City to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of a Franchise and this Chapter, and as permitted by applicable state and federal law.

5.20.100. Applicability.

The provisions of this Chapter shall apply to all Franchisees and Cable Systems to the greatest extent permissible under applicable law.

5.20.110. Severability.

If any section, sentence, clause or phrase of this Ordinance is 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 3. Effective Date.

This Ordinance shall take effect five days after its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this 23rd day of April, 2015.

CITY OF STANWOOD

By: Leonard Kelley
Leonard Kelley, Mayor

ATTEST:

By: Greg Thrasher
Greg Thrasher, City Clerk

Approved as to form:

By: Grant K. Weed
Grant K. Weed, City Attorney

Date of Publication: April 28, 2015