

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2190

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON
ESTABLISHING A NEW CHAPTER 5.06 SNOHOMISH MUNICIPAL
CODE AND PROVIDING AUTHORITY FOR PROCEDURES FOR AND
THE GENERAL TERMS AND CONDITIONS FOR FRANCHISES,
OTHER THAN CABLE TELEVISION FRANCHISES, TO USE PUBLIC
RIGHTS-OF-WAY OF THE CITY OF SNOHOMISH**

WHEREAS, the City has authority under general law and under RCW 35A.47.040 to grant non-exclusive franchises of the use of its public streets, bridges, public ways, structures and places; and

WHEREAS, the City has adopted in Chapter 5.08 SMC regulation for the granting of franchises for Cable Systems; and

WHEREAS, the City wishes to adopt general regulations for nonexclusive franchises other than franchises for Cable Systems;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH,
WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:**

Section 1. A new chapter 5.06 “Franchise Regulations” of the Snohomish Municipal Code is hereby adopted, reading as follows:

CHAPTER 5.06

FRANCHISE REGULATIONS

Sections:

- 5.06.010 Short Title
- 5.06.020 Definitions
- 5.06.030 Franchise Grant
- 5.06.040 Franchise Purposes
- 5.06.050 Nonexclusive Franchise
- 5.06.060 Application
- 5.06.070 Duration
- 5.06.080 Police Powers
- 5.06.090 Use of Rights-of-Way
- 5.06.100 Franchise Fees
- 5.06.110 Taxes
- 5.06.120 Other Authorizations
- 5.06.130 Rules and Regulations of the City

- 5.06.140 Delegation of Powers
- 5.06.150 Right-of-Way Disturbance Permit
- 5.06.160 Street Cut or Repair
- 5.06.170 Safety Requirements
- 5.06.180 Regulation of Rates and Charges
- 5.06.190 Discriminatory Practices Prohibited
- 5.06.200 Equal Employment Opportunity
- 5.06.210 Reimbursement and Fees
- 5.06.220 Franchise Renewal
- 5.06.230 Franchise Revocation
- 5.06.240 Miscellaneous Provisions
- 5.06.250 Severability

5.06.010 Short Title. This chapter shall constitute the general regulations for franchises within the City of Snohomish.

5.06.020 Definitions. For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words otherwise not defined shall be given their common and ordinary meaning. The word “shall,” whether in this chapter or a franchise agreement under this chapter, is always mandatory and not merely directory.

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

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

“City Council” means the Snohomish City Council, the governing body of the City.

“Franchise” means an agreement that authorizes a person or entity to construct, operate, maintain, or reconstruct a private facility, service, or system within a “franchise area.” Upon the written acceptance by a franchisee, the agreement constitutes a contract between the City and the franchisee.

“Franchise area” means the area within the jurisdictional boundaries of the City to be used or served, as the case may be, by a franchisee as specified in the franchise.

“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.

“Right-of-Way” or “Rights-of-Way” means all of the following which have been dedicated to the public or are hereafter dedicated to the public 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.

5.06.030 Franchise Grant. It is unlawful to engage in or commence construction, operation, or maintenance of a private service, facility, or system in a City right-of-way without a franchise issued under this chapter or Chapter 5.08 SMC. The City Council may, by ordinance, authorize the issuance of a nonexclusive franchise to construct, operate, and maintain a private service, facility, or system within the City to any person or entity, whether operating under an existing franchise or not, who applies to conduct a system, facility, or service, in a City right-of-way. Any franchise issued under the authority of this chapter shall comply with the terms and conditions of this chapter. The City Council may restrict the number of franchises should it determine such a restriction would be in the public interest.

5.06.040 Franchise Purposes. A franchise granted by the City under the provisions of this chapter shall:

- A. Permit the franchisee to engage in a service, facility, or system within the franchise area;
- B. Permit the franchisee to erect, install, construct, repair, reconstruct, replace, and retain service, facility, or system improvements in, on, over, under, upon, along, or across rights-of-way within the City; and
- C. Set forth the obligations of the franchisee under the franchise.

5.06.050 Nonexclusive Franchise. Any franchise granted pursuant to this chapter shall be nonexclusive and not preclude the City from granting other or future franchises or permits.

5.06.060 Application.

- A. An applicant for an initial franchise under this chapter shall submit to the City a written application on a form provided by the City, accompanied by the designated application fee. The City Council shall set the application fee for franchises under this chapter by resolution. The application fee is intended to cover the City's cost associated with processing the application, including without limitation, costs of administrative review, financial, legal, and technical evaluation of the applicant, 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 upon request refund the difference to the applicant.
- B. An application for an initial franchise under this chapter shall contain at a minimum:
 - 1. A statement as to the proposed franchise and franchise area;

2. Résumé or prior history of the applicant, including experience, to conduct the service, facility, or system;
3. Information demonstrating the applicant's legal, technical, and financial ability to operate the franchise requested;
4. Information concerning the officers, directors, equity holders of the entity seeking the franchise;
5. Information concerning any parent or subsidiary entity of the applicant or any other business entity owning or controlling the applicant in whole or in part;
6. Proposed construction and service schedule; and
7. Such other information as the "franchise" or "franchise agreement" requires.

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 to deny an application.

- C. Upon receipt of an application for an initial franchise and after obtaining any additional information, a hearing will be scheduled to allow public comment. At the hearing, the City Council shall receive public comment regarding the requested franchise:
1. Whether the public will benefit from granting a franchise to the applicant;
 2. Whether the applicant appears to have adequate legal, financial, and technical qualifications and capabilities to operate the franchise proposed;
 3. Whether the applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the City;
 4. Whether the applicant will comply with all of the terms and conditions placed upon the franchisee by the franchise, this chapter, and other applicable laws and regulations; and
 5. Whether the applicant will comply with all relevant federal and state laws and regulations pertaining to the construction, operation, and maintenance of the service, facility, or system proposed.
- D. Within the timeframe and schedule prescribed by applicable law, 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 the public comments. The City Council may grant one (1) or more franchises or may decline to grant any franchise. The grant, renewal, or extension of a franchise shall be adopted and approved by ordinance enacted in accordance with RCW 35A.13.190.

5.06.070 Duration. The term of any franchise granted under this chapter, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be specified in the franchise. The effective date of any franchise shall be as specified in the franchise.

5.06.080 Police Powers. In accepting any franchise granted under this chapter, the franchisee acknowledges that its rights thereunder are subject to the police powers of the City to adopt and enforce ordinances necessary for the health, safety, and welfare of the public and it agrees to comply with all applicable laws enacted by the City pursuant to such power.

5.06.090 Use of Rights-of-Way. For the purposes of operating franchisee's service, facility, or system in the franchise area, franchisee may place and maintain property and equipment within City rights-of-way consistent with the terms of the franchise granted.

5.06.100 Franchise Fees. The franchisee shall pay the City franchise fees in accordance with the terms of the franchise and applicable law.

5.06.110 Taxes. Nothing in this chapter shall limit the franchisee's obligation to pay applicable local, state, and federal taxes.

5.06.120 Other Authorizations. 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.

5.06.130 Rules and Regulations of the City. 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 police powers and in furtherance of the terms and conditions of a franchise and this chapter and as permitted by applicable state and federal law. In the event of a conflict between a franchise and this chapter, the franchise shall govern.

5.06.140 Delegation of Powers. Any right or power of the City may be delegated by the City Manager to any officer, employee, department, or board of the City or to such other person or entity as the City may designate to act on its behalf.

5.06.150 Right-of-Way Disturbance Permit. Unless exemptions are expressly provided within the terms of the franchise agreement, franchisee shall apply for and obtain a Right-of-Way Disturbance Permit prior to altering the right-of-way.

5.06.160 Street Cut or Repair. If the franchise allows street cuts or repairs, the franchisee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents which is necessary for the construction, installation, operation, repair, or maintenance of franchisee's service, facility, or system, provided that no action by an unrelated third party materially affects the integrity of franchisee's street cut or repair. Franchisee shall repair or replace, at no expense to the City, any failed street cut or repair which was completed by franchisee or franchisee's agents.

5.06.170 Safety Requirements. The franchisee shall at all times, install, maintain, and use commonly accepted methods and practices to avoid causing damage or injuries to the public. In furtherance thereof, all of franchisee's service, facility, and system shall at all times be kept, maintained, and operated in a safe condition.

5.06.180 Regulation of Rates and Charges. Consistent with the terms of the franchise granted, the City may regulate franchisee's rates and charges to the full extent permitted by law.

5.06.190 Discriminatory Practices Prohibited. The franchisee shall not deny service or otherwise discriminate against customers on the basis of race, color, natural origin, sex, age, disability, or other protected classes.

5.06.200 Equal Employment Opportunity. The franchisee shall strictly adhere to and comply with the equal employment opportunity requirements of federal, state, and local laws.

5.06.210 Reimbursement and Fees. To the extent allowed by applicable law, the City may require a franchisee to reimburse the City for:

- A. The City's reasonable processing and review expenses in connection with a sale or transfer of a franchise or a change in control of a franchise or franchisee. The City will send franchisee an itemized description of all such charges, and franchisee shall pay such amount within thirty (30) days after receipt of such description.
- B. Use of the public right-of-way for commercial purposes. Franchise fees shall reimburse the City for its direct and indirect expenses relating to day-to-day use of the right-of-way by the franchisee.

5.06.220 Franchise Renewal. To the extent not addressed in the franchise, franchise renewals will be conducted in accordance with applicable law. The City and franchisee by mutual consent may enter into renewal negotiations at any time during the term of a franchise.

5.06.230 Franchise Revocation. Any franchise granted by the City may be revoked during the period of the franchise, as provided in the franchise, subject to the procedural requirements provided for therein. A failure by the franchisee to comply with any of the material provisions of this chapter shall be deemed a violation of the City Code.

5.06.240 Miscellaneous Provisions.

- A. This chapter shall be construed in a manner consistent with all applicable federal, state, and local laws, and shall apply to any franchise hereafter accepted by franchisee.
- B. The captions throughout this chapter are intended to facilitate the reading hereof. Such captions shall not affect the meaning or interpretation of any part of this chapter.
- C. A franchisee shall not be relieved of its obligations to comply with any or all of the provisions of this chapter or its franchise by reason of any failure of the City to demand prompt compliance.

5.06.250 Severability. If any section, subsection, paragraph, or provision of this chapter is determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph, or provision of this chapter, all of which will remain in full force and effect.

ADOPTED by the City Council and **APPROVED** by the Mayor this 15th day of June, 2010.

CITY OF SNOHOMISH

By _____
Karen Guzak, Mayor

ATTEST:

By _____
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By _____
Grant K. Weed, City Attorney