

Title 5

BUSINESS LICENSES AND REGULATIONS*

Chapters:

- 5.01 Utility Tax**
- 5.03 Business Licenses**
- 5.04 Fireworks**
- 5.06 Public Dances, Music or Entertainment**
- 5.08 Peddlers, Vendors and Temporary Merchants**
- 5.10 Auctioning**
- 5.12 Taxicabs**
- 5.16 *Repealed***
- 5.20 CATV Franchise**
- 5.24 Utility Pole Attachment Permit**
- 5.28 Daycare Facilities**
- 5.32 Sexually Oriented Businesses**

* For garbage collection provisions, see Chapter 7.04 SMC.

Chapter 5.01

UTILITY TAX*

Sections:

- 5.01.010 Generally.
- 5.01.020 Definitions.
- 5.01.030 Reporting period and payment provisions.
- 5.01.040 Businesses and utilities subject to utility tax – Amount.
- 5.01.050 Exemptions and deductions.
- 5.01.060 Sale or transfer of business.
- 5.01.070 Taxpayer to keep books and records – Returns to be confidential.
- 5.01.080 Right to audit.
- 5.01.090 Overpayment or underpayment of tax.
- 5.01.100 Late payment penalties.
- 5.01.110 Clerk-treasurer to make the rules.
- 5.01.120 Violation – Penalty.

*Prior legislation: Ords. 208, 554, 576, 602, 618, 644, 665, 682, 704, 853, 854 and 958.

5.01.010 Generally.

There are levied and shall be collected utility taxes against the persons on account of the business activities, and in the amounts to be determined by the application of the rates against gross income, as set forth in this chapter. (Ord. 1019, 1997).

5.01.020 Definitions.

In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- (1) “Person” or “persons” mean persons of either sex, firms, copartnerships, corporations and other associations of natural persons, whether acting by themselves or by servants, agents or employees.
- (2) “Taxpayer” means any person liable for taxes imposed by this chapter.
- (3) “Gross revenue” means revenues received by a utility or business from operations or sales within the city less net uncollectibles. Gross revenue of natural, artificial or mixed gas and electric utilities shall include

revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include charges which are passed onto the subscribers by a utility pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this section. Gross revenues of telephone utilities shall include 100 percent of the toll service fees from calls originating in and/or billed to subscribers within the city of Stanwood including revenue from providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system, including transmission of communication for cellular telephones or other wireless phone service. Gross revenues of cable television utilities shall include revenues from the one-way transmission of video programming and associated nonvideo signals to subscribers which is provided in connection with video programming. (Ord. 1019, 1997).

5.01.030 Reporting period and payment provisions.

Utility taxes are due at the end of each monthly tax-reporting period. However, the city clerk-treasurer may, in the interest of economy of administration, set quarterly tax-reporting periods for individual taxpayers. Remittance of utility taxes imposed by this section shall be made to the city clerk-treasurer on or before the twenty-fifth day of the month next succeeding the end of the tax-reporting period. (Ord. 1019, 1997).

5.01.040 Businesses and utilities subject to utility tax – Amount.

There are levied and shall be collected utility taxes against persons on account of business activities in amounts to be determined by the nature of the business activities and by the application of rates against gross income as follows:

- (1) Utilities.

5.01.050

(a) Electric. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power within the city of Stanwood, a tax equal to six percent of the total gross revenue from such business during the tax-reporting period;

(b) Gas. Upon every person engaged in or carrying on a business of selling or furnishing gas within the city of Stanwood, a tax equal to six percent of the total gross revenue from such business in the city during the tax-reporting period;

(c) Telephone. Upon every person engaged in or carrying on a telephone business within the city of Stanwood, a tax equal to six percent of the total gross revenue from such business during the tax-reporting period;

(d) Water. Upon every person engaged in or carrying on the business of selling or furnishing water within the city of Stanwood, a tax equal to six percent of the total gross revenue from such business during the tax-reporting period;

(e) Sanitary Sewer. Upon every person engaged in or carrying on the business of furnishing sanitary sewer services within the city of Stanwood, a tax equal to six percent of the gross revenue from such business during the tax-reporting period;

(f) Drainage. Upon every person engaged in or carrying on the business of providing drainage services within the city of Stanwood, a tax equal to six percent of the gross revenue from such business during the tax-reporting period;

(g) Garbage. Upon every person engaged in or carrying on the business of collection of garbage or solid waste within the city of Stanwood, a tax of six percent of the gross revenue from such business during the tax reporting period;

(h) Cable Television. Upon every person engaged in or carrying on a cable television business within the city of Stanwood, a tax equal to three percent of the gross revenue from such business in the city during the tax-reporting period. (Ord. 1019, 1997).

5.01.050 Exemptions and deductions.

There shall be exempted and deducted from the total gross income upon which the tax is computed so much thereof as is derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents and any amount paid by the taxpayer to the United States, the state, or the city, as excise taxes levied or imposed upon the sale or distribution of property or services. There shall be exempted and deducted from the total gross income upon which the tax is computed all bad debts for services incurred, rendered or charged for during the tax reporting period. Debts shall be deemed bad and uncollectible when the same have been written off the books of the taxpayer. (Ord. 1019, 1997).

5.01.060 Sale or transfer of business.

Upon the sale or transfer during any tax year of a business subject to the utility tax, the purchaser or transferee shall, if the tax has not been paid in full for said year, be responsible for its payment for that portion of said year during which he carries on such business. (Ord. 1019, 1997).

5.01.070 Taxpayer to keep books and records – Returns to be confidential.

It shall be the duty of each taxpayer taxed upon his gross income to keep and enter in a proper book or set of books or records an account(s) which shall accurately reflect the amount of his gross income, which account shall always be open to the inspection of the city clerk-treasurer, or his duly authorized agent, and from which said officer or his agent may verify the return made by the taxpayer. The applications, statements or returns made to the city clerk-treasurer, pursuant to this chapter, shall not be made public, nor shall they be subject to inspection of any person except the mayor, city attorney, the city clerk-treasurer, or his authorized agent, and members of the city council. (Ord. 1019, 1997).

5.01.080 Right to audit.

If any taxpayer fails to make his return, or if the city clerk-treasurer is dissatisfied as to the correctness of the statements made in the application or return of any taxpayer, the city shall have the right, at the expense of the business subject to taxation, to conduct such audit procedures as are necessary to establish or account for the taxable revenue should the business subject to taxation fail or refuse to provide an accounting. (Ord. 1019, 1997).

5.01.090 Overpayment or underpayment of tax.

If the city clerk-treasurer upon investigation or upon checking a return finds that the tax paid is more than the amount required of the taxpayer, he shall refund the amount overpaid by a warrant upon the general fund. If the city clerk-treasurer finds that the tax paid is less than required, he shall send a statement to the taxpayer showing the balance due. Said taxpayer shall within 10 days after notification pay the amount shown thereon. (Ord. 1019, 1997).

5.01.100 Late payment penalties.

All taxes due under this chapter, beginning with tax to be paid for the month of January, 1998, if said tax is not paid on or before the time specified in SMC 5.01.030, a late payment penalty shall accrue and be added to the tax due as follows: If any tax is not paid within 15 days of its due date, a penalty shall be added equal to five percent of the tax. (Ord. 1019, 1997).

5.01.110 Clerk-treasurer to make the rules.

The city clerk-treasurer shall have the power and it shall be his duty, from time to time, to adopt, post in the City Hall, and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions thereof, and it is unlawful to violate or fail to comply with any such rule or regulation. (Ord. 1019, 1997).

5.01.120 Violation – Penalty.

Violation of this chapter shall constitute a Class B infraction as defined in SMC

13.01.045(1) and subject the violator to enforcement as set forth therein. Any such fines shall be in addition to the tax required. Officers, directors and managers of any organization conducting business activities shall be jointly and severally liable for the payment of the tax, late penalties, and any fine imposed under SMC Title 13. (Ord. 1112 § 2, 2001; Ord. 1018, 1997; Ord. 1019, 1997).

5.03.010

Chapter 5.03

BUSINESS LICENSES*

Sections:

- 5.03.010 Definitions.
- 5.03.020 License required.
- 5.03.025 Subcontractor's license required.
- 5.03.030 License application and renewal.
- 5.03.040 License application – Other requirements.
- 5.03.050 Fees – Business license.
- 5.03.060 Late penalty.
- 5.03.070 License expiration.
- 5.03.080 License – Suspension, denial or revocation.
- 5.03.090 Penalty for violation.

*Prior legislation: Ords. 931, 1038 and 1112.

5.03.010 Definitions.

The following terms shall have the following meanings:

(1) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the person engaging therein or to another person or class, directly or indirectly, including any activity conducted for the sale of goods or providing of services for a profit.

(2) "City" shall mean the city of Stanwood, Washington.

(3) "Clerk" shall mean the city clerk or such city employees or agents as the city administrator shall designate to administer this chapter.

(4) "Engage in business" means to commence, conduct, or continue in business or to exercise corporate or franchise powers as well as liquidate a business when the liquidators thereof hold themselves out to the public as conducting such business. For out-of-city businesses, "engage in business" shall refer to the point of sale, not the point of delivery.

(5) "License" shall include and be used interchangeably with the term "permit" and shall mean the official approval or authorization of the city of Stanwood to engage in business or to carry on or conduct a special event within the corporate limits of the city of Stan-

wood for which a license or permit is required pursuant to the provisions of this chapter.

(6) "Standard business" shall mean to engage in a business in the city of Stanwood for a continuous period of more than 15 days.

(7) "Person" shall include and be used interchangeably with the terms company, corporation, individual, owner, partnership, proprietorship and sole proprietorship and shall mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, joint venture, club, business trust, association, society, or group of individuals acting as a unit, whether mutual, cooperative, fraternal, religious, profit, nonprofit, or otherwise.

(8) "Temporary business" shall mean engaging in business for a period of 15 days or less, or vending from a mobile unit, or from a building, structure, or leasehold improvement which is not taxed as a part of the real property on which the business is located. (Ord. 1217 § 1, 2007).

5.03.020 License required.

It is unlawful for any person, firm, or corporation to engage in any business, occupation or pursuit, as defined in SMC 5.03.010, in the city without first having obtained a business license therefor as provided in this chapter. The business license provided for in this chapter shall be posted in a conspicuous location at the place of the business. Such business license is not transferable. (Ord. 1217 § 1, 2007).

5.03.025 Subcontractor's license required.

Each subcontractor engaging in business in the city of Stanwood shall separately obtain a license for such business issued by the city. The license of any general contractor shall not be deemed to satisfy the licensing requirements for subcontractors. (Ord. 1217 § 1, 2007).

5.03.030 License application and renewal.

(1) Application for a business license shall be made by filling a master application through the State Department of Licensing's Master License Service, in coordination with the city clerk, giving such information as is

deemed reasonably necessary to enable the enforcement of this chapter. Persons applying for a license must pay a fee as defined in SMC 3.30.080 and 5.03.050 and the State Master License Service’s handling fee.

(2) A business license must be approved by the city before a business commences operation within the city. If business is transacted by one person at two or more separate locations within the city, a separate application must be filed for each business location and a separate license shall be obtained and displayed in each location.

(3) The city clerk shall, when appropriate, refer applications to the planning department, the police department, or other governmental agencies for their review.

(4) If more than one business is conducted or operated on a single premises, a separate license shall be required for each business. Each business owner must make a separate application for license.

(5) The filing of an application for a license or the renewal thereof, or the payment of any application or renewal fee, shall not authorize a person to engage in or conduct a business until such license has been granted or renewed.

(6) A business license is not transferable. No licensee shall allow another person to operate a business under or display the license issued to their business, nor shall another person operate under or display the license issued to another business. A person who acquires an existing business must make application for a city business license before commencing business within the city with that business. A licensee must report a change of location of the business to the Master License Service, in coordination with the city clerk. A change of the location of a business requires approval by the city before business may commence at the new location, and may require submitting a new master application and payment of fees.

(7) The city’s decision to issue or the issuance of a business license shall not be construed as permission or acquiescence to conduct a prohibited activity or other violation; and the city shall not be held liable for the actions of any licensed business by virtue of having issued a license to conduct business.

(8) Every applicant or licensee shall permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter.

(9) License renewals shall be processed by the State Master License Service in coordination with the city. Renewal of the city license requires payment of fees including handling fees. (Ord. 1217 § 1, 2007).

5.03.040 License application – Other requirements.

In addition to the business license, other permits or licenses may be required for certain businesses. (Ord. 1217 § 1, 2007).

5.03.050 Fees – Business license.

(1) The fee for the business license required by this chapter shall be established by ordinance of the city council. The fee may be prorated as necessary to conform to SMC 5.03.070. The license fee for commercial, home occupation, contractor, or festival (including Mayfest) business licenses shall be as listed in SMC 3.30.080. Fees for temporary merchant, peddler, solicitor, mobile vending unit or charitable solicitation business licenses shall be as listed in SMC 3.30.090.

(2) The license fee shall be in addition to any license fee or tax imposed or levied under any law or other ordinance of the city except as otherwise expressly provided.

(3) The following shall be exempt from payment of fee:

(a) Nonprofit and not-for-profit activities and fundraising sales carried on by corporations registered as nonprofit by the Secretary of State’s Office.

(b) Garage sales, lawn sales, attic sales, rummage sales, flea market sales, or any other similar casual sale of tangible personal property conducted on an infrequent basis not to exceed three times per each calendar year and not to exceed two consecutive days at one time and which is advertised by any means whereby the public at large is or can be made aware of said sale;

5.03.060

(c) Persons selling personal property or providing a service pursuant to an order or process of a court of competent jurisdiction;

(d) Persons acting in accordance with their powers and duties as public officials;

(e) Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement in which separate items do not exceed five in number.

(f) Persons, sales, or services arising out of Mayfest or Farmer's Market located within the city of Stanwood, Washington, or any other community event determined by the clerk treasurer to be exempt from the requirements of this chapter. (Ord. 1217 § 1, 2007).

5.03.060 Late penalty.

Licenses must be renewed annually on or before the expiration date, or expiration of any prorated period. Failure to renew a business license by the license expiration date may result in the assessment of a late renewal penalty, and may lead to the revocation of the city license. Notwithstanding SMC 5.03.080, revocation of a license due to nonrenewal may require reapplication for the city license, and approval by the city before the revoked business may continue operation within the city. (Ord. 1217 § 1, 2007).

5.03.070 License expiration.

Each city license issued shall have an expiration date as determined by the Master License Service in coordination with the city. The city license may be prorated to coordinate with the expiration date assigned by the State Master License Service. (Ord. 1217 § 1, 2007).

5.03.080 License – Suspension, denial or revocation.

(1) A business license may be denied, suspended or revoked by the clerk whenever the licensee or any of its officers, directors, agents, owners or employees fails or have failed:

(a) To maintain the licensed premises or business activity in compliance with applicable health, building, fire, or safety laws, ordinances, or regulations;

(b) To comply with the requirements of this chapter. Any suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that those conditions will not recur; or

(c) To renew a business license within 120 days after the expiration date of the license.

(2) The clerk shall, by certified mail, give written notice to the applicant of denial of a license or the suspension or revocation of a license. Said notice shall include a summary of the complaints, objections and information considered by the clerk and the reason(s) for the action. Notice mailed to the mailing address on the application or most recent renewal shall be deemed received three days after mailing. The clerk's decision may be appealed to the city hearing examiner if written notice is given by the appellant within seven calendar days and upon payment of the appropriate fee. A copy of such written appeal shall also be submitted to the city clerk. (Ord. 1217 § 1, 2007).

5.03.090 Penalty for violation.

Any person violating or failing to comply with any of the provisions of this chapter, or any lawful rule or regulation adopted by the city clerk treasurer pursuant thereto, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine in any sum not to exceed \$1,000, or by imprisonment for a term not to exceed 90 days, or by both such fine and imprisonment. (Ord. 1217 § 1, 2007).

Chapter 5.04

FIREWORKS

Sections:

- 5.04.010 Purpose.
- 5.04.020 State law adopted.
- 5.04.030 Public display license.
- 5.04.050 License – Required.
- 5.04.060 Sale date, hours.
- 5.04.070 License – Issuance prerequisite.
- 5.04.080 License – Application – Insurance required.
- 5.04.090 License – Renewal – Preference.
- 5.04.100 License – Number.
- 5.04.110 Stands – Operation.
- 5.04.120 Stands – Temporary.
- 5.04.130 Penalties for violations.

5.04.010 Purpose.

It is the intent of this chapter to provide a procedure for the granting of licenses, and the possession, sale and discharge of fireworks. (Ord. 636 § 1, 1984; Ord. 243 § 1, 1963).

5.04.020 State law adopted.

Chapter 70.77 RCW pertaining to fireworks is adopted by this chapter by reference as though stated in its entirety in this chapter. (Ord. 636 § 2, 1984; Ord. 243 § 2, 1963).

5.04.030 Public display license.

A license for a public display of fireworks may be issued by the city council if and when they deem it advisable. (Ord. 636 § 3, 1984; Ord. 243 § 3, 1963).

5.04.050 License – Required.

It is unlawful for any person, firm, copartnership or corporation to engage in the retail sale of fireworks within the city without first having obtained a license from the clerk-treasurer. The annual fee to be charged for the issuance of any such retail license shall be \$10.00, which fee shall cover but one retail sales outlet. (Ord. 243 § 5, 1963).

5.04.060 Sale date, hours.

It is unlawful for any person, firm, copartnership or corporation to offer for retail sale,

expose for retail sale, sell at retail or use any fireworks within the city, except from 12:00 noon on June 28th to 12:00 noon on July 5th of each year. (Ord. 243 § 6, 1963).

5.04.070 License – Issuance prerequisite.

The fireworks license shall be issued only to such applicants who meet the following qualifications:

(1) Nonprofit, charitable, religious or eleemosynary corporations, organized and existing primarily for veteran, patriotic, religious, charitable or civic betterment purposes; and

(2) The corporation or association has its principal and permanent meeting place in the city, and has been organized and established in the city for a period of at least one year prior to the date application is made for a fireworks license. (Ord. 243 § 7, 1963).

5.04.080 License – Application – Insurance required.

Application for a license:

(1) Shall be made in writing accompanied by a license fee of \$25.00;

(2) Shall be made on or prior to the third Monday in April of each year. Applicants for any such license shall be notified by the clerk-treasurer of the granting or rejection of their application for license on or before the first Monday in May of each calendar year; and, if any applicants are not granted a license, the fee shall be refunded;

(3) Shall set forth the proposed location of the fireworks stand applied for; and

(4) Shall be accompanied by an assurance that if the license is issued to applicant, applicant shall, at the time of receipt of such license, deliver to the clerk-treasurer \$50,000 to \$100,000 public liability, and \$5,000 property damage insurance policy, with rider attached to the policy designating the city as an additional assured thereunder. (Ord. 554 § 3(d), 1980; Ord. 243 § 8, 1963).

5.04.090 License – Renewal – Preference.

Applicants for renewal of license shall be given preference over applicants for license by persons not previously licensed, provided that if the holder of the license fails to make appli-

5.04.100

cation for renewal by the third Monday in April, the preference shall be forfeited. (Ord. 243 § 9, 1963).

5.04.100 License – Number.

No one organization may receive more than one license for fireworks sales during any one calendar year. The maximum number of licenses which may be issued pursuant to this chapter during any one calendar year shall not exceed one license for each 1,500 residents of the city, or fraction thereof, according to the last official census. (Ord. 243 § 10, 1963).

5.04.110 Stands – Operation.

No person other than the licensee organization shall operate the stand for which the license is issued, or share or otherwise participate in the benefits of the operation of such stand. (Ord. 243 § 11, 1963).

5.04.120 Stands – Temporary.

All retail sales of “safe and sane” fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is prohibited. Temporary stands shall be subject to the following provisions:

(1) No fireworks stand shall be located within 25 feet of any other building, nor within 50 feet of any gasoline station;

(2) Fireworks stands need not comply with the provisions of the building code of the city; provided however, that all stands shall be erected under the supervision of the fire chief, who shall require that those stands be constructed in a manner and place which shall insure the safety of attendants and patrons. Approved fire extinguishers shall be maintained at stands at all times;

(3) Each stand must have at least two exits;

(4) No fireworks stand shall be located closer than 600 feet to another fireworks stand;

(5) All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least 20 feet surrounding the stand;

(6) “No smoking” signs shall be prominently displayed on the fireworks stand;

(7) Each stand shall be operated by adults only. No fireworks shall be left unattended in a stand;

(8) All unsold stock, accompanying litter, and the fireworks stand shall be removed from the location and the city by 12:00 noon on July 6th of each year. (Ord. 243 § 12, 1963).

5.04.130 Penalties for violations.

Violation of this chapter shall constitute a Class A infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein. (Ord. 1112 § 2, 2001).

Chapter 5.06

PUBLIC DANCES, MUSIC OR ENTERTAINMENT

Sections:

- 5.06.010 Dance, music or entertainment – Permit and/or license required.
- 5.06.020 Premises license.
- 5.06.030 Dance, music or entertainment permit.
- 5.06.040 Liquor retailer license.
- 5.06.050 Application and fees.
- 5.06.060 Policing dances.
- 5.06.070 Immoral dances prohibited – Hours dances may be conducted.
- 5.06.080 Right of inspection – Minors.
- 5.06.090 Intoxicated and boisterous persons.
- 5.06.100 Revocation of license – Transferability.
- 5.06.110 Penalties for violations.

5.06.010 Dance, music or entertainment – Permit and/or license required.

No person shall hold any public dance or provide music or entertainment without first obtaining the license and/or permits required under this chapter; provided, that mechanical music devices, radios and television sets are excluded from the operation of this chapter. (Ord. 590 § 1, 1982; Ord. 559 § 1, 1980).

5.06.020 Premises license.

No person shall conduct or maintain any premises where music, dancing or entertainment is allowed or provided without first procuring a license so to do from the clerk-treasurer. No license shall be granted until application for the license shall be approved nor any license granted to any person who is not of good moral character. (Ord. 590 § 2, 1982; Ord. 559 § 2, 1980).

5.06.030 Dance, music or entertainment permit.

(1) Any person conducting or providing dancing, music or entertainment on a premises which has a license under this chapter shall obtain a permit to conduct or provide such dancing, music or entertainment.

5.06.040

(2) No person maintaining a premises licensed under this chapter shall rent or provide such licensed premises to any other person for such purpose without evidence that such other person has obtained a permit under this chapter. (Ord. 590 § 3, 1982; Ord. 559 § 3, 1980).

5.06.040 Liquor retailer license.

It is unlawful for any liquor retailer licensee to permit or allow upon such licensed premises any music, dancing or entertainment whatsoever, unless such licensee has a current permit and license from the city to provide such music, entertainment or dancing. (Ord. 590 § 4, 1982; Ord. 559 § 4, 1980).

5.06.050 Application and fees.

(1) Application for a music, dancing or entertainment license shall be made by written application to the clerk-treasurer, reciting the reasons for application and setting forth the following:

(a) The names of three persons who will vouch for the good moral responsibility of the applicant;

(b) A description of the nature, frequency, hours of duration of the proposed activity;

(c) A statement that the proposed activity will not adversely affect the use and occupancy of other premises in the vicinity, or the public peace, morals and welfare generally; and

(d) A statement that the proposed activity will not impose a substantially increased burden on law enforcement in the city.

(2) The premises license application fee shall be \$25.00, which shall be paid at the time of application.

(3) The dance, music or entertainment permit application fee shall be \$5.00, which shall be paid at the time of application.

(4) A license or permit, when issued, shall be valid until December 31st, of the year in which it is issued.

(5) No such license shall be granted to any corporation, but if any dancehall is conducted as herein provided by a corporation, a license shall be issued to the manager or any other directing head thereof.

(6) The clerk-treasurer, upon receipt of an application accompanied by the license fee, shall set the application for hearing at the next regular council meeting, at which time the council may grant or reject the application, or in its discretion, may continue the matter for a period not to exceed one month, when final action thereon must be taken. (Ord. 590 § 5, 1982; Ord. 559 § 5, 1980).

5.06.060 Policing dances.

Whenever or wherever an officer or officers are required to police a public dance, the expense thereof shall be borne by the dance licensee, and such officer shall be approved by the chief of police before being allowed to serve. (Ord. 559 § 7, 1980).

5.06.070 Immoral dances prohibited – Hours dances may be conducted.

No immoral or indecent dance shall be given or carried on in any place licensed under the provisions of this chapter. Every such building or other place used for music, entertainment or public dancing shall be kept in a clean, healthful and sanitary condition, and all premises, corridors and stairways connected therewith shall at all times be open to the public and be fully lighted. No public dance or premises shall be conducted or operated between the hours of 2:00 a.m. and 6:00 a.m. on any day or night of the week. (Ord. 590 § 6, 1982; Ord. 559 § 6, 1980).

5.06.080 Right of inspection – Minors.

All peace officers of the city shall have free access to the premises and the public dances for the purpose of inspection and to enforce compliance with the provisions of this chapter. (Ord. 590 § 7, 1982).

5.06.090 Intoxicated and boisterous persons.

No person under the influence of intoxicating liquor shall be permitted to or allowed to remain at or in any public dance or dancehall, and no boisterous conduct shall be allowed on the part of any person attending any public dance or dancehall, and any person found guilty of violating this section shall be guilty of

a misdemeanor, and punished as set forth in SMC 5.06.110. (Ord. 590 § 8, 1982).

**5.06.100 Revocation of license –
Transferability.**

(1) Any permit or license granted under this chapter to conduct dancing, music or entertainment except as herein provided may be revoked by the mayor by written notice of revocation to the licensee. The licensee shall have 10 days thereafter to appeal the revocation of license to the city council for a hearing.

(2) The holder of a license or permit which has been revoked by the mayor may submit a new application for a license or permit for consideration by the city council as provided in SMC 5.06.050.

(3) Each licensee accepting a license hereunder shall be deemed to have consented to the provisions of this section, with respect to the cancellation of licenses.

(4) No license granted hereunder shall be transferable, without the consent of the mayor, nor shall any public dance, music or entertainment be conducted at any other place than that specified in the license therefor. (Ord. 590 § 9, 1982).

5.06.110 Penalties for violations.

Violation of this chapter shall constitute a Class B infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein. (Ord. 1112 § 2, 2001; Ord. 590 § 10, 1982).

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Chapter 5.08

**PEDDLERS, VENDORS AND
TEMPORARY MERCHANTS¹**

Sections:

- 5.08.010 Definitions.
- 5.08.020 Application process and exemptions.
- 5.08.030 License approval, appeals and exemptions.
- 5.08.040 Special conditions – Mobile unit vendors.
- 5.08.050 License fees, terms and exemptions.
- 5.08.060 License revocation/denial.
- 5.08.070 Conventions – Festivals.
- 5.08.080 Site requirements.
- 5.08.090 Temporary merchant/vendor general requirements.
- 5.08.100 Responsibilities.
- 5.08.110 Penalty for violation.

5.08.010 Definitions.

In construing the provisions of this chapter, except when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

(1) “Temporary merchant” includes any person who sells, or offers for sale, any goods, wares, merchandise, food or anything of value, for a period in excess of two days in any one location, except from within a permanent building they own or lease. The provisions of this chapter shall not apply to public officers selling property under authority of law and to persons selling property under court order.

(2) “Permanent building” means a structure constructed on a permanent foundation, and hooked up to city water, sewer, and drainage. Permanent structures must also have restrooms and washing areas.

(3) “Peddler” means any person, either as agent or principal, who carries goods, wares, merchandise or food of whatever nature or description from house to house, building to building or upon any street, highway or public place within the city for the purpose of selling

such goods, wares or merchandise or soliciting orders for the same. Exempt from this definition are newspapers.

(4) “Vending of food from a mobile unit” means the vending of edible merchandise from a mobile unit traveling city streets for the purpose of selling edible merchandise. Exempt from the meaning of this definition shall be those mobile units used specifically for the delivering only of food pursuant to orders taken at an established place of business. Also exempt from this definition are: meals on wheels and food basket or hot food delivery, by churches or other not-for-profit charitable organizations, to the elderly, sick or physically challenged.

(5) “Solicitor for profit” includes any person who goes or communicates from house to house, from place to place, or from street to street, soliciting or taking, or attempting to take orders for the sale of goods, including magazines, books, periodicals or personal property of any nature whatsoever for future delivery, or for service to be performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such order, or whether or not he is collecting advance payment on such order, or who in such matter, requests information which, to a reasonable person, appears calculated to ultimately result in the solicitation of orders for merchandise or services to be rendered of any nature.

(6) “Charitable” means any charitable, religious or nonprofit organization or corporation which has received tax exempt status under IRC 501(C)(3), 26 USCA 501(C)(3) as adopted or as hereafter amended. A copy of said tax exemption will be filed with the city clerk.

(7) “Solicit” and “solicitation” mean the request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such will be used for a charitable purpose as hereafter defined. “Solicit” and “solicitation” shall include the following methods of requests, collections for receipts:

- (a) Any oral or written request;

1. Prior legislation: Ords. 257, 554 and 848.

5.08.020

(b) The sale of, offer or attempt to sell any change, coupon, device, tag, emblem, ticket, book, card, magazine, membership, merchandise, subscription, advertising space or other thing in connection with which an appeal is made for a charitable purpose or any statement is made that the whole or any part of the proceeds from such sale will be donated to or will go to a charitable purpose. (Ord. 932, 1996).

5.08.020 Application process and exemptions.

License applications under this chapter shall be made to the city clerk on forms prescribed by that office. The application must be filed at least 30 days prior to the commencement of the activity proposed. All applications will be reviewed by the police, public works, and planning departments and such other department(s) as determined necessary by the city clerk. The information on the application shall include, but not be limited to the following:

- (1) Name and physical description of the applicant;
- (2) Local address where all notices may be mailed to the applicant;
- (3) Phone number where the applicant may be reached;
- (4) A brief description of the nature and method of the business, and goods to be sold, or services solicited or provided;
- (5) If an agent or employee, the name and address of the principal or employer;
- (6) If a vehicle is to be used, a description of the vehicle, the name of the person or company to whom the vehicle is registered, together with vehicle license number or other means of identification;
- (7) A copy of a current valid driver's license;
- (8) For any permit where handling of food is involved, applicant should supply:
 - (a) A copy of the current foodhandlers permit from the Snohomish County health department;
 - (b) A declaration that he/she is free of infectious, contagious or communicable disease. If applicant is not free of infectious, con-

tagious or communicable disease, the license may be denied;

(9) License applications for Stanwood Mayfest and other special city events are exempt from this section and shall be licensed as provided in Chapter 5.01 SMC. (Ord. 932, 1996).

5.08.030 License approval, appeals and exemptions.

(1) On the receipt of an application with appropriate license fee, the city clerk shall prepare and deliver to the applicant a license, which shall require the approval signature of the city clerk, and all other appropriate city department heads. The application must show:

- (a) The name, address and telephone number of the applicant;
- (b) The kind of goods to be sold or solicited to be sold;
- (c) Amount of fee paid;
- (d) Date of issuance;
- (e) Duration of license;
- (f) License number, registered ownership, identifying description of any vehicle to be used by the licensee;
- (g) Current driver's license number and state of issuance of license, of any driver's license displayed by the licensee.

(2) The city clerk shall keep a permanent record of all licenses issued.

(3) If the license is denied, for reasonable cause, any license fee previously paid shall be retained by the city to defray costs of investigation.

(4) As a condition precedent to the issuance of a license to conduct business as a temporary merchant under this chapter, an applicant must obtain and retain a minimum of \$500,000 public liability and property damage insurance, which shall include product liability coverage, naming the city as an additional insured.

(5) Any person aggrieved by the action of the city clerk, in the denial of an application, or revocation of his license, may apply for an appeal through the mayor or his designated representative within 14 days after notice of the action complained of has been mailed to him. Such appeal shall be made by filing a written statement setting forth fully the

grounds for the appeal; the mayor shall evaluate the appeal proposal and set a time and place for hearing before the city council on such appeal, and notice shall be given to the appellant in the same manner as herein provided for notice of hearing on revocation. The decision and order of the council on such appeal shall be final and conclusive.

(6) It is lawful for any farmer, gardener or other person, without license, to sell, deliver or peddle any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced or manufactured by such person. Such persons are specifically exempt from payment of license fees under the provisions of this chapter. Claim for such exemption must be made by application and approved through the city clerk. (Ord. 932, 1996).

5.08.040 Special conditions – Mobile unit vendors.

(1) A vendor from a mobile unit shall not use radios or any other sound devices to attract public attention unless in accordance with Chapter 9.50 SMC.

(2) The vendor shall provide, for public use, a receptacle of adequate size on said unit for the deposit of refuse. Appropriate recycling containers shall also be provided.

(3) The owner or operator of such mobile unit vending or peddling edible food shall fully comply with any and all federal, state, county and city laws regarding the purity of such food and the cleanliness of such unit.

(4) Mobile units must be 200 feet from an existing and stationary like business.

(5) Insurance, as required by SMC 5.08.030(4) shall be required. (Ord. 932, 1996).

5.08.050 License fees, terms and exemptions.

(1) Temporary Merchants. The fee for a temporary merchant’s license shall be as listed in SMC 3.30.090. This license shall not exceed 15 days in duration. A temporary merchant’s license will be issued only twice in a 12-month period, and the two permits shall not be issued consecutively. Approved vending carts that

can be moved daily by hand and are located immediately adjacent to a store which has approved restrooms and sanitary facilities are exempt from this requirement.

(2) Peddlers and Solicitors. The fee for a peddler’s license shall be as listed in SMC 3.30.090. The fee shall be per peddler, and shall not be prorated for any part of a license year.

(3) Mobile Unit Vending. The license fee for mobile unit vending shall be as listed in SMC 3.30.090.

(4) Charitable Solicitations. The license fee for charitable solicitations shall be as listed in SMC 3.30.090. A license for service clubs, churches, schools and other not-for-profit organizations will be issued for a one-year time period, which will begin on January 1st of each year and not be prorated. The organization sponsoring the solicitation shall secure the license.

(5) Identification for Charitable Solicitors. Each solicitor shall carry proper credentials identifying him/herself and the sponsoring organization.

(6) Exemptions. A declaration of exemption, if exemption is claimed, in which case the license fee need not be paid unless the applicant shall be found not entitled to exemption, whereupon the license fee shall forthwith be paid if the applicant desires to transact business as a peddler, solicitor or canvasser. (Ord. 932, 1996).

5.08.060 License revocation/denial.

(1) License Revocation – When. Licenses issued under this chapter may be revoked by the city council after notice and hearing for:

(a) Fraud, misrepresentation or false statement contained in the application or in the course of carrying out the licensee’s business; or

(b) Any violation of this chapter; or

(c) Conducting business in any unlawful manner or in such a manner as constituting a breach of the peace or disorderly conduct, or in such manner to constitute a menace to the health, safety or general welfare of the public.

(2) License Revocation – Hearing Notice. Notice of a hearing for revocation of a license

5.08.070

shall be given in writing setting forth the grounds for the revocation. Notice shall be mailed to the licensee, certified mail, return receipt requested, addressed to the address set forth on the license application. The time and place of the hearing shall be the next regular council meeting after the 10-day advance notice of the public hearing has been legally published. (Ord. 932, 1996).

5.08.070 Conventions – Festivals.

(1) The promoter, sponsor, or other person, firm, corporation or legal entity of whatever nature or kind organizing a convention, festival, show, bazaar, fair or flea market, which shall include transient or temporary dealers, merchants, peddlers, vendors, canvassers or solicitors, shall obtain a license under this chapter to cover all dealers involved in said event.

(2) Transient dealers, vendors or merchants participating in an event licensed herein shall not be required to have a separate license under this chapter.

(3) The promoter, sponsor or other person is responsible for payment of fees and required information on participants for said event. The following conditions apply:

(a) The application for a festival license must be filed with the city clerk on forms provided by the city at least 30 days before said event (this time limit may be reduced to 20 days at the discretion of the police chief), with an application fee as provided in SMC 3.30.080.

(b) The approximate number of participants expected to be included.

(c) Five days prior to the event, a complete list of persons operating booths shall be submitted to the city clerk, with payment of fees.

(e) The police chief reserves the right to investigate any participating vendor, at his discretion, for the protection of the public welfare.

(f) In the event the police chief determines that a police officer should be in attendance at said event, the cost to cover the salary of the extra officer shall be paid by the spon-

sor/promoter, in addition to the above fees. (Ord. 932, 1996).

5.08.080 Site requirements.

(1) Private Property. No person shall conduct business under this chapter on private property without written permission from the property owner.

(2) City Property. No person shall conduct business at the same location for more than two days, under this chapter, without obtaining a lease of city right-of-way, as provided in Chapter 14.60 SMC.

(3) Site Plans. Any person applying for a license under this chapter to conduct business for more than two days at any one location shall provide a site plan of the business location and such other plans or drawings as the city may require for approval. All site plans must be reviewed and approved by the public works director and the planning director. (Ord. 932, 1996).

5.08.090 Temporary merchant/vendor general requirements.

Any person seeking a vendor's license as defined in SMC 5.08.010 and 5.08.020 shall comply with the following requirements:

(1) All advertising shall be on the unit and will not be allowed on the street or sidewalk, except as provided under Chapter 14.32 SMC.

(2) The site must be kept clean and orderly at all times and the vendor must provide a refuse container if their merchandise generates refuse.

(3) The city reserves the right to limit the number of sites allowed in any given area.

(4) If located on a sidewalk, a minimum usable and unimpaired sidewalk clearance of five feet shall be maintained by any street vendor.

(5) If a temporary merchant vendor is located on a street, the operation shall be oriented to the pedestrians on the sidewalk and not the vehicular traffic, if such exposure would interfere with the traffic flow.

(6) Vendors are prohibited in parks unless prior written approval is obtained from the public works department.

(7) Vendors shall comply with all parking requirements as listed in Chapter 17.105 SMC.

(8) Vendors shall not obstruct the passage along any sidewalk, street, alley or parking lot by causing a congregation of people.

(9) Vendors shall not sell within 500 feet of any school grounds during school session or events, except if vendor possesses written permission from the city and the school district.

(10) Vendors shall comply with all city, county, state and federal regulations regarding food handling. (Ord. 932, 1996).

5.08.100 Responsibilities.

The issuance of a license herein provided for shall not relieve the licensee from securing any other license(s) required by state, federal, county or city law. (Ord. 932, 1996).

5.08.110 Penalty for violation.

Violation of this chapter shall constitute a Class B infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein. (Ord. 1112 § 2, 2001; Ord. 932, 1996).

Chapter 5.10

AUCTIONING

Sections:

5.10.010 Fees.

5.10.020 Penalty for auctioning without license.

5.10.030 *Repealed.*

5.10.010 Fees.

An application fee in the amount of \$10.00 shall be submitted to the city clerk-treasurer at the time of filing for the license for auctioning. (Ord. 561 § 2, 1980).

5.10.020 Penalty for auctioning without license.

Any person who sells or attempts to sell at public auction in the city any real or personal property whatsoever, except as hereinbefore provided, without first having obtained a license therefor, as required under the terms and provisions of this title, shall constitute a Class B infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein. (Ord. 1112 § 2, 2001; Ord. 561 § 1, 1980).

5.10.030 Violations generally – Penalties.

Repealed by Ord. 1112. (Ord. 561 § 3, 1980).

Chapter 5.12

TAXICABS

Sections:

- 5.12.010 Supervision of police chief.
- 5.12.020 License – Required.
- 5.12.030 Compliance with state and city laws required.
- 5.12.040 License – Card issuance.
- 5.12.050 License – Fee.
- 5.12.060 Operator license – Required.
- 5.12.070 Operator license applicant – Data required.
- 5.12.080 Operator license applicant – Qualifications.
- 5.12.090 Operator license applicant – Character certificate required.
- 5.12.100 Operator license applicant – Investigation.
- 5.12.110 Operator license – Fee required.
- 5.12.120 Operator license – Revocation procedure.
- 5.12.130 General license provisions.

5.12.010 Supervision of police chief.

The licensing and inspection of taxicabs and for hire cars, the examination of the qualifications of applicants for licenses to drive taxicabs and for hire cars and the licensing of drivers as hereinafter provided, and the enforcing of this chapter shall be under the supervision and control of the chief of police. (Ord. 164 § 1, 1946).

5.12.020 License – Required.

No taxicabs shall ply or be operated upon the streets of the city without first obtaining a license so to do, such license, if issued, shall be for the calendar year and shall be effective for such period of time unless sooner suspended or revoked, as hereinafter provided. Application for licenses for taxicabs shall be made by the owner thereof upon blank forms to be furnished by the clerk-treasurer, and such application shall contain the full name and address of the owner, the type of vehicle and the passenger carrying capacity. Nor shall any owner of a taxicab allow the taxicab to be operated by any person other than the driver licensed pur-

suant to the provisions of this chapter. (Ord. 164 § 2, 1946).

5.12.030 Compliance with state and city laws required.

No taxicab or for hire car shall be licensed unless the taxicab is in a safe condition for use as such, nor until satisfactory evidence is furnished that the provisions of applicable state laws and this chapter have been complied with. (Ord. 164 § 3, 1946).

5.12.040 License – Card issuance.

If upon inspection a taxicab is found to be of lawful construction and in proper condition in accordance with the provisions of this chapter upon the payment of the license fee hereinafter set forth, the taxicab shall be licensed by delivering to the owner a card of such size and form as may be fixed by the clerk-treasurer. (Ord. 164 § 4, 1946).

5.12.050 License – Fee.

The occupational license fee shall be \$25.00 per year plus \$10.00 per year for each taxicab and for hire car licensed. All such licenses shall expire on December 31st of each year and shall not be transferable from owner to owner or from car to car. (Ord. 554 § 3(f)(1), 1981; Ord. 174 § 1, 1952; Ord. 164 § 5, 1946).

5.12.060 Operator license – Required.

Every person desiring to drive, operate or have charge of a taxicab or for hire car within the city, shall make written application to the clerk-treasurer for a license so to do. Such application shall be made upon blanks furnished by the clerk-treasurer and shall be signed and sworn to by the applicant before a notary public or some other officer duly authorized to administer oaths. (Ord. 164 § 6, 1946).

5.12.070 Operator license applicant – Data required.

Every applicant shall state his name, place of birth, place of residence, length of time he has resided in the city, married or single, last place of employment with name and address of employer, whether he has been previously licensed as such driver, and if so where; wheth-

er any such license has ever been suspended or revoked, and if so, for what cause; whether or not he has ever been convicted of a crime, and if so, the number of such convictions, the approximate dates thereof, the names of the courts in which he was charged, the crime with which he was charged, and the final disposition of the case and/or cases. (Ord. 164 § 7, 1946).

5.12.080 Operator license applicant – Qualifications.

Every applicant must possess the following qualifications: He must be at least 21 years of age, and duly licensed to drive a motor vehicle for hire under the laws of the state of Washington. He must show that he has a good knowledge of the laws of the state of Washington, and the city ordinances, relating to the driving and operation of motor vehicles. (Ord. 164 § 8, 1946).

5.12.090 Operator license applicant – Character certificate required.

Every applicant shall accompany his application with a certificate of two reputable citizens of Stanwood, certifying that the applicant is of good moral character and not addicted to the use of intoxicating liquors or drugs. (Ord. 164 § 9, 1946).

5.12.100 Operator license applicant – Investigation.

Every applicant for such driver's license shall be referred by the clerk-treasurer to the chief of police, whose duty it shall be to investigate such applicant and if satisfied with his qualifications, recommend in writing within a reasonable time that a license be issued to him, or if not satisfied with such qualifications, so report to the council. The council shall determine whether or not the applicant is entitled to such license and if it determines that such applicant is entitled to such license it shall notify the clerk-treasurer, and he shall issue such license. The license when issued shall be displayed in a prominent place while driving, operating or in charge of a taxicab or for hire car covered by this chapter, such display to make license visible to occupants of the vehicle. (Ord. 164 § 10, 1946).

5.12.110 Operator license – Fee required.

Each applicant shall also accompany his application with a certified check or cashier's check made payable to the clerk-treasurer, or cash in the sum of \$10.00, which check or cash shall be returned to the applicant if no license shall be issued hereunder, otherwise retained by the clerk-treasurer as an annual license fee. All licenses issued to drivers hereunder shall expire on December 31st of each year, unless previously revoked. The power of revocation with or without cause being expressly reserved to the council as provided in SMC 5.12.120. (Ord. 554 § 3(f)(2), 1981; Ord. 174 § 2, 1952; Ord. 164 § 11, 1946).

5.12.120 Operator license – Revocation procedure.

If the chief of police finds that any person licensed hereunder has been convicted of a criminal violation of federal or state law, or any city ordinance, and that such conviction establishes that such licensee is no longer of good moral character and reputation or is not a careful and experienced driver, then the chief of police shall make a written report of the circumstances surrounding such matter to the council, and shall make recommendations to the council regarding the suspension or revocation of the license of such person. After considering the report and before revoking or suspending any such license, the council shall order a hearing and in such a case shall notify the licensee of the date of the hearing and of the contents of the report of the chief of police, which hearing shall be held on a certain day, but shall not be less than 10 days from and after the mailing of notice of such hearing to such licensee, and which said notice shall require the licensee to show cause on such date, if any he has, why such license shall not be suspended or revoked. If upon hearing before the council a majority of the council shall find that the license of the licensee should be suspended or revoked, it shall be so ordered. An appeal from such order, suspension or revocation, may be made to the superior court for Snohomish County, in the manner provided for under the general laws of the state of Washington. In case of the revocation of the

5.12.130

license, the license shall be taken up by the chief of police and canceled by the clerk-treasurer, and in case of the suspension of a license, the license shall be surrendered to the clerk-treasurer, and shall be returned to the licensee at the termination of the period of suspension. (Ord. 164 § 12, 1946).

5.12.130 General license provisions.

Every license issued under the provisions of this chapter shall state in substance that such license is issued in consideration of the fee paid therefor and the right of the council to revoke or suspend such license pursuant to the provisions of this chapter. Upon the revocation of any license for cause, the unearned portion of the license fee shall be returned to the licensee. (Ord. 164 § 13, 1946).

Chapter 5.16

**MOBILE/MANUFACTURED
HOME PARKS***

(Repealed by Ord. 968)

*Provisions on manufactured housing are codified in SMC 17.95.385 et seq.

Chapter 5.20

CATV FRANCHISE

Sections:

- 5.20.010 Definitions.
- 5.20.020 Terms of franchise.
- 5.20.030 Application.
- 5.20.040 Franchise issuance.
- 5.20.050 Acceptance.
- 5.20.060 Police powers.
- 5.20.070 Construction standards.
- 5.20.080 Undergrounding and landscaping.
- 5.20.090 Construction in right-of-way.
- 5.20.100 Safety requirements.
- 5.20.110 Building moving.
- 5.20.120 Trimming of trees.
- 5.20.130 Rates.
- 5.20.140 Cable availability.
- 5.20.150 Franchise fee.
- 5.20.160 External franchising costs.
- 5.20.170 Cable television system evaluation.
- 5.20.180 Records required and city’s right to inspect.
- 5.20.190 Public, educational and government access.
- 5.20.200 Citywide PEG access interconnection.
- 5.20.210 Institutional networks (I-nets).
- 5.20.220 PEG access equipment.
- 5.20.230 Nondiscrimination.
- 5.20.240 Parental control devices.
- 5.20.250 Devices for the hearing impaired.
- 5.20.260 Discounts.
- 5.20.270 Continuity of service.
- 5.20.280 Franchise nontransferable.
- 5.20.290 Removal and abandonment of property of franchisee.
- 5.20.300 Revocation for cause.
- 5.20.310 Effect of termination for noncompliance.
- 5.20.320 Insurance.
- 5.20.330 Performance bond.
- 5.20.340 Recourse against bonds and other security.
- 5.20.350 Franchising costs.
- 5.20.360 Equalization of civic contributions.
- 5.20.370 Inconsistency.
- 5.20.380 Severability.
- 5.20.390 Effect of change in law.

- 5.20.400 Independent contractors.
- 5.20.410 Force majeure.

5.20.010 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. Words used in the present tense include the future, words in the plural form include the singular form, and words in the singular form include the plural form. Terms listed in this section shall have their defined meanings unless the context requires that the ordinary meaning pertains. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meanings.

“Abandonment” means the disconnection by the operator of specific facilities from the cable system.

“Activated” means the status of any capacity or part of the cable system in which any cable service requiring the use of that capacity or part is available without further installation of cable system equipment other than subscriber premises equipment, whether hardware or software.

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

“Applicant” means any person who files an application for franchise to provide cable services within the city.

“Bad debt” means amounts lawfully billed to a subscriber and owed by the subscriber for cable service and accrued as revenues on the books of the operator, but not collected after reasonable efforts have been made by the operator to collect the charges.

“Basic service” means any cable service tier that includes, at a minimum, the retransmission of local television broadcast signals and local PEG access channels.

“Bi-directional” means that the cable system is capable of providing both upstream and downstream transmissions.

“Broadcast signal” means a television or radio signal transmitted over the air to a wide

5.20.010

geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

“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 any amendments thereto, 47 U.S.C. Section 521 et seq.

“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.

“Cable system” has the meaning specified in Section 602 of the Cable Act.

“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.

“Character generator” or “character generated” means the device by which alphanumeric programming is generated to be cablecast on a cable channel.

“City” means the city of Stanwood, a city of the state of Washington, existing pursuant to the Washington State Constitution, and the laws of the state of Washington.

“City council” means the council of the city of Stanwood or any future board constituting the legislative body of the city of Stanwood.

“Downstream” means carrying a transmission from the headend to remote points on the cable system or to interconnection points on the cable system.

“Emergency” means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

“Expanded basic service” means the tier of optional video programming services which is above “basic service,” and does not include “premium services.”

“External franchising cost” means the cost borne by the operator to fulfill a specific franchise requirement as authorized by federal law. These costs may include such items as

capital contributions for public, education and government programming and institutional networks.

“Facilities” means the component parts of the cable system, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the rights-of-way.

“FCC” means the Federal Communications Commission.

“Fiber-optic” means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying cable service by means of electric light-wave impulses.

“Franchise” means a contractual agreement, executed between the city and the operator, containing the specific provisions of the authorization to operate a cable television system in the city is granted and regulated.

“Franchise area” means the area within the jurisdictional boundaries of the city, including any areas annexed by the city during the term of this franchise.

“Franchise fee” means any tax, fee or assessment of any kind imposed by the city or other government entity on the operator or subscriber, or both, solely because of their status as such and which may be lawfully imposed. Franchise fees shall not include any tax, fee or assessment of general applicability, capital costs required by this franchise to be incurred by the operator for public, educational or governmental access facilities and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise, such as payments for bonds, insurance, indemnification, penalties or liquidated damages.

“Gross revenues” means any and all revenues derived by the operator, or an affiliate, from the operation of the cable system to provide cable services in the city, other than revenue from transactions related to real property, the capital contribution collected from subscribers and paid in support of PEG access channels, bad debt and any taxes on services furnished by the operator, imposed on the operator or any subscriber or used by any gov-

ernmental unit, agency or instrumentality and collected by the operator for such entity. However, gross revenues shall include franchise fee revenue and revenues received by the operator or an affiliate from local and national advertising sales, home shopping channels, and similar sources. When the revenue of the operator includes gross revenues from sources outside of the city, an operator shall allocate the appropriate percentage of gross revenues by multiplying the revenues received by a fraction, the numerator of which is the number of operator's subscribers in the city, and the denominator of which is the total number of all subscribers.

"Headend" means the operator's primary facility for signal reception and dissemination on its cable system, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for broadcast signals, and all other related equipment and facilities.

"Installation" means the connection of the cable system by means of a cable drop from feeder cable to subscribers' terminals.

"Institutional network" or "I-net" means that part of a cable system's facilities or capacity designated for noncommercial communications to, from and among the city, fire districts, government agencies, schools and libraries via cable, owned by the operator.

"Node" means that portion of the cable system where fiber-optic cables and coaxial cables meet. The node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of bi-directional cable services to subscribers over a hybrid fiber-coaxial cable ("HFC") cable system.

"Operator" means any person or group of persons, including the operator, who provide(s) cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise control(s) or are (is) responsible for, through any arrangement, the management and operation of such a cable system in the city.

"OVS operator" shall mean any person who has been certified by the Federal Communications Commission to operate an open video system under Part 76 of its rules, 47 C.F.R., Part 76.

"Open video system" means a facility, consisting of a set of transmission paths and associated signal generation, reception and control equipment that (i) is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community; and (ii) affords open access to independent video programming providers that are not affiliates of the open video system operator.

"OVS services" shall mean any service provided through an open video system except telecommunications services regulated by the Washington Utilities and Transportation Commission. OVS services shall include, but not be limited to, multi-channel video services, video programming, video dial tone service, cable television service or other similar video services and cable modem services or other non-dial-up internet access services. "OVS services" shall not include telephone.

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

"Premium service" means programming choices (such as movie channels, pay-per-view programs, or video on demand) offered to subscribers on a per-channel, per-program or per-event basis.

"Public, education and government (PEG) access channels" means channel capacity designated by the operator for the transmission of public, educational, or government access use in accordance with a franchise and 47 U.S.C. Section 521.

"Public ways" or "rights-of-way" include the surface of and space above and below any real property in the city in which the city has an ownership interest, or interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any public or utility

5.20.020

easements established, dedicated or devoted for public utility purposes.

“Subscriber” means any person who or which elects to subscribe to, for any purpose, cable service provided by the operator by means of or in connection with the cable system and whose premises are physically wired and lawfully activated to receive cable service from the operator’s cable system.

“Tier” means a group of channels for which a single periodic subscription fee is charged.

“Upstream” means carrying a transmission to the headend from remote points on the cable system or from interconnection points on the cable system. (Ord. 1156 § M1, 2004).

5.20.020 Terms of franchise.

(1) Authority to Grant Franchises for Cable Television Systems and Other Video Systems. It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable television system or other video systems without a franchise issued under this chapter. The city council may, by ordinance, award nonexclusive franchises to construct, operate and maintain cable television systems and other video systems which comply with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits or preclude the city from using any public rights-of-way, streets, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes, as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new public rights-of-way and other public properties.

(2) Incorporation by Reference. The provisions of this chapter shall be incorporated by reference granting a franchise subject to this chapter, approved hereunder. The provisions of any proposal submitted and accepted by the city shall be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, this chapter and the franchise, the franchise shall be the prevailing document.

(3) Nature and Extent of the Franchise. Any franchise granted hereunder by the city shall authorize a franchisee, subject to the provisions herein contained, to:

(a) Engage in the business of operating and providing cable services or other video services and the distribution and sale of such services to subscribers within the city;

(b) Erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable television system or other video system; and provide similar cable facilities, or properties rented or leased from other persons, firms or corporations, such as public utilities or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(4) Length of the Franchise. The city shall have the right to grant franchises for a period of time appropriate to the circumstances of the particular grant. (Ord. 1156 § M2, 2004).

5.20.030 Application.

An applicant for franchise to construct, operate, and maintain a cable television system or other video system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable filing fee as established by resolution of the city council. (Ord. 1156 § M3, 2004).

5.20.040 Franchise issuance.

Prior to the granting of a franchise, the city council shall conduct a public hearing to determine the following:

(1) Initial Franchise.

(a) Whether the public will be benefited by the granting of a franchise to the applicant;

(b) Whether the applicant has the requisite financial and technical resources and capa-

bilities to build, operate and maintain a cable television system or other video system in the area;

(c) Whether the applicant has any conflicting interests, either financial or commercial, which will be contrary to the interests of the city;

(d) Whether the applicant will comply with all terms and conditions placed upon a franchisee by this chapter;

(e) Whether the applicant is capable of complying with all relevant federal, state, and local regulations, codes and standards pertaining to the construction, operation and maintenance of the cable television system or other video system facilities incorporated in its application for a franchise;

(f) Whether the public rights-of-way have the capacity to accommodate the cable television system or other video system;

(g) Whether the proposed franchise is consistent with the city's present and future use of the public rights-of-way to be used by the cable television system or other video system;

(h) Whether the benefit to the public from the cable television system or other video system outweighs the potential disruption to existing users of the public rights-of-way to be used by the cable television system or other video system, and the resultant inconvenience which may occur to the public; and

(i) Whether all other conditions resulting from the grant of the franchise have been considered by the city and that the city determines that the grant is still in the public's best interest.

(2) Renewal Franchise.

(a) Whether the franchisee has substantially complied with the material terms of the existing franchise.

(b) Whether the quality of the franchisee's previous service has been reasonable in light of community needs.

(c) Whether the franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(d) Whether the franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a franchisee's proposal.

(e) Whether such renewal is consistent with applicable federal law. (Ord. 1156 § M4, 2004).

5.20.050 Acceptance.

Within 60 days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the city council in its discretion may authorize, a franchisee shall file with the finance director its unconditional written acceptance of the franchise and all of its terms and conditions, in a form satisfactory to the city attorney, together with the bond and evidence of insurance as required by SMC 5.20.320, Insurance, and SMC 5.20.330, Performance bond. (Ord. 1156 § M5, 2004).

5.20.060 Police powers.

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the city and the city council to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the city pursuant to such power. The city reserves the right to use, occupy and enjoy any public rights-of-way or other public places for any purpose, including, without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other city services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The city council reserves the right to delegate its authority for franchise administration to a designated agent. (Ord. 1156 § M6, 2004).

5.20.070 Construction standards.

Any cable system or other video system constructed under this chapter shall be placed and maintained at such places and positions in or upon such public rights-of-way and public

5.20.080

places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the state of Washington, and city rules, regulations, ordinances, codes, standards and policies pertaining to such construction.

At least seven days prior to the intended construction, a franchisee shall inform all residents in the affected area that a construction project will commence, the dates and nature of the project, and a toll-free telephone number that the subscriber may call for further information. A pre-printed door hanger may be used for this purpose.

The city reserves the right, as the interest of the public may require, to ensure that (1) the public rights-of-way have the capacity to accommodate the cable television system or other video system, (2) the proposed construction is consistent with the city's present and future use of the public rights-of-way, (3) the benefit to the public from the construction of the cable television system or other video system outweighs the potential disruption to existing users of the public rights-of-way and the resultant inconvenience which may occur to the public, and may require the installation or construction of new facilities proposed by the franchisee to be constructed in arterial thoroughfares or to be installed in alternate public rights-of-way which are substantially comparable in terms of the expense to the franchisee for installation or construction, and which provide distribution to all affected parcels of property that is equal or better to the requested installation route. The city shall give particular preference to the alternate installation location in cases in which the existing improvements to the public right-of-way would be affected by the proposed installation, or where the structural integrity of the surface of the right-of-way, or inconvenience to the public caused by the proposed installation cannot be mitigated through alternative means.

(1) Notice of Entry on Private Property. Where the franchisee has lawful authority to enter upon private property, at least 24 hours prior to entering private property or easements adjacent to or on such private property to per-

form new plant construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

(2) Emergency Repairs. Notice requirements of subsection (1) of this section, are suspended for purposes of entry upon private property to perform repairs at the subscriber's request or in the event of system outage repairs or other emergencies in which insufficient time is available to provide notice to subscribers.

(3) Restoration of Property. After performance of work, the franchisee shall restore private property as nearly as possible to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of a franchisee, be promptly repaired and restored (including replacement of such items as shrubbery and fencing) to the reasonable satisfaction of the property owner. (Ord. 1156 § M7, 2004).

5.20.080 Undergrounding and landscaping.

In those areas and portions of the city where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or hereafter may be placed underground, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon city approval. Such activities shall be made in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground, accompanied by landscaping and screening acceptable to the city. (Ord. 1156 § M8, 2004).

5.20.090 Construction in right-of-way.

(1) Right-of-Way Permit. A franchisee shall submit an application for, pay the permit fee, and obtain a right-of-way permit to perform work in any public rights-of-way. No work, other than emergency repairs or standard installations, shall commence without such a permit. Emergency repairs may be made immediately with notification given to the city no later than the next business day.

(2) Placement. In accordance with the permit issued, all transmission lines, equipment, and structures shall be located and placed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by a franchisee shall be placed in such manner as not to interfere with the usual travel on such public way. A franchisee shall comply with the manual for in-street work any time any poles or other fixtures are placed in any street or public way.

(3) Interference with Use of Streets. When installing, locating, laying, or maintaining facilities, apparatus, or improvements, a franchisee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by the franchisee of such work. Any facility, apparatus, or improvement under this chapter shall be laid, installed, located, or maintained in conformance with city rules, regulations, ordinances, standards and policies. In any event, a franchisee shall, at its own expense, and to the satisfaction of the city in accordance with the terms of the right-of-way permit, restore to city standards and specifications any damage or disturbance caused to streets as a result of franchisee's construction or operations.

(4) Relocation/Removal. Upon receipt of 30 days' prior written notice, a franchisee, at its own expense, and within the time period prescribed by the city, shall protect, support,

temporarily disconnect, relocate, or remove any of its facilities or property within the public rights-of-way when, in the judgment of the city, the same is required by reason of traffic conditions, public safety or improvements by governmental agencies of that portion of the right-of-way. Nothing herein shall be deemed a taking of the property of a franchisee, and a franchisee shall be entitled to no surcharge by reason of this section.

(5) City's Performance of Work. After receipt of 30 days' prior written notice, and upon the failure of a franchisee to commence, pursue, or complete any work required by the provisions of this chapter or failure to comply with any applicable federal, state or city laws, ordinances, rules, regulations or standards to be performed on any street, within the reasonable time prescribed and to the satisfaction of the city, the city may, at its option, cause such work to be done, and a franchisee shall pay to the city the reasonable cost thereof, which costs may include the city's reasonable overhead and administrative expense, within 30 days after receipt of demand. (Ord. 1156 § M9, 2004).

5.20.100 Safety requirements.

A franchisee, in accordance with applicable national, state, and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, on, over, under, across and upon public rights-of-way or places of a franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. (Ord. 1156 § M10, 2004).

5.20.110 Building moving.

Whenever any person shall have obtained a permit from the city to use any street for the purpose of moving any building, a franchisee, upon seven days' written notice from the city, shall raise or remove, at the expense of the permittee desiring to move the building, any of a

5.20.120

franchisee's wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with all city codes, regulations and general ordinances of the city. A franchisee shall be indemnified and held harmless from any and all damages or claims of whatsoever kind or nature, caused directly or indirectly from this action, except to the extent such damages or claims are the result of franchisee's negligent action. A franchisee may also require payment in advance from the permittee. (Ord. 1156 § M11, 2004).

5.20.120 Trimming of trees.

Upon approval of the city public works department and upon granting of a permit by the director of public works where applicable, a franchisee shall have the authority to trim trees, in accordance with National Arborist Association standards, ordinance and easement restrictions, upon and hanging over streets, alleys, sidewalks, and public places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the franchisee. A franchisee shall be responsible for debris removal from such activities. Failure to remove debris after a reasonable time shall result in the debris being removed by the city and the costs involved charged to the franchisee. Tree trimming shall be coordinated with other utility providers, including but not limited to Public Utility District No. 1 of Snohomish County. (Ord. 1156 § M12, 2004).

5.20.130 Rates.

Within 30 days after the grant of an initial franchise hereunder, a franchisee shall file with the city a complete schedule of all present rates charged to all subscribers. Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the city and all subscribers a minimum of 30 days' prior written notice of such change.

Subject to the Act and resultant FCC regulations, the city may regulate the rates or charges for providing basic service and equipment and may establish rate regulation review proce-

dures as permitted by federal law. (Ord. 1156 § M13, 2004).

5.20.140 Cable availability.

Cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. (Ord. 1156 § M14, 2004).

5.20.150 Franchise fee.

A franchisee shall pay to the city quarterly, on or before the thirtieth day after the end of each calendar quarter, a percentage, as established by separate ordinance, of gross revenues, as defined herein for the preceding calendar quarter. Such remittances shall be accompanied by forms furnished by the city to report detailed information as to the sources of such revenues. Any remittance not paid when due shall bear interest at the rate established in the ordinance conferring the franchise. (Ord. 1156 § M15, 2004).

5.20.160 External franchising costs.

Prior to incurring any expense for any franchise-related requirements that would be treated as an external cost passed through to subscribers under applicable federal law, the franchisee shall notify the city of its intent to exercise its right and the amount to be passed through to subscribers. The city may waive the franchise-related requirement if, in the city's opinion, the increase in rates would be a burden on subscribers. (Ord. 1156 § M16, 2004).

5.20.170 Cable television system evaluation.

The city may require annual franchise compliance evaluations during the term of a franchise. The city may also require periodic meetings in addition to the annual franchise compliance evaluations. The city shall provide a franchisee 30 days' prior written notice of the franchise compliance evaluation or meeting date and topic of discussion. (Ord. 1156 § M17, 2004).

5.20.180 Records required and city's right to inspect.

(1) A franchisee shall at all times maintain at its office a full and complete set of maps showing the location of the cable television system or other video system installed or in use in the city, exclusive of subscriber drops and equipment provided in subscribers' homes, and a summary of service calls, identifying the number, general nature and disposition of such calls. Subject to reasonable notification this information will be available for review by the city. Furthermore, a summary of such service calls shall be submitted to the city, within 30 days of a written request from the city, in a form reasonably acceptable to the city.

(2) Upon 48 hours' written notice, and during normal business hours, the franchisee shall permit examination by a duly authorized representative of the city, of all franchisee property and facilities, together with any appurtenant property and facilities of the franchisee situated within the city, and all records relating to the franchise or this chapter, provided they are necessary to enable the city to carry out its regulatory responsibilities under local, state and federal law. Such records include all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of the franchisee. The franchisee shall have the right to be present at any such examination.

(3) The city agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent a franchisee makes the city aware of such confidentiality. A franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the city believes it must release any such confidential books and records in the course of enforcing a franchise or this chapter, or for any other reason, it shall advise a franchisee in advance so that a franchisee may take appropriate steps to protect its interests. If the city

receives a demand from any person for disclosure of any information designated by a franchisee as confidential, the city shall, so far as consistent with applicable law, advise a franchisee and provide a franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the city agrees that, to the extent permitted by state and federal law, it shall deny access to any of a franchisee's books and records marked confidential as set forth above to any person.

(4) Copies of all petitions, applications, communications and reports submitted by a franchisee, or on behalf of or relating to a franchisee, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting a cable television system or other video system authorized pursuant to this chapter and a franchise shall be made available to the city upon request. Copies of responses from the regulatory agencies to a franchisee shall likewise be furnished to the city upon request. (Ord. 1156 § M18, 2004).

5.20.190 Public, educational and government access.

The city may require, as a condition of a franchise granted pursuant to this chapter, provisions for public, educational and government ("PEG") access. (Ord. 1156 § M19, 2004).

5.20.200 Citywide PEG access interconnection.

In the case of multiple cable television systems and other video systems operating in the city, the city may request a franchisee to begin negotiations with the other franchisees to interconnect PEG access channels delivered to subscribers by each of the franchisees in the city. Interconnection of PEG access channels may be accomplished by direct cable connection, microwave link, or other technically feasible method.

Upon receiving a request of the city to interconnect, a franchisee shall commence negotia-

5.20.210

tions and shall report the results of such negotiations no later than 60 days after such initiation. (Ord. 1156 § M20, 2004).

5.20.210 Institutional networks (I-nets).

The city may require a franchisee to construct an I-net in accordance with applicable law. (Ord. 1156 § M21, 2004).

5.20.220 PEG access equipment.

A franchisee may be required to provide PEG access support in accordance with applicable law. (Ord. 1156 § M22, 2004).

5.20.230 Nondiscrimination.

In connection with rates, charges, cable facilities, rules, regulations and in all franchisee's services, programs or activities, and all franchisee's hiring and employment made possible by or resulting from this franchise, there shall be no discrimination by a franchisee or by a franchisee's employees, agents, subcontractors or representatives against any person because of sex, age 40 through 70 (except minimum age), race, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. A franchisee shall not violate any applicable federal, state or local law or regulation regarding nondiscrimination in employment or the provision of services.

Any material violation of this provision shall be grounds for termination of a franchise by the city and, in the case of the franchisee's breach, may result in ineligibility for further city agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled; and provided further, that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee. (Ord. 1156 § M23, 2004).

5.20.240 Parental control devices.

Upon request by a subscriber, a franchisee shall make available and may charge the subscriber a fee not to exceed the franchisee's actual cost including applicable handling fees, a device by which the subscriber can prohibit viewing and audio reception of a particular cable service or video programming service. (Ord. 1156 § M24, 2004).

5.20.250 Devices for the hearing impaired.

A franchisee shall comply with FCC closed captioning requirements, 47 C.F.R. 76.606, or any successor rules and regulations thereto. (Ord. 1156 § M25, 2004).

5.20.260 Discounts.

The operator shall offer a discount of 30 percent from the normal charge for basic services and installations to those individuals age 62 or older or handicapped who are the legal owner or lessee/tenant of their residence; provided, that their combined disposable income from all sources does not exceed income levels used by the city for other utility discounts. The city or its designee shall be responsible for certifying to the operator that such applicants conform to the specific criteria. At its sole option the operator may offer a limited level of service commonly referred to as "lifeline" at a reduced rate for those individuals unable to afford additional levels of service including such programming as satellite-delivered superstations and movies, etc. (Ord. 1156 § M26, 2004).

5.20.270 Continuity of service.

It shall be the right of all subscribers to continue receiving cable service or other video services so long as their financial and other obligations to a franchisee are fulfilled. In this regard a franchisee shall act, so far as it is within its control, to ensure that all subscribers receive continuous uninterrupted service during the term of the franchise.

In the event a franchisee fails to operate a cable television system or other video system for 72 continuous and consecutive hours without prior notification to and approval of the city council or without just cause such as an

impossibility to operate the cable television system or other video system because of the occurrence of an emergency or other circumstances reasonably beyond a franchisee's control, the city may, after notice and an opportunity for a franchisee to commence operations at its option, operate the cable television system or other video system or designate someone to operate the cable television system or other video system until such time as a franchisee restores cable service or other video service or a replacement franchisee is selected. If the city is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the city for all reasonable costs in excess of revenues from the cable television system received by the city that are the result of a franchisee's failure to perform. (Ord. 1156 § M27, 2004).

5.20.280 Franchise nontransferable.

(1) A franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the franchise and/or cable television system or any of the rights or privileges granted by the franchise without the prior consent of the city council which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by the city that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the franchise agreement or such other ground as may be permitted. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise and/or cable television system without the consent of the city council shall, by federal law, result in an immediate termination of the franchise. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the city shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with a franchisee.

(2) The following nonexclusive list of events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable television system requiring compliance with this section:

(a) The sale, assignment or other transfer of all or a majority of a franchisee's assets;

(b) The sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a franchisee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in the franchisee;

(c) The issuance of additional capital stock or partnership, membership or other equity interest by a franchisee so as to create a new controlling interest in the franchisee; and

(d) The entry by the franchisee into an agreement changing the management or operation of the franchisee and/or the cable television system. The term "controlling interest" as used herein means majority equity ownership of the franchisee.

(3) Except as provided below, no franchisee may sell or otherwise transfer ownership in a franchise and/or cable television system within a 36-month period following either the acquisition or initial construction of said cable television system by the franchisee. In the case of a sale of multiple cable television systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such cable television systems to one or more third parties, such transfer shall be considered a part of the initial transaction. The above-described 36-month holding period shall not apply to:

(a) Any transfer of ownership interest in any franchise and/or cable television system which is not subject to federal income tax liability;

(b) Any sale required by operation of any law or any act of any agency, any state or political subdivision or the city; or

(c) Any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

(4) In the case of any sale or transfer of ownership of any franchise and/or cable television system after the 36-month period following acquisition of such cable television system, and in accordance with federal law, the city shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission regulations, the requirements of this chapter or a franchise, and such other reasonable information as the city, in its sole discretion, may request. If the city fails to render a final decision on the request within 120 days from receipt by the city of all required information, such request shall be deemed granted unless the requesting party and the city agree to an extension of time.

(5) A franchisee shall notify the city in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the franchisee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by the city as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of the city to such change in control of ownership shall apply.

(6) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the city may inquire into the qualifications of the prospective transferee or controlling party, and franchisee shall assist the city in any such inquiry. In seeking the city's consent to any change of ownership or control, the franchisee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to the city, which application shall include the information required under state and federal law. An application, acceptable to the city, shall be submitted to the city no more than 120 days nor less than 90 days prior to the date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the cable television system and comply with all franchise require-

ments for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the applicant and determining that they are satisfactory, the city finds that such transfer is acceptable, the city shall transfer and assign the rights and obligations of such franchise. The consent of the city to such transfer shall not be unreasonably denied.

(7) Any financial institution having a pledge of the franchisee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the city that it or its designee satisfactory to the city shall take control of and operate the cable television system, in the event of a franchisee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within 30 days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the cable television system. The financial institution shall not exercise control over the cable television system for a period exceeding one year unless extended by the city in its discretion and during said period of time it shall have the right to petition the city to transfer the franchise to another franchisee.

(8) The city shall be reimbursed for its out-of-pocket costs associated with its review of a franchisee's request.

(a) A cable system or other video system shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, without the prior written consent of the city, which consent shall not be unreasonably withheld.

(b) A franchisee shall promptly notify the city of any actual or proposed change in, or transfer of, or acquisition by any other party of control of a franchisee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable pre-

sumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any person or group of persons of a majority of the shares or the general partnership interest in the grantee. Every change, transfer or acquisition of control of a franchisee shall make a franchise subject to cancellation unless and until the city shall have consented thereto.

(c) The parties to the sale or transfer shall make a written request to the city for its approval of a sale or transfer and furnish all information required by law and the franchise.

(d) The city shall render a final written decision on the request within 120 days of the request, provided it has received all requested information. Subject to the foregoing, if the city fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the city agree to an extension of time.

(e) Within 30 days of any transfer or sale, if approved or deemed granted by the city, a franchisee shall file with the city a copy of a written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by a franchisee and the transferee.

(f) In reviewing a request for sale or transfer, the city may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the franchisee shall assist the city in so inquiring.

(g) The consent or approval of the city to any transfer by a franchisee shall not constitute a waiver or release of any rights of the city, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the franchise.

(h) Notwithstanding anything to the contrary in this section, the prior approval of the city shall not be required for any sale, assignment or transfer of the franchise and cable television system or other video system to an entity controlling, controlled by or under the same common control as a franchisee; provided, that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the city and must

agree in writing to comply with all provisions of the franchise. (Ord. 1156 § M28, 2004).

5.20.290 Removal and abandonment of property of franchisee.

The city may direct a franchisee to temporarily disconnect or bypass any equipment of a franchisee in order to complete street construction or modification or install and remove underground utilities. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.

In the event that the use of any part of the cable television system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the franchise or other city ordinances or the franchise has been terminated, canceled or has expired, a franchisee shall promptly, upon being given 10 days' written notice, remove, at its expense, within 180 days from the streets or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, a franchisee shall promptly restore the street or other areas from which such property has been removed to a condition satisfactory to the city.

Any property of a franchisee remaining in place 180 days after the termination or expiration of the franchise shall be considered permanently abandoned. The city may extend such time not to exceed an additional 90 days.

Any property of a franchisee to be abandoned in place after 180 days shall be abandoned in such manner as the city shall prescribe. Upon permanent abandonment of the property of a franchisee in place, the property shall become that of the city, and a franchisee shall submit to the finance and accounting manager an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. None of the foregoing affects or limits a franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law. (Ord. 1156 § M29, 2004).

5.20.300

5.20.300 Revocation for cause.

Any franchise granted by the city may be terminated during the period of such franchise for failure by a franchisee to comply with material provisions of this chapter and/or the franchise.

Unless a franchisee requests termination of its franchise, the following procedures shall be followed by the city:

(1) The city shall provide the franchisee with a detailed written notice, by certified mail, detailing the violation and the change of condition necessary to cure such violation. Within 30 days thereafter, the franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) If said response is not satisfactory to the city, the city may declare a franchisee to be in default, with written notice, by certified mail, to the franchisee. Within 10 business days after notice to the franchisee, the franchisee may deliver to the city a request for a hearing before the city council. If no such request is received, the city may declare the franchise terminated for cause.

(3) If the franchisee files a timely written request for a hearing, such hearing shall be held within 30 days after the city's receipt of the request therefor. Such hearing shall be open to the public and the franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within 10 days after the hearing, the city council, on the basis of the record, will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The city council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the city council does not grant any additional period, the city council may by resolution declare the franchise to be terminated and forfeited.

(4) If a franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of

competent jurisdiction, provided a franchisee is otherwise in compliance with the franchise.

(5) Nothing contained in this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, upon satisfactory assurances made to the city that the terms and conditions of this chapter can be met by the new franchisee. (Ord. 1156 § M30, 2004).

5.20.310 Effect of termination for noncompliance.

Subject to state and federal law, if any franchise is terminated by the city by reason of a franchisee's noncompliance, that part of the cable television system under such franchise located in the streets and public rights-of-way, shall, at the election of the city, become the property of the city at a cost consistent with the provisions of the Act. If the city, or a third party, does not purchase the cable television system, a franchisee shall, upon order of the city council, remove the cable television system as required under SMC 5.20.290, Removal and abandonment of property of franchisee. (Ord. 1156 § M31, 2004).

5.20.320 Insurance.

A franchisee shall provide evidence of a policy of public liability insurance naming the city as an additional insured, in a sum as specified in the franchise agreement. The franchise shall require advance notice to the city prior to cancellation. The city may, but is not required to, procure such insurance at the franchisee's expense, in case it fails to do so. (Ord. 1156 § M32, 2004).

5.20.330 Performance bond.

A franchisee shall promptly repair or cause to be repaired any damage to city property caused by a franchisee or any agent of a franchisee. A franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and, if deemed necessary by the city, shall be required to post a performance bond or other surety acceptable to the city, in an amount specified by the city and issued by a surety company

licensed to do business in the state of Washington, naming the city as beneficiary and conditioned upon all restoration work being done promptly and in a workmanlike manner that conforms to city standards. (Ord. 1156 § M33, 2004).

5.20.340 Recourse against bonds and other security.

Bonds and other security may be utilized by the city for purposes including, but not limited to, reimbursement of the city by reason of a franchisee's failure to pay the city any sums due under the terms of this chapter or the franchise, reimbursement of the city for reasonable costs borne by the city to correct franchise violations not corrected by a franchisee after due notice, and monetary remedies or damages assessed against a franchisee due to default or violations of the franchise requirements or this chapter.

(1) Recourse. In the event a franchisee has been declared to be in default by the city under SMC 5.20.300, Revocation for cause, and if a franchisee fails, within 30 days of mailing of the city's finding of a final and unappealable determination, to pay the city any franchise fees, penalties, or monetary sanctions, or fails to perform any of the conditions of the franchise, the city may thereafter, with 30 days' prior written notice to the franchisee, foreclose against the performance bond and/or withdraw from any other security an amount sufficient to compensate the city's damages, with interest at the maximum legal rate. Upon such foreclosure or withdrawal, the city shall notify a franchisee in writing, by certified mail, postage prepaid, of the amount and date thereof.

(2) Restoration. Within 30 days after mailing notice to a franchisee that the city has foreclosed franchisee's performance bond or that any amount has been withdrawn by the city from the other security pursuant to subsection (1) of this section, a franchisee shall deposit such further bond or sum of money, or other security, as the city may require, sufficient to meet the requirements of this chapter.

(3) Rights of the City. The rights reserved to the city with respect to any bond or security are in addition to all other rights of the city

whether reserved by this chapter or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond or other security shall constitute an election or waiver of any rights or other remedies the city may have. (Ord. 1156 § M34, 2004).

5.20.350 Franchising costs.

Upon acceptance of any initial franchise or renewal franchise granted hereunder, the franchisee shall pay to the city the city's out-of-pocket costs associated with the franchising process. Costs shall include such items as consulting fees and expenses and fees associated with publishing notices and ordinances. Such payment is not to be considered in lieu of franchise fee payments. Payment is due within 30 days of receipt of appropriate invoice from the city. (Ord. 1156 § M35, 2004).

5.20.360 Equalization of civic contributions.

In the event of one or more franchises being granted, the city may require that such subsequent franchisees pay to the city an amount proportionally equal to costs contributed by the original franchisee. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.

On the anniversary of the grant of each later awarded franchise, such subsequent franchisees shall pay to the city an amount proportional to the amount contributed by the original franchisee, based upon the number of subscribers held by such subsequent franchisees. Such payments will be based upon incremental increases in subscribers, if any.

Additional franchisees shall provide all PEG access channel(s) currently available to the subscribers of existing franchisees. In order to provide these PEG access channels, additional franchisees shall interconnect, at their cost, with existing franchisees, subject to any reasonable terms and conditions that the existing franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the franchisees. The city council, in such cases of

5.20.370

dispute of award, may be called upon to arbitrate regarding these arrangements. Any cost associated with the process shall be equally distributed by both franchisees. (Ord. 1156 § M36, 2004).

5.20.370 Inconsistency.

If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal or state law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this chapter shall not be affected thereby. (Ord. 1156 § M37, 2004).

5.20.380 Severability.

If any section, sentence, paragraph, term, subsection, clause or phrase of this chapter should be held to be illegal, invalid or unconstitutional by a court of competent jurisdiction, or by any state or federal regulatory authority having jurisdiction thereof, such illegality, invalidity or unconstitutionality shall not affect the legality, validity or constitutionality of any other section, sentence, clause or phrase of this chapter. (Ord. 1156 § M38, 2004).

5.20.390 Effect of change in law.

In the event that state or federal laws, rules or regulations preempt a provision or limit the enforceability of a provision of this chapter, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule or regulation is subsequently repealed, rescinded, amended, voided or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party. (Ord. 1156 § M39, 2004).

5.20.400 Independent contractors.

This chapter shall not be construed to provide that a franchisee is the agent or legal representative of the city for any purpose whatsoever. A franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the city or to bind the city in any manner or thing whatsoever. (Ord. 1156 § M40, 2004).

5.20.410 Force majeure.

In the event a franchisee's performance of any of the terms, conditions or obligations required by this chapter or a franchise granted hereunder is prevented by a cause or event not within a franchisee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of the franchisee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires. (Ord. 1156 § M41, 2004).

Chapter 5.24

**UTILITY POLE
ATTACHMENT PERMIT**

Sections:

- 5.24.010 Permit required.
- 5.24.020 Hold harmless.
- 5.24.030 City activity.
- 5.24.040 Fees.
- 5.24.050 Permit approval.
- 5.24.060 Attachment requirements.
- 5.24.070 Permit cancellation.
- 5.24.080 Insurance.

5.24.010 Permit required.

No person shall attach any article to a utility pole in the city without first having obtained a permit under the provisions of this chapter. (Ord. 760 § 2, 1988).

5.24.020 Hold harmless.

The applicant shall be required to sign the following “Hold Harmless Agreement” as a condition precedent to obtaining the city permit:

HOLD HARMLESS

The applicant hereby agrees that, in consideration of the City’s obtaining a PUD Temporary Pole Attachment Permit on their behalf, to hold the City harmless for any claims for injuries, damages, accident, or occurrence arising from the installation, maintenance, taking down, or presence of the applicant’s property on any PUD or telephone pole.

(Ord. 760 § 2, 1988).

5.24.030 City activity.

Should the city have to perform any services due to the city’s permit from PUD #1 or General Telephone Company, the applicant shall be billed for \$25.00 per man hour, plus equipment charges, or the city’s actual cost, whichever is greater. (Ord. 760 § 2, 1988).

5.24.040 Fees.

An application fee of \$35.00 shall be charged for each permit, which is nonrefundable, should the permit be denied or canceled, for any reason. (Ord. 760 § 2, 1988).

5.24.050 Permit approval.

A city permit may be issued when signed and approved by the mayor. However, no attachments may be made until the city obtains a “temporary permit for utility pole attachments” from Snohomish County PUD #1. (Ord. 760 § 2, 1988).

5.24.060 Attachment requirements.

(1) All attachments to utility poles shall be in conformance with rules provided by Snohomish County PUD #1 and General Telephone Company. These requirements are available from PUD #1.

(2) Depending on the size, weight, type and proposed method of attachment and the applicants qualifications, the city may allow the applicant to make attachments to utility poles or may require the following:

(a) Attachment by a state licensed and bonded contractor able to provide the necessary personnel and equipment.

(b) Attachment by the city public works department under the provisions of SMC 5.24.030. (Ord. 760 § 2, 1988).

5.24.070 Permit cancellation.

The city permit is subject to cancellation at any time, at the option of the city. If the permit is canceled, all attachments must be immediately removed by the applicant, or the city will remove them, under the provisions of SMC 5.24.030. (Ord. 760 § 2, 1988).

5.24.080 Insurance.

The city may require proof of public liability insurance by the applicant as a condition precedent to the issuance of the permit. (Ord. 760 § 2, 1988).

Chapter 5.28

DAYCARE FACILITIES*

(Reserved)

*Code reviser's note: For provisions on daycare facilities as home occupations, see SMC 17.95.382.

Chapter 5.32

SEXUALLY ORIENTED BUSINESSES

Sections:

- 5.32.010 Purpose and intent.
- 5.32.020 Definitions.
- 5.32.030 Sexually oriented business overlay zone created.
- 5.32.040 Prohibition.
- 5.32.050 Regulated uses.
- 5.32.060 Sexually oriented business permit required.
- 5.32.070 Investigation and application.
- 5.32.080 Issuance of permit.
- 5.32.090 Licenses required for sexually oriented business – Fees.
- 5.32.100 License for managers and entertainers of adult cabarets required – Fee.
- 5.32.110 Licenses for models and escorts.
- 5.32.120 Due date for license fees.
- 5.32.130 Manager on premises.
- 5.32.140 License nontransferable.
- 5.32.150 License – Posting and display.
- 5.32.160 Specifications – Adult cabarets.
- 5.32.170 Standards of conduct and operation applicable to adult cabarets.
- 5.32.180 Regulations applicable to adult arcades.
- 5.32.190 Regulations applicable to video stores not qualifying as sexually oriented businesses.
- 5.32.200 Exemptions.
- 5.32.210 License – Name of business and place of business.
- 5.32.220 Inspections.
- 5.32.230 Hours of operation.
- 5.32.240 Record keeping requirements.
- 5.32.250 Procedure for appealing a license/permit denial.
- 5.32.260 Suspension or revocation of license or permit procedures – Appeal.
- 5.32.270 Suspension or revocation of license/permit – Duration.
- 5.32.280 Adult bookstores not incorporating arcade uses.
- 5.32.290 Building facade.
- 5.32.300 Signs.
- 5.32.310 Parking and lighting regulations.

- 5.32.320 Number of permitted uses per structure.
- 5.32.330 Severability.
- 5.32.340 Limitation of liability.
- 5.32.350 Violations – Penalties.
- 5.32.360 Public nuisance – Injunctions.
- 5.32.370 Moral nuisances.
- 5.32.380 Effective date.

5.32.010 Purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote health, safety, morals, and general welfare of the citizens of the city of Stanwood, and to establish reasonable and uniform regulations to prevent the deleterious location of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. (Ord. 930, 1996).

5.32.020 Definitions.

For the purposes of this chapter certain terms and words are defined as follows:

(1) “Sexually oriented businesses” mean those businesses defined as follows:

(a) “Adult arcade” means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic or computer generated reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(b) “Adult bookstore”, “adult novelty store”, or “adult video store” means a commer-

cial establishment which has as a significant or substantial portion of its stock-in-trade or a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:

(i) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or

(ii) An establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing “specified sexual activities” or “specified anatomical areas”, and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe “specified anatomical areas” or “specified sexual activities”;

(iii) Video stores that sell and/or rent only video tapes or other photographic or computer generated reproductions, and associated equipment shall come within this definition if 20 percent or more of its stock-in-trade or revenues comes from the rental or sale of video tapes or other photographic reproductions or associated equipment which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(c) “Adult cabaret” means a nightclub, bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which features: i) persons who appear nude or semi-nude; ii) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or iii) films, motion pictures, video cassettes, slides, or other photographic reproductions which are

5.32.020

characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(d) “Adult motel” means a hotel, motel, or similar commercial establishment which has the primary function of:

(i) Offering accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and

(ii) Offering a sleeping room for rent for a period of time that is less than 20 hours; or

(iii) Allowing a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 20 hours.

(e) “Adult motion picture theater” means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by the depiction or description of “specified anatomical areas” or “specified sexual activities” are regularly shown for any form of consideration.

(f) “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or “specified sexual activities.”

(g) “Escort agency” means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(h) “Nude or semi-nude model studio” mean any place where a person, who appears nude or semi-nude or displays “specified anatomical areas”, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photo-

graphed, or similarly depicted by other persons.

(i) “City” means the city of Stanwood, Washington.

(j) “Clerk” means the city clerk, or designee.

(k) “Employee” means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any business offering adult entertainment, adult theater, or adult use establishments, whether or not such person is paid compensation by the operator of said business.

(l) “Entertainer” means any person who provides sexually oriented entertainment in an adult cabaret whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

(m) “Manager” means any person who manages, directs, administers, or is in charge of, the affairs and/or the conduct of an adult cabaret.

(n) “Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(o) “Establishment” means and includes any of the following:

(i) The opening or commencement of any sexually oriented business as a new business; or

(ii) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business defined herein;

(iii) The addition of any of the sexually oriented businesses defined herein to any other existing sexually oriented business; or

(iv) The relocation of any such sexually oriented business.

(p) “Nude or state of nudity” means the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast.

(q) “Operator” means and includes the owner, permit holder, custodian, manager,

operator, or person in charge of any permitted or licensed premises.

(r) "Permitted and/or licensed premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

(s) "Permittee and/or licensee" shall mean a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(t) "Person" means any individual, firm, joint venture, copartnership, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver or any other group or combination acting as a unit.

(u) "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(v) "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, sexual encounter establishment, semi-nude model studio, escort agency, or adult motel.

(w) "Specified anatomical areas" mean and include any of the following:

(i) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of areolae; or

(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(x) "Specified criminal acts" mean any conviction or acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including but not limited to, distribution of obscenity or material harmful to minors, prostitution or pandering.

(y) "Specified sexual activities" mean and include any of the following:

(i) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(ii) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

(iii) Masturbation, actual or simulated; or

(iv) Human genitals in a state of sexual stimulation, arousal or tumescence; or

(v) Excretory functions as part of or in connection with any of the activities set forth in subsections (y)(i) through (iv) of this section.

(z) "Sexually oriented entertainment" means a live performance at an adult cabaret which is characterized by the performer's exposure of "specified anatomical areas."

(aa) "Transfer of ownership or control of a sexually oriented business" means and includes any of the following:

(i) The sale, lease or sublease of the business; or

(ii) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(iii) The establishment of a trust, gift or other similar legal devise which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(bb) "Youth-oriented business or activity" means a business utilizing a permanent building or facility where children under the age of 18 years are invited onto the business premises in conjunction with such business activity and at least 50 percent of the business revenue is generated from their patronage. (Ord. 930, 1996).

5.32.030 Sexually oriented business overlay zone created.

There is hereby created a sexually oriented business overlay zone within such geographical areas of the city as are identified on the official city zoning map of the city. The boundaries of such sexually oriented business overlay zone are further identified and

5.32.040

depicted on Exhibit A¹, attached to the ordinance codified in this chapter and by this reference incorporated herein. Sexually oriented businesses as defined herein may only locate within the sexually oriented businesses overlay zone above described; provided, however, even within such zone a sexually oriented business shall not locate within a distance of 100 feet of an existing youth-oriented business or activity; within 100 feet of any residential zone or any single or multiple family use; within 100 feet of any public park; within 100 feet of any church or other religious facilities or institution including public or private schools. Such distance shall be measured in a straight line from the nearest property line of the existing youth-oriented business to the nearest property line of the site upon which the proposed sexually oriented business proposes to locate. (Ord. 930, 1996).

5.32.040 Prohibition.

For the reasons stated in the recitals and SMC 5.32.010, a person shall not use any property or premises for a sexually oriented business within the city of Stanwood except within the sexually oriented business overlay zone established by this chapter, and then only subject to all regulations and conditions enumerated herein. (Ord. 930, 1996).

5.32.050 Regulated uses.

The following sexually oriented businesses are subject to the provisions of SMC 5.32.030 and all other regulations contained in this chapter:

- (1) Adult arcade;
- (2) Adult bookstore, adult novelty store, or adult video store;
- (3) Adult cabaret;
- (4) Adult motion picture;
- (5) Adult theater;
- (6) Nude/semi-nude model studio;
- (7) Escort agency;
- (8) Adult motel/hotel. (Ord. 930, 1996).

1. Code reviser's note: Exhibit A is on file in the clerk's office.

5.32.060 Sexually oriented business permit required.

(1) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit, issued by the city for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business without said permit.

(2) The city clerk or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits and licenses. The planning director or his/her designee are responsible for ascertaining whether a proposed sexually oriented business for which a permit and/or license is being applied for complies with all requirements enumerated herein and all other applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of the ordinance codified in this chapter.

(3) An application for a sexually oriented business permit shall be made on a form provided by the city. Any person desiring to operate a sexually oriented business shall file with the city clerk an original and two copies of a sworn permit application on the application form supplied by the city.

(4) The completed application shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, he/she shall state their legal name and any aliases or previous married names and submit satisfactory proof that he/she is at least 18 years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, and include their dates of birth, and partnership agreement, if applicable;

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of Washington, the names and capacity of all officers, directors and shareholders, the name of the registered corporate agent, and the address of the registered office for service of process;

(iv) As a part of the application process, every officer, director, or shareholder, as defined above, shall provide the city clerk with an affidavit attesting to their identity and relationship to the corporation.

(b) Whether the applicant or any other individuals listed pursuant to subsections (4)(a)(ii) and (iii) above within a two-year period immediately preceding the date of the application has been convicted of a specified criminal act and, if so, the specified criminal act involved, the date of conviction, and the place of conviction.

(c) Whether the applicant or any of the other individuals listed pursuant to this chapter has had a previous permit or license under this chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the sexually oriented business for which the permit or license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

(d) Whether the applicant or any other individual listed pursuant to this chapter holds any other permits and/or licenses under this chapter, et seq., or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

(e) The single classification of permit for which the applicant is filing.

(f) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(g) The applicant's mailing address and residential address.

(h) Two two-inch by two-inch black and white photographs of the applicant(s), including all shareholders/partners, taken within six months of the date of the application, showing only the full face of the applicant(s). The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant.

(i) The applicant(s) including all shareholders/partners, shall provide driver's license number, social security number, and or his/her

state or federally issued tax identification number.

(j) Each application shall be accompanied by a complete set of fingerprints of each person required to be included in the application, including all shareholders/partners as defined above, utilizing fingerprint forms as prescribed by the chief of police. Application shall be made for annual permit before January 1st of each year.

(k) In the case of an adult cabaret, a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(l) Applicants for a permit and/or license under this chapter shall have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within 30 days from the date of such change by supplementing the application on file with the city clerk or his/her designee, shall be grounds for suspension of a permit and/or license.

(m) In the event the city clerk or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business permit or license, he/she shall promptly notify the applicant of such fact and allow the applicant 10 days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

(n) The applicant must be qualified according to the provisions of this chapter, must have a current city business license, and the premises must be inspected and found to be in compliance with health, fire, and building codes of the city.

(o) The applicant shall be required to pay a nonrefundable application fee as listed in

5.32.070

SMC 3.30.110 at the time of filing an application under this chapter. Note: this is a processing fee. License fees shall also be required in the event the application is approved.

(p) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.

(q) The application form for licenses and permits issued under this chapter shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of their knowledge. (Ord. 930, 1996).

5.32.070 Investigation and application.

(1) Upon receipt of an application properly filed with the city clerk and upon payment of the nonrefundable application fee, the city clerk or his/her designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to other city departments or other agencies responsible for enforcement of health, fire, and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant's application and the proposed sexually oriented business. Said investigation shall be completed within 60 working days of receipt of the application by the city clerk or his/her designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its recommendation as to approval or disapproval of the application, date it, sign it, and in the event it recommends disapproval, state the specific reasons therefor citing applicable laws or regulations.

(2) A department or agency shall recommend disapproval of an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the city. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the city clerk or his/her designee. (Ord. 930, 1996).

5.32.080 Issuance of permit.

(1) The city clerk or his/her designee shall grant or deny an application for a permit within 60 days from the date of its proper filing. Upon the expiration of the sixtieth day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the city or its designee notifies the applicant of a denial of the application and states the reason(s) for that denial.

(2) Grant of Application for Permit.

(a) The city clerk or his/her designee shall grant the application unless one or more of the criteria set forth in subsection (2)(C) below (Denial of Application for Permit) is present.

(b) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of Application for Permit. The city clerk or his/her designee shall deny the application for any of the following reasons:

(i) An applicant is under 18 years of age.

(ii) An applicant is overdue on his/her payment to the city of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.

(iii) An applicant has failed to provide information required by this chapter or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.

(iv) The applicant has failed to comply with any provision or requirement of this chapter. (Ord. 930, 1996).

5.32.090 Licenses required for sexually oriented business – Fees.

(1) No sexually oriented business shall be operated or maintained in the city of Stanwood

unless the owner or operator has obtained a sexually oriented business permit as set forth above, and the applicable licenses from the city clerk. For adult cabarets the required license shall be the adult cabaret license set forth in subsection (2) below. It is unlawful for any entertainer, employee, or operator to knowingly work in or about or knowingly perform any service directly related to the operation of an unlicensed adult cabaret business.

(2) The annual fee for an adult cabaret business license shall be as noted in SMC 3.30.110. This amount shall be used for the cost of administration of this chapter.

(3) The annual license fee for all other sexually oriented businesses described in SMC 5.32.050 shall be as noted in SMC 3.30.110. This amount shall be used for the cost of administration of this chapter.

(4) The above referenced licenses expires annually on December 31st and must be renewed by January 1st.

(5) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(6) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.100 License for managers and entertainers of adult cabarets required – Fee.

(1) No person shall work as a manager or entertainer at an adult cabaret without having first obtained an entertainer’s or manager’s license from the city clerk. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in SMC 5.32.060(4) and the same procedures shall be followed as set forth in SMC 5.32.070 and 5.32.080. A nonrefundable processing fee as noted in SMC 3.30.110 shall accompany the application.

(2) The annual fee for such a license shall be as noted in SMC 3.30.110. This amount

shall be used for the cost of administration of this chapter.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(5) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.110 Licenses for models and escorts.

No person shall work as a model at a nude or semi-nude model studio or as an escort as defined herein without having first obtained a model or escort license from the city clerk.

(1) Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in SMC 5.32.060(4) and the same procedures shall be followed as set forth in SMC 5.32.070 and 5.32.080. A nonrefundable processing fee as noted in SMC 3.30.110 shall accompany the application.

(2) The annual fee for such a license shall be as noted in SMC 3.30.110. This amount shall be used for the cost of administration of this chapter.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) In cases where the license becomes effective on a date other than January 1st, the license fee shall be prorated on a quarterly basis. The cost thereof shall be computed by prorating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

(5) The applicant must be 18 years of age or older. (Ord. 930, 1996).

5.32.120 Due date for license fees.

All licenses required by this chapter must be issued and the applicable fees paid to the city clerk at least 14 calendar days before com-

5.32.130

mencing work at a sexually oriented business. The sexually oriented business permit required by SMC 5.32.060 must only be renewed based on changed circumstances as set forth in SMC 5.32.060(4)(1). (Ord. 930, 1996).

5.32.130 Manager on premises.

(1) A licensed manager shall be on duty at an adult cabaret business premises at all times.

(2) The licensed manager on duty shall not be an entertainer.

(3) It shall be the responsibility of the manager to verify that any entertainer who works or appears within the premises possesses a current and valid entertainer's license posted in the manner required by this chapter. (Ord. 930, 1996).

5.32.140 License nontransferable.

No license or permit issued pursuant to this chapter shall be transferable. (Ord. 930, 1996).

5.32.150 License – Posting and display.

(1) Every entertainer shall post his or her license in his or her work area so that it is readily available for public inspection.

(2) Every person, corporation, partnership, or association licensed under this chapter shall display its license in a prominent place within the establishment. In the case of adult cabarets, the name of the manager on duty shall be prominently posted during business hours. (Ord. 930, 1996).

5.32.160 Specifications – Adult cabarets.

(1) Separation of Sexually Oriented Adult Entertainment Performance Area. The portion of the adult cabaret premises in which sexually oriented adult entertainment is performed shall be a stage or platform that is separated from all patron seating areas in the following ways:

(a) Be at least 24 inches in elevation above; and

(b) Be separated by a distance of at least 10 feet; and

(c) Have a continuous railing at least three feet in height, extending from the floor, and located at least 10 feet from all points of the sexually oriented adult entertainment performance area.

(2) Lighting. Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable.

(3) Submittal of Plans. Building plans showing conformance with the requirements of this chapter shall be included with any application for an adult cabaret business license. (Ord. 930, 1996).

5.32.170 Standards of conduct and operation applicable to adult cabarets.

(1) Standards for Patrons, Employees and Entertainers. The following standards of conduct must be adhered to by patrons, entertainers and/or employees of adult cabarets at all times:

(a) No employee or entertainer shall appear nude or semi-nude on any part of the premises open to view of members of the public, except on or in the entertainment performance area described in SMC 5.32.160(1).

(b) No patron or customer shall go into or upon the adult entertainment performance area described in SMC 5.32.160(1) while sexually oriented entertainment is being performed.

(c) No member of the public or employee or entertainer shall allow, encourage, or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of any other person.

(d) No member of the public or employee or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, which contact is intended to arouse or excite sexual desires.

(e) No employee or entertainer shall perform acts of or acts which simulate:

(i) Sexual intercourse, masturbation, bestiality, sodomy, oral copulation, flagellation, or any sexual acts which are prohibited by law; or

(ii) The touching, caressing, or fondling of the breasts, buttocks, pubic area, or genitals.

(f) No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.

(g) No entertainer of an adult cabaret shall be visible from any public place outside the premises during the actual or apparent hours of his or her employment or performance on the premises.

(h) No entertainer employed or otherwise working at an adult cabaret shall solicit, demand, accept, or receive any gratuity or other payment from a patron, customer, or member of the public.

(i) No customer or patron of an adult cabaret shall give or otherwise provide an entertainer with a gratuity or other payment.

(j) Signs in lettering at least three-quarters inch high shall be conspicuously displayed in the public area of the establishment stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF STANWOOD. ENTERTAINERS ARE:

- (i) Not permitted to engage in any type of sexual conduct;
- (ii) Not permitted to appear nude or semi-nude, except on stage;
- (iii) Not permitted to dance or model where patrons are congregated;
- (iv) Not permitted to solicit, demand, accept, or receive any gratuity or other payment from a patron.

(2) Standards for Owner or Operator of Adult Cabarets. At any adult cabaret where live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" are provided the following are required:

(a) Admission must be restricted to persons of the age of 18 years or more; and

(b) Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable. (Ord. 930, 1996).

5.32.180 Regulations applicable to adult arcades.

All adult bookstores, adult novelty stores, or adult video stores having facilities for customer's viewing of depictions of human nudity and/or sexual conduct of any nature, including depictions of specified sexual activities, shall comply with the following regulations:

(1) The viewing areas within the sexually oriented viewing booth premises shall be visible from a continuous main aisle and shall not be obscured by any curtain, door, wall or other enclosure. As used in this chapter "viewing area" means the area where a patron or customer would ordinarily be positioned while watching a film, video or other viewing device.

(2) The licensee shall not permit any doors to public areas on the premises to be locked during business hours in compliance with the applicable provision of the city of Stanwood Building Code, Uniform Fire Code, and National Fire Protection Association Code.

(3) A sexually oriented adult viewing booth operator must, at all times when the premises are open or when any member of the public is permitted to enter and remain there, maintain sufficient lighting to provide equally distributed illumination about all parts of the premises which are open to and used by patrons so that objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type will be readable.

(4) The licensee shall not permit more than one person to occupy a sexually oriented adult arcade station or viewing booth at any time and public notices to this effect shall at all times be conspicuously posted and maintained on the sexually oriented adult arcade premises.

5.32.180

(5) There must be at least one employee on duty and situated in the public room adjacent to the sexually oriented adult arcade stations or viewing booths at all times that any patron, member, or customer is present inside the premises.

(6) There must be permanently posted and maintained in at least two conspicuous locations on the interior of every sexually oriented adult arcade premises a sign stating substantially the following:

Occupancy of any station or viewing booth is at all times limited to one person. There may be no acts of lewd or obscene conduct in the stations or viewing booths or on the premises. Violators are subject to criminal prosecution.

Each sign must be conspicuously posted and not screened from the patron's view. The letters must be on a contrasting background and shall be no smaller than three-quarters inch in height.

(7) The premises must be equipped with overhead lighting fixtures of sufficient intensity to maintain sufficient lighting that provides equally distributed illumination about all parts of the premises which are open to and used by patrons so that objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight point type can be read.

(8) Doors to areas on the premises which are available for use by persons other than the owner, manager, operator or their agents or employees may not be locked during business hours.

(9) The unobstructed view into the sexually oriented adult arcade viewing booths or stations from the adjacent public room by direct line of sight must remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times.

(10) No patron, member, or customer is permitted access to any area of the premises which has been designated as an area in which

patrons, members or customers will not be permitted.

(11) No sexually oriented adult arcade viewing booth or station may be occupied by more than one person at any time.

(12) There may be no acts of lewd or obscene conduct in the sexually oriented adult arcade stations or viewing booths or on the premises.

(13) No person may operate or maintain any warning system or device, of any nature or kind, for the purpose of warning or aiding and abetting the warning of patrons, members, customers or any other persons occupying sexually oriented adult arcade stations or viewing booths located on the premises that police officers or city health, fire, licensing or building inspectors are approaching or have entered the premises.

(14) No person under the age of 18 years of age may be on or within a sexually oriented adult arcade booth premises whether as a patron, member, customer, agent, employee or independent contractor.

(15) Premises. Restrooms may not contain video reproduction equipment.

(16) Steps Risers. No steps or risers are allowed in any sexually oriented adult arcade viewing booth or station.

(17) Seating. No sexually oriented adult arcade station or viewing booth shall have more than one stool type seat. In order to prevent obscuring the occupant of a sexually oriented adult arcade station or viewing booth from view, no stool for seating within a sexually oriented adult arcade station or viewing booth shall have any seatback or sides. The seat cannot be positioned behind the doorway so that the occupant sits with his or her back to the door.

(18) Ventilation and Other Holes. All ventilation devices between the sexually oriented adult arcade viewing booths must be covered by a permanently affixed ventilation cover. Ventilation holes may only be located one foot from the top of the viewing booth walls or one foot from the bottom of the viewing booth walls. There may not be any other holes or openings between the viewing booths. (Ord. 930, 1996).

5.32.190 Regulations applicable to video stores not qualifying as sexually oriented businesses.

Video stores that sell or otherwise distribute films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and less than 20 percent of their stock-in-trade or revenues comes from the rental or sale of such items shall be subject to the following regulations:

(1) All such items as are described above shall be physically segregated and closed off from other portions of the store such that these items are not visible and/or accessible from other portions of the store.

(2) No advertising for such items shall be posted or otherwise visible, except where such items are authorized for display.

(3) Signs readable at a distance of 20 feet shall be posted at the entrance to the area where such items are displayed stating that persons under the age of 18 are not allowed access to the area where such items are displayed.

(4) The manager or attendant shall take reasonable steps to monitor the area where such items are displayed to insure that persons under 18 years of age do not access the age-restricted area.

(5) Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under 18 years of age is prohibited.

(6) Employees of such video stores shall check identification of persons appearing to be 18 or under to insure that such items are not rented or sold to persons under the age of 18. (Ord. 930, 1996).

5.32.200 Exemptions.

It is a defense to prosecution under this chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated by:

(1) A proprietary school, licensed by the state of Washington; a college, junior college, or university supported entirely or partly by taxation;

(2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) The modeling of clothing or lingerie in a full-service restaurant where no consideration is charged, whether directly or indirectly, and specified anatomical areas are not exposed by the model. (Ord. 930, 1996).

5.32.210 License – Name of business and place of business.

No person granted a permit and/or license pursuant to this chapter shall operate a sexually oriented business under a name not specified in his/her license, nor shall he/she conduct business under any designation or at a location not specified in his/her permit and/or license. (Ord. 930, 1996).

5.32.220 Inspections.

(1) All books and records required to be kept pursuant to this chapter shall be open to inspection by the police chief of the city of Stanwood during the hours when the licensed premises is open for business upon two days' written notice to the licensee. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.

(2) The licensed premises shall be (as an implied condition of receiving a sexually oriented business permit and/or license) open to inspection by the police chief during the hours when the sexually oriented business premises is open for business. The purpose of such inspection shall be to determine if the licensed premises is operated in accordance with the requirements of this chapter. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this chapter. (Ord. 930, 1996).

5.32.230 Hours of operation.

It is unlawful for any sexually oriented business premises, except adult motels, to be conducted, operated, or otherwise open to the public between the hours of 2:00 a.m. and 11:30 a.m. (Ord. 930, 1996).

5.32.240 Record keeping requirements.

(1) Within 30 days following each calendar quarter, each sexually oriented business licensee shall file with the city clerk a verified report showing the licensee’s gross receipts and amounts paid to entertainers, models, or escorts, if applicable, for the preceding calendar year.

(2) Each sexually oriented business licensee shall maintain and retain for a period of two years beyond the last date of employment, the full name, date of birth, address, age and driver’s license number of all persons employed or otherwise retained as entertainers, models, and escorts by the licensee. (Ord. 930, 1996).

5.32.250 Procedure for appealing a license/permit denial.

(1) When the city clerk refuses to grant a license or permit, he/she shall notify the applicant in writing of the same, describing the reasons therefor, and shall inform the applicant of his right to appeal to the city council within 10 days of the date of the written notice by filing a written notice of appeal with the city clerk containing a statement of the specific reasons for the appeal and a statement of the relief requested.

(2) Within 10 days of receiving a timely appeal, the city clerk shall forward the administrative record of the licensing decision to the city council.

(3) Once the applicant has appealed the city clerk’s decision, the city council shall review the administrative record at the next regularly scheduled meeting for which proper notice can be given. Written notice of the date and time of the scheduled meeting will be given to the applicant by the city clerk-treasurer by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application.

(4) The applicant and city clerk or his/her representative shall be given an opportunity to argue the merits of the appeal before the city council. Oral argument by each party shall not exceed 20 minutes and shall be limited to the administrative record before the council. New

evidence shall not be presented by the parties or accepted by the council.

(5) The city council shall uphold the city clerk’s decision unless it finds the decision is not supported by substantial evidence in the administrative record. The applicant shall bear the burden of proof.

(6) The city council shall issue a written decision within 10 days of hearing the appeal. The council may uphold the city clerk’s decision and deny the permit, overrule the city clerk’s decision and grant the permit, or remand the matter to the city clerk for further review and action. The city clerk shall complete further action or review within 30 days of receiving the remand.

(7) Appeal to the city council shall constitute final administrative review. (Ord. 930, 1996).

5.32.260 Suspension or revocation of license or permit procedures – Appeal.

License suspension and/or revocation and appeal therefrom shall be done in accordance with SMC 13.01.030(8). (Ord. 1112 § 2, 2001; Ord. 930, 1996).

5.32.270 Suspension or revocation of license/permit – Duration.

Duration of license suspension or revocation shall be determined in accordance with SMC 13.01.030(8). (Ord. 1112 § 2, 2001; Ord. 930, 1996).

5.32.280 Adult bookstores not incorporating arcade uses.

Adult bookstores, adult novelty stores, or adult video stores not including or incorporating into the business conduct those activities described in the definition of “adult arcade,” may locate or continue to operate within commercial zones of the city, as well as the sexually oriented business overlay zone; provided, however, such businesses locating within a commercial zone shall be subject to the following additional requirements: No building or structure used for an adult bookstore, adult novelty store, or adult video store as defined herein shall locate closer than 1,200 feet from

any other building or structure used for such purpose, nor shall such a business locate within 600 feet of an existing church or school building, as measured in all compass directions from the exterior wall of the existing building to the closest property line of the subject building. (Ord. 930, 1996).

5.32.290 Building facade.

All sexually oriented business building facades, exteriors, and exits must be indistinguishable from surrounding buildings. Illustrations depicting partially or totally nude males and/or females shall not be posted or painted on any exterior wall of a building used for a sexually oriented business, or on any door or apparatus attached to such building. (Ord. 930, 1996).

5.32.300 Signs.

Signs shall be permitted as allowed in accordance with Chapter 17.110 SMC. (Ord. 930, 1996).

5.32.310 Parking and lighting regulations.

On-site parking shall be required and regulated in accordance with Chapter 17.105 SMC, and in addition shall meet the following requirements:

(1) All on-site parking areas and premises entries of sexually oriented businesses shall be illuminated from dusk until one hour past closing hours of operation with a lighting system that will provide adequate illumination and visibility on the parking surface and/or walkways. An on-premises exterior lighting plan shall be presented to the city building department for approval prior to the operation of any sexually oriented business.

(2) All parking must be visible from the fronting street. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of fencing as approved by the city building department. (Ord. 930, 1996).

5.32.320 Number of permitted uses per structure.

There shall be no more than one sexually oriented business operating in the same building, structure, or portion thereof. In addition there shall be no other nonsexually oriented business operating in the same building, structure, or portion thereof in which a sexually oriented business is currently operating. (Ord. 930, 1996).

5.32.330 Severability.

If any portion of this chapter as now or hereafter amended, or its application to any person or circumstance is held invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected. Any ordinance or regulation in conflict with this chapter is hereby repealed. (Ord. 930, 1996).

5.32.340 Limitation of liability.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the city, its officials, or employees for the performance or the failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public. (Ord. 930, 1996).

5.32.350 Penalties for violation.

Violation of this chapter shall constitute a Class A infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein. (Ord. 1112 § 2, 2001; Ord. 930, 1996).

5.32.360 Public nuisance – Injunctions.

Any sexually oriented businesses in violation of this chapter shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief. (Ord. 930, 1996).

5.32.370

5.32.370 Moral nuisances.

Chapter 7.48 RCW pertaining to moral nuisances is hereby adopted by reference. (Ord. 930, 1996).

5.32.380 Effective date.

The ordinance codified in this chapter shall be in full force and effect five days after its passage and publication as provided by law. (Ord. 930, 1996).