

CODE

CLARK COUNTY, NEVADA

(Codified through Ordinance 3757 adopted March 18, 2009)

Chapter 5.04 - FRANCHISED MONORAIL TRANSPORTATION SYSTEMS*

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* Prior ordinance history: Ords. 2146 and 2769.

Editor's note: All of Chapter 5.04 was amended except Sections 5.04.050 and 5.04.060 by Ord. 2959

5.04.010 Definitions. For purposes of this chapter the definitions shown in this section and in Chapter 6.14 of this code shall apply; when not inconsistent with the context, words used in the present tense include the future tense; word in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender; the words "shall" and "will" are mandatory, and "may" is permissive.

(a) "Abandonment" or "abandoned" means that all or a portion of a monorail has not been in continuous operation transporting passengers for a period to be specified in the franchise

agreement, unless such failure to operate is permitted by this chapter or the franchise agreement or is caused by reasons of force majeure.

(b) "Applicant" means the prospective monorail franchisee who submits an application as set forth in this chapter.

(c) "Application" means all written documentation, statements, representations and warranties provided by an applicant to the county, in accordance with this chapter, to be relied upon by the county commission in making its determination of whether to grant or withhold a monorail franchise.

(d) "Artificial person" means any form of business organization and any other nongovernmental legal entity, including but not limited to a profit or nonprofit corporation, partnership, limited liability company, association, trust, or unincorporated organization.

(e) "Certificate of operation" means a document issued by the director of development services on an annual basis certifying that a monorail has been inspected and found to be in compliance with the manufacturer's requirements for operation and maintenance, the approved operations and maintenance manual(s) and applicable requirements of this chapter.

(f) "Commencement of construction" means that time and date when the first physical construction of a monorail is initiated, after the appropriate permits are issued for such work.

(g) "Completion of construction" means that time and date when a monorail is installed and is operational in a manner approved by the county as evidenced by a certificate of operation in accordance with the requirements of this chapter and the franchise agreement.

(h) "County" means the county of Clark, Nevada.

(i) "County commission" means the board of county commissioners of the county.

(j) "County manager" means the county manager appointed by the county commission to perform such administrative functions of the county government as may be required of him or her by the county commission, or his or her designee.

(k) "Director of business license," "director of development services," "director of public works," or "fire chief" means the county departmental director or officer specifically named, or his or her designee, or any successors thereto.

(l) "Fixed guideway" means a mass transportation facility which uses and occupies a separate right-of-way or rails exclusively for public transportation, including without limitation, fixed rail, automated guideway transit and exclusive facilities for buses.

(m) "Install and operate" or "installation and operation" means to design, lay, construct, erect, equip, test, put into commission, maintain, operate, use to provide transportation service, repair, renew replace, enhance the capacity of, modernize, or improve a monorail, or to cause or direct any of these activities.

(n) "Lender" means any person or governmental entity making a loan, guarantee or other credit facility or holding a credit instrument issued in connection with the financing of a monorail, and any trustee or collateral or administrative agent appointed in connection therewith.

(o) "Monorail" is a generic term meant to describe a non-technology specific system to transport passengers that is installed and operated on a fixed guideway, including associated passenger stations, power propulsion systems, intermodal facilities, lots for parking motor vehicles, workshops and other land and structures. The term does not include a system to transport passengers between two end points with no intermediate stops.

(p) "Monorail franchise" or "franchise" means the authorization granted to a person, by the county commission, to install and operate a monorail within the unincorporated area of the

county for the provision of public transportation, and to use the specified rights-of-way for the installation and operation of a fixed guideway system for its monorail.

(q) "Monorail franchise agreement" or "franchise agreement" means an agreement setting forth the terms and conditions of a monorail franchise.

(r) "Monorail franchisee" or "franchisee" means the person to whom a monorail franchise is granted and includes the meaning of the word "owner" as defined in NRS 705.665.

(s) "Monorail master business license" means the master business license issued by the county, pursuant to Chapter 6.14 of this code, permitting the various business activities associated with the operation of a monorail.

(t) "Monorail route" or "route" means the authorized route with respect to which the county commission has approved a monorail franchisee to install and operate a monorail.

(u) "Operator" means the agent of the monorail franchisee appointed by the franchisee to operate the monorail.

(v) "Person" means a natural person or an artificial person. The term "person" does not include a government, governmental agency, or political subdivision of a government.

(w) "Prohibited use notice" means a formal written document issued by the director of development services indicating noncompliance with the requirements of certification, installation, inspection, operation or other such portions of this chapter and further indicating that the monorail may not be operated for other than inspection or testing.

(x) "Public improvement" means roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses across, along, over or under any rights-of-way, or other such improvements which are to be used by the general public.

(y) "Public utility" means any person that provides electric energy or natural gas, telecommunications services, cable television services (including community antenna television service), interactive computer services, or sells or resells personal wireless services, regardless of whether that person is subject to the regulations of, or holds a certificate of public convenience and necessity from the public utilities commission.

(z) "Public utility facility" or "public utility facilities" means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used by a public utility to provide public utility service in the county.

(aa) "Qualified individual" means a natural person who is technically qualified to install and/or operate a monorail, and who acts as an agent of the monorail franchisee in satisfaction of the installation and/or operation requirements of this chapter.

(bb) "Right-of-way" or "rights-of-way" means public property dedicated to, granted to, or held, administered or prescriptively used by the county or other public entities for public street purposes or drainage ways, and, except as limited by any underlying grant, shall include the surface, the air space above the surface and the area below the surface of the full width of the way, including sidewalks, any part of which is used by the public or open to the public as a matter of right for the purpose of vehicular and pedestrian traffic.

(cc) "Transfer and assign" means the full or partial transfer of ownership, control, or the right of control of the franchise, either direct or indirect. The term "control" includes actual working control in whatever manner exercised, and the right of control shall include situations wherein that right is exercisable through intervening corporations, partnerships, or other legal entities. A transfer of control shall be conclusively deemed to occur whenever a majority of the voting

control of the franchisee is acquired by a person or persons, in privity, other than a person who was in direct or indirect control of the franchisee at the time the franchise was awarded or whose acquisition of control has been previously approved. The terms "transfer or assign" shall not include: (1) any mortgage, security interest, pledge, or encumbrance of any of the assets of the franchisee as security for monies borrowed; or (2) any mortgage, security interest, pledge, or other encumbrance of the stock or partnership, membership or other ownership interest of the franchisee as security for monies borrowed.

(dd) "Within the county" or "in the county" means within the unincorporated areas of the county, including unincorporated towns.

(Ord. 2959 § 1 (part), 2003)

5.04.020 Purpose. The purpose of this chapter is:

(a) To authorize and regulate, in a nondiscriminatory manner, the installation and operation of franchised monorails within the county.

(b) To authorize the granting of monorail franchises for the installation and operation of monorails, pursuant to NRS 705.610 through 705.700.

(c) To set certain standards incident to the installation and operation, and removal of franchised monorails by incorporating applicable uniform codes and other requirements and restrictions.

(d) To provide land use and zoning requirements applicable to real property used for monorails.

(e) To address the compatibility of franchised monorails for connection with a system of transportation operated on public fixed guideways.

(f) To provide requirements for the connection of franchised monorails with other private transportation systems.

(g) To provide for the use of rights-of-way by monorails.

(h) To authorize and establish procedures for the issuance of all necessary permits required for the installation and operation of a monorail.

(Ord. 2959 § 1 (part), 2003)

5.04.030 Jurisdictions of county departments. (a) Except as provided for in this chapter, the county manager may delegate authority as is necessary for the purposes of the administration of this chapter.

(b) Any right or power in or duty impressed upon any officer or employee of the county by virtue of this chapter shall be subject to transfer by the county commission or county manager to any other officer or employee of the county.

(Ord. 2959 § 1 (part), 2003)

5.04.040 Monorail franchise required. (a) Except as provided in subsection (b) of this section, no monorail which requires fares for passage, whether paid by or for passengers, shall be installed or operated by any person in, on, over, or under any county rights-of-way without a monorail franchise granted by the county commission.

(b) A monorail which is installed solely on private property and/or in, on, over, or under any rights-of-way through an easement in which the owner has a property interest, or through county approved leasehold, shall not be required to obtain a monorail franchise pursuant to this chapter or a monorail master business license pursuant to Chapter 6.14 of this code.

(Ord. 2959 § 1 (part), 2003)

5.04.050 Monorail master business license. Upon the grant of a monorail franchise by the county commission, the director of business license shall issue a monorail master business license to the franchisee, provided the franchisee has complied with license requirements and all approvals for such license have been obtained pursuant to Chapter 6.14 of this code.

5.04.060 Business license(s) for non-monorail business(es). Before engaging in any business activity not authorized by the monorail master business license issued under Chapter 6.14 of this code, a monorail franchisee shall obtain any necessary business license required by applicable provisions of Titles 6, 7 and 8 of this code.

5.04.070 Application for a monorail franchise. (a) An applicant for a monorail franchise shall apply for a franchise in the form and manner prescribed by the county manager, which shall include at a minimum:

(1) A statement setting forth all agreements and understanding existing between the applicant and any person with respect to the application for a monorail franchise or the applicant's acting as an agent or representative of another person regarding the application.

(2) A statement identifying ownership of the applicant as follows:

(A) For a sole proprietorship or partnership, a list of all owners and partners and their relative interests, or in the case of a limited liability company a list of all members and managers.

(B) For a corporation, a list of officers and directors, and a list of stockholders or shareholders holding more than ten percent of outstanding stock or shares and their relative interests in the corporation.

(C) If any stockholders, shareholders, partners or owners listed in (A) or (B) of this subsection are artificial persons, a list of stockholders, shareholders, partners or owners of such artificial person holding more than ten percent of outstanding stock, shares or ownership interests in the artificial person.

(3) A cash deposit or other security instruments, if any, of a type and in an amount reasonably determined by the county manager to be sufficient to pay costs deemed necessary to examine the application and to pay for the public notices required by this chapter. Such costs shall be borne in their entirety by the applicant.

(4) An original and three copies of the general location of the proposed monorail, including a map of the proposed monorail route or routes.

(b) When an application is submitted pursuant to this section, the county may use information provided by a professional consultant which examines the soundness of applicant's financial status and business plan. Any documents or information provided to said consultant(s) by the applicant at the county's request shall be held confidential, but may be reviewed by county employees or agents in the course of their duties. A copy of the consultant's report(s) shall be delivered to the applicant for his review and comments prior to finalization.

(c) In the event the county manager determines the application to be incomplete, he will so notify the applicant within ten days of such determination. When the county manager determines an application for a monorail franchise to be complete, he shall develop with the applicant a draft monorail franchise agreement in conformance with this chapter and present it before the county commission.

(Ord. 2959 § 1 (part), 2003)

5.04.080 Monorail franchise approval by county commission. (a) The approval of a new or renewal of an existing monorail franchise agreement shall be considered by the county commission following a public hearing on the application and draft franchise agreement at a meeting of the county commission.

(b) Notice of a proposed new monorail franchise and the meeting at which it is scheduled before the county commission shall be given to all public utilities and rights-of-way licensees, and any other entity known to have facilities within rights-of-way affected by the proposed monorail a minimum of three working days before the meeting at which the county commission will conduct a public hearing on the application and consider the monorail franchise agreement.

(c) At the public hearing, the county commission shall consider whether to grant or deny the new or renewed monorail franchise and related terms and conditions and to authorize the issuance of a monorail master business license.

(Ord. 2959 § 1 (part), 2003)

5.04.090 Monorail franchise agreement terms and conditions. (a) A conditional monorail franchise, together with a monorail master business license, shall grant permission to the franchisee to install and operate a monorail in, on, along, under or over those rights-of-way generally identified in the franchise agreement, according to the terms and conditions contained in the franchise agreement and this chapter, and to engage in those activities approved in the monorail master business license, contingent upon the franchise obtaining applicable land use and building permits.

(b) In addition, the following provisions shall apply:

(1) The monorail franchise agreement shall incorporate and be subject to all applicable provisions of this chapter, all of which shall be binding upon the monorail franchisee and its permitted successors and assignees.

(2) All documents provided by the applicant as part of the completed application and all statements, representations, warranties and promises made therein by the applicant shall be binding upon the franchisee.

(3) A monorail franchise shall be terminable in accordance with the provisions of Section 5.04.160 of this chapter if the franchisee fails, for reasons other than force majeure, to commence construction of the monorail within the period of time, after the effective date of the monorail franchise, specified in the franchise agreement, in which case the county commission may reinstate such an expired monorail franchise at its sole discretion upon such terms as the county commission deems appropriate.

(4) Any monorail franchise granted pursuant to this chapter shall be for a fixed term and shall be renewable under such terms as set forth in the franchise agreement.

(5) The monorail franchise agreement shall specify a geographical area within which the county shall not permit, authorize or facilitate another monorail, except as provided in the franchise agreement and NRS Section 705.700.3 regarding connection with another system of transportation.

(6) No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically mentioned in this chapter or in the franchise agreement.

(7) The granting of a franchise pursuant to this chapter shall not impart to the franchisee any vested ownership right or ownership interest in any right-of-way or county property in which the monorail is installed or operated, notwithstanding the right to use such rights-of-way or county property as set forth in subsection (a) of this section.

(8) The franchisee shall at all times during the term of the franchise agreement be subject to all lawful exercise of the police power by the county, including any and all ordinances, rules or regulations which the county has adopted or may adopt, which apply to the public generally. Any conflict between the provisions of this chapter and any other present or future lawful exercise of county police powers shall be resolved in favor of said county police powers.

(9) The franchisee shall maintain records and allow for audits as provided in applicable sections of Titles 6 and 8 of this code.

(10) The franchisee shall install and operate, or cause to be installed and operated, a monorail according to the franchise agreement.

(11) The franchisee shall pay all normal fees and costs associated with application for permits and licenses to any county department, even if those permits and licenses are issued as part of the franchise.

(12) The business license fees set forth in Chapter 6.14 of this code shall be paid by the franchisee in the manner required by the applicable provisions of Chapter 6.14 of this code and the franchise agreement.

(13) The franchise agreement may include such other provisions as the county and the franchisee agree are necessary or useful to the installation or operation of the monorail and shall include any other provisions required by law.

(Ord. 2959 § 1 (part), 2003)

5.04.100 Installation of monorails. A monorail franchise granted pursuant to this chapter shall provide for construction and installation in the following manner:

(a) Prior to installation of a monorail, the applicant shall submit to the county all permit application documents required to apply for any building, rights-of-way, zoning and land use permits pursuant to Titles 22, 27, 29 and 30 of this code; the permit application shall be processed and placed before the county's planning commission pursuant to the applicable provisions of Titles 29 and 30. The county's planning commission shall make a recommendation to approve or deny the permit application and forward the application to the county commission, who shall make a final determination on the application. The permit application shall identify encroachment requirements necessary to install and operate the monorail in those rights-of-way generally identified in the franchise agreement and more precisely specified in the permit application.

(b) Approval of a monorail permit application and encroachment in any rights-of-way will be contingent on the franchisee complying with all county established standards for construction, which include uniform codes, and obtaining all necessary permits, licenses and zoning approvals, including the following provisions:

(1) The franchisee shall obtain written approval from the director of public works of a proposed scope of a traffic impact analysis and mitigation study, in a form and format approved by the director, outlining the effects of the monorail on the rights-of-way on, along, under or over the proposed monorail route, which scope also must be approved in writing, if applicable by the state of Nevada department of transportation;

(2) The franchisee shall obtain written approval from the directors of development and public works on the detailed engineering plans that show the final locations of all supporting structures and related monorail facilities that will be installed, maintained and operated in rights-of-way, including air space;

- (3) All public improvement work performed by the franchisee in rights-of-way shall be inspected, completed and accepted in accordance with Titles 5, 27 and 30 of this code;
 - (4) In the case of damage caused by the franchisee to any rights-of-way, the franchisee shall at no cost and expense to the county repair, replace and restore the damaged area in accordance with Titles 5, 27, and 30 of this code;
 - (5) The franchisee shall not relocate any public utility facilities or public improvements, whether on a temporary or permanent basis, until first obtaining approval from the owner of the public utility facilities or public improvements. The costs of removing, relocating or reconstructing any public utility facility or public improvement shall be borne by the franchisee, unless otherwise agreed by the owner of the public utility facilities or public improvements. If the franchisee or its agents performs the relocation or reconstruction, it shall be performed only after consultation with the applicable public utility and in accordance with the standards of the industry.
- (c) In design, construction, operation and maintenance of a monorail, the franchisee shall comply with the following provisions:
- (1) The monorail and associated structures, facilities, and buildings shall be designed and constructed in accordance with applicable state and federal laws, including the Americans With Disabilities Act, and applicable regulations promulgated pursuant to those laws, Chapters 22.02 Building Administrative Code, 22.04 Building Code, 22.16 Amusement and Transportation Systems Code, 25.04 Electrical Code of this code and related development services department technical guidelines and codes, as adopted at the time of contracting for construction.
 - (2) Design plans, calculations, operation and maintenance manual(s), related documents, and fees for the monorail and associated structures, facilities, and buildings shall be submitted with a completed permit application to the county development services department permit application center, in accordance with Chapter 22.02 of this code, for review by the directors of development services, public works, and the fire chief prior to building permit issuance. Where applicable, design plans, calculations, and associated documents shall be submitted to, and approvals obtained from, appropriate agencies, including but not limited to Las Vegas Valley Water District, Clark County Sanitation District, Clark County Fire Department, and Clark County Health District.
 - (3) Designs prepared for or by the franchisee shall be sealed by a registered professional engineer and/or registered architect, as may be appropriate.
 - (4) All plan review, permit, inspection, and operational certificate renewal fees shall be paid by franchisee in accordance with Chapters 22.02 and 22.16 of this code, unless otherwise specified in the franchise agreement.
 - (5) Inspections of the monorail and its associated structures, facilities, and buildings and issuance of building permits shall be in accordance with Chapters 22.02 and 22.16 of this code, the county approved design plans and operations and maintenance manual(s) and any special requirements of the permits required by the director of development services that require a county-listed quality assurance agency. Third-party quality assurance inspections and/or testing shall be performed in accordance with the requirements of approved plans and the operation and maintenance manual(s) for monorails or fixed guideway systems in accordance with applicable provisions of Chapters 22.02 and 22.16 of this code.
 - (6) A certificate of operation shall be issued and renewed annually in accordance with the applicable provisions of Chapters 22.04 and 22.16 of this code, which shall be required to operate the monorail. It shall be the responsibility of the monorail franchisee to operate the

monorail in accordance with the applicable provisions of Chapter 22.16 of this code, this chapter and the approved operations and maintenance manual(s). Failure to meet these requirements is cause for the director of development services to initiate or recommend suspension of franchisee's certificate of operation pursuant to Section 5.04.180 of this chapter.

(7) After completion of construction the franchisee shall maintain and provide to the director of development services and director of public works, upon request and at no cost, detailed as-built plans.

(Ord. 2959 § 1 (part), 2003)

5.04.110 Operating standards for monorails. (a) Operations and maintenance of the monorail shall comply with the franchise agreement, the approved operations and maintenance manual(s), approved plans, and county codes adopted at the time of plan approval and permit issue, together with the applicable provisions of Chapter 22.02 of this code, the provisions of which in whole or in part may be set forth as requirements in the certificate of operation.

(b) The franchisee shall employ a qualified individual or individuals, or have available under contract at all times timely service by a qualified individual(s), to meet the requirements of the operations and maintenance manual(s) and operations and maintenance requirements imposed by this chapter and Chapter 22.16 of this code.

(c) Fees for the inspection and monitoring of the operating monorail shall be paid in accordance with Sections 22.02.520 and 22.02.710 of this code, unless otherwise specified in the franchise agreement.

(d) Except as provided in subsection (e) of this section, if the director of development services determines that a monorail is not in material compliance with the requirements and provisions of this chapter, the franchise agreement, or the operations and maintenance manual(s), he shall notify the franchisee in writing of the noncompliance and specify the basis of such noncompliance and the time period in which the monorail must be brought into compliance.

(e) In the event that the franchisee has failed to bring the monorail into compliance within the period specified, or in the event that the noncompliance giving rise to such notice has resulted in or presents an imminent threat to life, limb or property, the director of development services may declare that continued operation of all or the affected portion of the monorail is prohibited and issue to the franchisee a prohibited use notice. The prohibited use notice shall declare the reasons for the finding. Upon receipt of the prohibited use notice, the franchisee shall immediately cease operation of all or a portion of the monorail as determined by the director of the development services.

(f) Upon issuance of a prohibited use notice, the director of development services shall cause an out-of-service seal to be affixed to the monorail control panel, or other portion of the monorail as he determines, stating that the monorail shall not be operated except as necessary for repair, testing or inspection. In the event the franchisee does not adequately secure the monorail, the director of development services may cause one or more out-of-service seals to be placed across any or all entrances to the monorail. Such notices shall not be removed except by order of the director of development services after the monorail has been repaired, reinspected and certified for operation.

(g) When the franchisee has effected a repair of all deficiencies identified in the prohibited use notice, and any deficiencies discovered in the course of repairs which themselves could be the subject of a prohibited use notice, the franchisee shall notify the director of development services and request an inspection. The director of development services shall inspect the monorail within

twenty-four hours of such notification. If the director of development services finds the deficiencies to be corrected and all required tests to have been successfully completed, he shall remove the out-of-service seals and permit the monorail to resume operation (see Section 22.16.060(c) of this code).
(Ord. 2959 § 1 (part), 2003)

5.04.120 Amendment of monorail franchise agreement. (a) Amendments to the monorail franchise agreement must be approved by the county commission; and
(b) Any change in the route of the monorail having a material effect upon land use, and any addition or material modification to the original route specified in the land use permit, shall constitute an amendment to the land use permit which must be approved by the county commission, in its sole discretion, and shall require a new application for land use permit and notice to affected property owners, if any, in accordance with applicable sections of Titles 29 and 30 of this code.
(Ord. 2959 § 1 (part), 2003)

5.04.130 Eminent domain. (a) The county herein specifically declares that the grant of a monorail franchise does not grant to the franchisee the power of eminent domain, even if the specified monorail route identified in the monorail franchise or land use permit is on property in which the monorail franchisee has no property right or easement, and that exercise of the county's right of eminent domain to acquire property for a monorail shall be completely discretionary by the county commission. Further, the grant of a monorail franchise or land use permit does not constitute a promise by the county, nor does it obligate the county to exercise its power of eminent domain for a monorail in the future with respect to the monorail.
(b) A monorail franchisee may request that the county exercise its power of eminent domain by providing a written application to the county manager, which shall include the following:
(1) A legal description of the property or easement area, clearly identifying its owner and detailing any easements;
(2) An appraisal of the property or easement area;
(3) Written evidence which shows that a reasonable offer was made to purchase the property or easement and reasonable time given for the owner to accept the offer;
(4) Written information that demonstrates the need for the property or easement and all reasonable alternatives the franchisee has considered;
(5) A deposit of cash made payable to the county treasurer, and delivered to the county manager, in an amount equal to the appraisal of the subject property or easement or such greater amount as the county reasonably determines is necessary under the circumstances; and
(6) A statement acknowledging that the franchisee shall reimburse the county for any and all legal costs resulting from the county exercising its power of eminent domain.
(c) When the county manager determines that the application for use of eminent domain is complete, he shall present the application to the county commission at a regularly scheduled meeting. The county commission shall review the application and set a date for public hearing for approval or denial of the use of eminent domain, shall cause public notice of the public hearing, and shall cause notice to be sent to the property owner(s) affected no less than thirty days prior to the public hearing date. The affected property owner(s) and the general public shall be given an opportunity to address the county commission prior to its decision. The franchisee

shall reimburse the county for all costs associated with providing the various notices required by this section.

(Ord. 2959 § 1 (part), 2003)

5.04.140 Inspections and approvals--Enforcement by the county. (a) Any inspections or subsequent approvals undertaken by the county pursuant to this chapter are undertaken solely to ascertain compliance with this chapter and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions in this chapter dealing with inspection or approval by the county do not expand the county's general law duties.

(b) The franchisee shall have no recourse whatsoever against the county for any loss, cost, expense, or damage arising out of the enforcement or lack of enforcement of any provision or requirement of this chapter or of any franchise agreement.

(Ord. 2959 § 1 (part), 2003)

5.04.150 Franchise reporting. On or before one hundred twenty days following the end of each fiscal year, or other yearly period specified in the franchise agreement, during the term of the franchise agreement the franchisee shall submit one copy each of an annual written report to the county manager and director of business license. The written reports shall include the following information:

(a) A detailed financial report as required by Title 6 of this code which conforms to Generally Accepted Accounting Principles (GAAP).

(b) A general report which details the following:

(1) Status of installation, if applicable;

(2) Total ridership, in monthly and annual totals, in sufficient detail to determine capacity in persons per hour, per direction;

(3) Incidents of cessation of operation, both planned and unplanned, including the cause, duration, and repairs required, if applicable;

(4) Accidents, emergencies and circumstances where injury or the threat of injury to persons occurred or material damage or the threat of material damage to property occurred;

(5) Any material claims made to the franchisee's insurer and any material claims paid by the franchisee's insurer; and

(6) Any lawsuits in which the franchisee is directly or indirectly involved and which have a material impact on the franchisee's ability to perform the duties of the franchise agreement.

(Ord. 2959 § 1 (part), 2003)

5.04.160 Franchise revocation, suspension and penalties. (a) After providing notice and an opportunity for the franchisee to be heard and a reasonable opportunity to cure as specified in the franchise agreement, including lender protection provisions, a franchise may be revoked or suspended by the county commission if it finds that the franchisee has failed to comply with applicable provisions of the Clark County Code, the franchise agreement, or the laws or regulations of the state of Nevada or of the United States. The county commission may, in its sole discretion, choose to:

(1) Impose monetary fines and other penalties upon the franchisee, including but not limited to assessment of penalties, suspension of construction or operation of the monorail, or restriction of business activities of the monorail franchise and monorail master business license; and/or

(2) Revoke or suspend the monorail franchise and monorail master business license, and impose terms and conditions for reinstatement or continuance.

(b) Decisions of the county commission pursuant to (a) of this section regarding penalties, suspensions or revocations of the monorail franchise shall automatically apply to the monorail master business license, unless otherwise determined by the county commission.

(Ord. 2959 § 1 (part), 2003)

5.04.170 Abandonment of monorail. After the franchisee has been provided notice and an opportunity to be heard and a reasonable opportunity to cure as specified in the franchise agreement, including lender protection provisions, the county commission may declare the monorail to be abandoned and may terminate the franchise and monorail master business license. The portions of the monorail structure occupying rights-of-way may be removed in accordance with applicable provisions of this chapter, or otherwise used as the county commission deems appropriate. The franchise and the monorail master business license may be reinstated at the sole discretion of the county commission upon reapplication by the former franchise holder pursuant to this chapter and Chapter 6.14 of this code.

(Ord. 2959 § 1 (part), 2003)

5.04.180 Removal of monorail structures on public property or rights-of-way. (a) In the event that a franchise has been revoked or has expired without renewal, or a monorail has been found to be abandoned, the county may remove those portions of the fixed guideway structure in, on, along, under or over rights-of-way and may draw upon the proceeds of the removal security, posted pursuant to Section 5.04.240 of this chapter, to reimburse costs of removal.

(b) Removal or relocation of a franchisee's monorail to accommodate a public improvement shall be in accordance with the terms and conditions of the franchise agreement and must be approved by the county commission only after a public hearing in which the franchisee and any person having an interest in the monorail has had an opportunity to be heard.

(c) When in case of emergency it becomes necessary for the county or any public authority to remove or cause damage to any of the franchisee's monorail, no charge shall be made by the franchisee against the county for loss, damage, restoration, and repair.

(d) If the county commission declares a monorail to be a public nuisance pursuant to Chapter 11.06 of this code, abatement of such public nuisance shall be completed in accordance with the provisions of Chapter 11.06. In addition to notification requirements of Chapter 11.06, the franchise agreement may provide for additional notification by the county to other interested parties in the event the county intends to declare the monorail a public nuisance.

(Ord. 2959 § 1 (part), 2003)

5.04.190 Transfers and assignments. The monorail franchise agreement and the rights, privileges, permissions, and authorities granted therein are personal to the monorail franchisee and cannot be sold, transferred, leased, assigned, or otherwise disposed of, in whole or in part, either by voluntary or involuntary proceedings without the approval of the county commission, which cannot be unreasonably withheld, after written notification by the franchisee and the prospective transferee or assignee and upon such conditions as the county commission may prescribe; provided, however, that no restriction on transfers specified in this section shall be understood as preventing the monorail franchisee from conveying its properties to a trustee as security for bond and indebtedness in the normal course of the franchisee's business.

(Ord. 2959 § 1 (part), 2003)

5.04.200 Acquisition of monorail by the county. If the county acquires a monorail:

(a) Through use, or threat of use, of its right of eminent domain, the county shall provide the franchisee with adequate contractual assurance that:

(1) After acquisition, the county will provide service, fares and performance conforming to those existing at the time of acquisition, for a period necessary to protect the usefulness of the monorail to the franchisee; and

(2) The franchisee shall approve any future deletions from or reconfiguration of the monorail, including passenger stations; and

(3) The franchisee shall be held harmless from any liability or claim arising after the acquisition from the operation or any change made in the installation and operation of the monorail or from any act or omission of the county or its employees, contractors or agents; or

(b) Through voluntary transfer, the county and franchisee may mutually agree to any terms; or

(c) Through abandonment, the monorail shall be deemed voluntarily transferred to the county, and the county may operate the monorail itself, auction the monorail to a qualified bidder, or remove those portions occupying rights-of-way, as determined by the county commission.

(Ord. 2959 § 1 (part), 2003)

5.04.210 Indemnification. (a) To the maximum extent permitted by Nevada law, the franchisee shall indemnify, save harmless, and defend the county, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with the installation, construction, operations, maintenance, or condition of the monorail. The franchisee is not required to indemnify or hold harmless the county, its officers and employees as provided herein, to the extent caused by, resulting from or arising out of the active negligence or intentional actions of one or more officers or employees of the county.

(b) The franchisee shall indemnify and hold harmless any county officer or employee who serves on a governing board which has control or oversight of the monorail.

(c) The amounts and types of required insurance coverage set forth in Section 5.04.220 of this chapter shall in no way be construed as limiting the scope of indemnity set forth in this section.

(Ord. 2959 § 1 (part), 2003)

5.04.220 Insurance. The franchisee shall comply at all times with the insurance requirements of this section. Failure to obtain and maintain insurance coverages in the amounts required by this section or the franchise agreement shall be cause for immediate cessation of installation and operation of the monorail, except for those activities necessary to mitigate any safety hazard as required by the county commission, and shall be grounds for revocation, suspension or penalties pursuant to this chapter.

(a) Upon commencement of construction and continuing until completion of construction, the franchisee shall secure and maintain general liability insurance with coverage for property damage caused by its construction and installation activities, and liability insurance with coverage for injury and property damage as specified by resolution by the county commission and amended from time to time, and which are available at commercially reasonable terms.

(b) Upon completion of construction and continuing through the term of the franchise agreement, the franchisee shall maintain liability insurance with coverage for bodily injury and property damage against all risk arising from its operations, in amounts specified by resolution by the county commission and amended from time to time, and which are available at commercially reasonable terms.

(c) The franchisee shall at all times maintain workers' compensation insurance in compliance with NRS Chapters 616 and 617.

(d) All policies of insurance required under this section shall be issued by insurance companies licensed or authorized to do business in the state of Nevada in accordance with applicable sections of NRS Title 57, from carriers having a rating from the A.M. Best Company of A-VII or greater as determined by the county manager to be appropriate on a case-by-case basis. Proof of coverage shall be evidenced by submitting an insurance certificate, or certificates, to the county manager, which names the county as an additional insured and indicates that the county will be notified no less than thirty days prior to alteration, cancellation, termination or non-renewal of coverage.

(Ord. 3497 § 1, 2007: Ord. 2959 § 1 (part), 2003)

5.04.230 General security requirements. The franchisee shall provide the following forms of security to the county:

(a) The franchisee shall place, or cause to be placed, the design drawings and technical specifications of the technology used in its monorail, in escrow for the life of the monorail and provide proof of such escrow and proof of the county's irrevocable right to obtain and use said design drawings and technical specifications.

(b) Within thirty days of the grant of the monorail franchise, the franchisee shall provide to the county manager security in an amount stated by resolution of the county commission. The county may draw against this security for payment of any unpaid fees, penalties, or to recover other actual costs, including liquidated damages specified in the franchise agreement, that may be incurred as a result of the franchisee's failure to comply with the provisions of its franchise agreement, this chapter or Chapter 6.14 of this code. If the county draws upon the proceeds of any security, the franchisee shall, within thirty days of notice from the county, replenish such security to the amount required by the county commission.

(c) All forms of security required by this section must include provisions which:

(1) Provide for payment of all reasonable legal fees and costs incurred by the county in its efforts to enforce payment; and

(2) Require the issuer to notify the county manager no later than thirty days before cancellation, or issuance of statement of intent not to renew said security instrument.

(d) The security required by this section or any other provision in this chapter or Chapter 6.14 of this code shall be in the form of a cash deposit made payable to the county treasurer, an irrevocable letter of credit or pledge of certificate of deposit issued by a Nevada bank, a performance bond issued by a surety authorized to conduct business within the state of Nevada, or any other like security approved by the county manager.

(Ord. 2959 § 1 (part), 2003)

5.04.240 Security for removal of monorail. Prior to commencement of construction and throughout the term of the franchise agreement, the franchisee shall provide the county manager security which guarantees completion of the monorail and/or demolition and removal, as

appropriate, of any structures within rights-of-way, and restoration of those rights-of-way in accordance with the improvement standards of Title 27 of this code, in the event the monorail is abandoned or the franchise is terminated. The amount of security or penal amount of the bond shall be established by resolution by the county commission as necessary to cover cost of construction of those portions of the monorail constructed or installed in the rights-of-way, and include an amount to cover the expense of engineering or consulting that may be required to carry out the demolition and removal, and restoration of rights-of-way, and reimbursement of legal costs incurred by the county.

(Ord. 2959 § 1 (part), 2003)

5.04.250 Rights reserved to the county. Without limitation upon the rights which the county might otherwise have, the county does hereby expressly reserve the rights, powers, and authorities to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the county; and to grant multiple exclusive monorail corridor agreements and monorail franchises within the county to other persons for the operation of monorails pursuant to this chapter and as it may be amended, subject, however, to the exclusive rights of the franchisee within a geographic area defined in the franchise agreement.

(Ord. 2959 § 1 (part), 2003)

5.04.260 Notice. All notices shall be sent to the franchisee or to the county at the addresses indicated in the franchise agreement. The franchisee shall notify the county manager of any change of address within ten working days of such occurrence. Failure to provide such notification of change of address, and any resulting delay in receipt of notice, shall not excuse the franchisee from any obligation imposed by this chapter or by its franchise agreement, nor shall it serve as cause for reduction or removal of any monetary fine or other penalty or restriction imposed by the county.

(Ord. 2959 § 1 (part), 2003)

5.04.270 Force majeure. In the event a franchisee's performance of any of the terms, conditions or obligations required by this chapter or franchise agreement is prevented by a cause or event beyond the control and without the fault or negligence of the franchisee, including but not restricted to, acts of God, acts of another franchisee, epidemics, quarantine restrictions, freight embargoes, explosions, strikes, sabotage, riots or civil disturbances, acts of public enemies, unusually severe weather and natural disasters such as floods, earthquakes, landslides, and fires, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. Delays of agents, subcontractors or suppliers of any tier are recognized to be within the franchisee's control unless the agent's, subcontractor's or supplier's failure to perform is attributable to the above listed excusable causes.

(Ord. 2959 § 1 (part), 2003)