

CLARK COUNTY CODE
CHAPTER 5.01 — RIGHTS-OF-WAY MANAGEMENT
Revised October 1998

5.01.010 Definitions. For the purpose of this chapter, the following definitions shall apply:

(a) “Abandoned” means the relinquishing of facilities owned by a public utility that no longer has a business license, or franchise or rights-of-way license agreement, or certificate of public convenience and necessity from the Public Utilities Commission, if required by the laws of the State of Nevada, or of a facility which the public utility has agreed to transfer to the County.

(b) “Applicant” means the person who submits the completed application as set forth in Title 5 of this Code.

(c) “Application” means all written documentation, statements, representations and warranties provided to the County, in accordance with Title 5, by a prospective franchisee or rights-of-way licensee, which are relied upon by the County in making its determination of whether to grant or withhold a franchise or rights-of-way license.

(d) “Business License” means the written authorization required by the County for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in Title 6, within unincorporated areas and unincorporated towns within Clark County, Nevada.

(e) “Commence construction” means that time and date when the first connection is physically made to a utility pole for overhead facilities, when trenching is initiated for underground facilities, or when foundations are excavated for transmission facilities, provided all of these facilities are part of a public utility system, and the appropriate permits are issued for such work.

(f) “Commence operation” means that time and date, after construction completion, when the public utility system is first used to provide subscription service.

(g) “Construction Completion” means that time and date when all facilities have been installed and all public rights-of-way and properties have been restored to their former appearance and condition in a manner acceptable to the County.

(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 County Commission to perform such administrative functions of the county government as may be required of him by the County Commission, or designee.

(k) “Director of Administrative Services,” “Director of Business License,” or “Director of Public Works” mean the county departmental director specifically named, or designee.

(l) “Easement” means the right to use the real property of another.

(m) “Facility” or “facilities” means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used in connection therewith or appurtenant thereto to provide public utility service in the County.

(n) “Franchise” means the non-exclusive authorization granted by the County Commission to a public utility to construct, operate, and maintain its system in the rights-of-way within the County for the provision of subscription services to persons, other than themselves, and to use the rights-of-way for the installation, operation, and maintenance of its facilities. The conditions and requirements of such authorization will be described within a franchise agreement for such purpose.

(o) “Franchise Agreement” means an agreement granting use of public rights-of-way to provide Subscription Services.

(p) “Franchisee” means the person to whom a franchise is granted, and its agents, including but not limited to contractors licensed by the State Contractors Board and providing construction, installation, or maintenance services on facilities located in rights-of-way on behalf of a franchisee.

(q) “Person” means a natural person, any form of business or social organization and any other non-governmental legal entity, including but not limited to the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term “Person” does not include a government, governmental agency, or political subdivision of a government.

(r) “Public Improvement” means new 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, or other public facilities across, along, over or under any street or streets, or other such improvements which are to be used by the general public.

(s) “Public Utilities Commission” means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

(t) “Public utility” means any person that provides electric energy or natural gas, telecommunications services, 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. Public utility does not include a cable company treated under the provisions of chapter 5.02 of this code and providing services permitted by its cable franchise or cable service permit.

(u) “Public utility service” means the provision of electric energy, natural gas, telecommunications, interactive computer service, or personal wireless service over or through facilities located in rights-of-way.

(v) “Public utility system” or “system” means any facilities, in whole or in part, constructed to provide public utility services and using rights-of-way to provide such service.

(w) “Right-of-Way” or “Rights-of-Way” means public property including air space dedicated to, granted to, or held or prescriptively used by the County for public street purposes.

(x) “Rights-of-Way License” means the non-exclusive authorization granted by the County Commission in exchange for a rental fee to a public utility to construct, operate, and maintain its system in specific streets and rights-of-way as authorized routes for non-subscription service. The conditions and requirements of such authorization will be described within a License Agreement for such purpose.

(y) “Rights-of-Way License Agreement” means an agreement granting use of public rights-of-way to provide non-subscription public utility services.

(z) “Rights-of-Way Licensee” means the person to whom a rights-of-way license is granted and its agents, including but not limited to contractors licensed by the State Contractors Board and providing construction, installation, or maintenance services on facilities located in rights-of-way on behalf of a rights-of-way licensee.

(aa) “Street” means the surface, the air space above the surface and the area below the surface of the full width of the right-of-way, including sidewalks and thoroughfares, places or ways of any kind used by the public or open to the public as a matter of right for the purpose of vehicular traffic or vehicular and pedestrian traffic.

(bb) “Subscription Service” means any service provided by a public utility over or through facilities located in rights-of-way to persons or governmental entities within unincorporated Clark County.

(cc) “Transfer or Assign” shall not include any mortgage, pledge, or other encumbrance of the assets, stocks, or the franchise or rights-of-way license agreement of the franchisee or right-of-way licensee as security for moneys borrowed.

5.01.020 Purpose. The purpose of this Chapter is to:

- (a) Establish a local policy concerning rights-of-way management for public utilities.
- (b) Permit and manage reasonable access, in a non-discriminatory manner, to rights-of-way in unincorporated Clark County for public utility systems.
- (d) Manage physical capacity of the rights-of-way held in public trust by the County.
- (e) Recover public costs of permitting private use of County rights-of-way.
- (f) Ensure all public utilities within the County comply with all ordinances, rules and regulations of the County.

5.01.030 Business License Required. Franchisee or rights-of-way licensee shall first obtain a business license issued by the director of business license, after application and compliance with all applicable requirements of Title 6 of this code. The application processing fee for a business license is as set forth in Clark County Code Title 6. No franchise or rights-of-way license will be approved until the applicant has first obtained a business license. In addition to the requirements of Title 6 of this Code, an application for a business license by a public utility utilizing County rights-of-way shall include:

- (a) A statement setting forth all agreements and understandings existing between the applicant and any person with respect to the applicant’s acting as an agent or representative of another person regarding use of rights-of-way;
- (b) For a corporation, a list of officers and directors of the applicant;
- (c) For a partnership, a list of all partners and their relative interests in the partnership;
- (d) A statement of whether any of the persons listed in subsections (a), (b) and (c) of this section has had a franchise or rights-of-way license declined, suspended or revoked, and, if so, the government agency issuing this decision, the date, time, place and reasons given.
- (e) A copy of the order and certificate of public convenience and necessity from the Public Utilities Commission, if such certificate is required by the laws of the State of Nevada.

5.01.040 Issuance Of Business License. The director of business license shall issue a business license to a public utility which has met the business licensing requirements of Clark County Code Titles 5 and 6.

5.01.050 Franchise or Rights-of-Way License Required. Facilities shall not be constructed, installed, operated, or maintained in, over, or under any rights-of-way, or within or on the facilities of a franchisee or rights-of-way licensee which are located in, over, or under any rights-of-way, without a franchise or rights-of-way license agreement granted by the County Commission. Any person constructing, installing, operating or maintaining facilities in any right-of-way prior to adoption of this section, and who does not hold a current franchise or rights-of-way license previously granted by the County Commission, shall obtain a franchise or

rights-of-way license agreement within one hundred twenty (120) days of the effective date of Clark County Ordinance No. 2045.

5.01.055 Cable service. Providers of cable service shall be regulated under the provisions of chapter 5.02 of this code. A public utility franchised or licensed under the provisions of this chapter 5.01 may not provide cable services to subscribers in the county without first complying with the provisions of chapter 5.02 of this code.

5.01.060 Application for a Franchise or Rights-of-Way License Agreement. The following procedures will apply to all applications for new franchise or rights-of-way license agreements or renewals thereof:

(a) The applicant shall make a written request to the director of administrative services for a franchise or rights-of-way license.

(b) The applicant will provide:

(1) the information required by Nevada Revised Statutes Section 709.060.

(2) a copy of all Clark County business licenses pertaining to applicant's activity in the rights-of-way.

(3) a list of persons that will be using the applicant's facilities in rights-of-way to provide subscription service of which the applicant is aware at time of application.

(c) When an application is certified as complete by the director of administrative services, the application shall be presented before the County Commission for approval or denial.

(d) Notice of the application will be given pursuant to Nevada Revised Statutes Section 709.070.

5.01.070 Franchise Agreement Conditions. The approval of a new or the renewal of an existing franchise by the County Commission and its acceptance by the applicant shall be reflected by execution of a franchise agreement. The franchise agreement shall incorporate all provisions of this chapter.

(a) Any franchise granted pursuant to this chapter shall be non-exclusive.

(b) All provisions of this chapter and the franchise agreement shall be binding upon the franchisee, its successors, or assignees.

(c) If a franchisee notifies the county manager twenty-four (24) months before the expiration of a franchise that it wishes to extend the franchise, the county manager shall, within twelve (12) months of the expiration of the franchise, grant a one-time extension of five (5) years under the same terms and conditions, unless the franchisee has not substantially complied with the terms and conditions of the franchise agreement or Clark County Code.

(d) The franchise agreement shall be construed in favor of the County and 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.

(e) The granting of any franchise pursuant to this chapter shall be a privilege and shall not impart to the franchisee any right of property in any rights-of-way, except that the franchisee shall retain a utility easement, upon County Commission approval, in the event that the County vacates or abandons any rights-of-way in which the franchisee has facilities and the franchisee notifies the County of its desire to obtain a utility easement in that right-of-way. The franchise agreement shall be construed to have granted the non-exclusive permission and authority to use any rights-of-way as provided in this chapter for the construction, operation, and maintenance of

facilities underground, on the surface, or above ground. In no event shall this chapter or any franchise agreement be construed to have granted permission or authority to use any facilities outside of rights-of-way or any public facilities within rights-of-way which are not used for pedestrian or vehicular traffic. Use of such facilities, if permitted, shall be subject to a separate agreement with the County.

(f) 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, upon notice to the franchisee of at least thirty (30) days before adoption and opportunity for the franchisee to be heard before adoption if requested by the franchisee within fifteen (15) days after receipt of the notice, and which apply to the public generally and to the franchisee. 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 the County police powers.

(g) Any privilege claimed under this chapter or any franchise agreement in any rights-of-way shall be equal to the privilege of any other franchise under this chapter or Nevada Revised Statutes Chapters 709 and 711, and shall be subordinate to any other prior lawful occupancy of the rights-of-way.

(h) 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 to any other officer or employee of the County.

(i) The franchise shall be subject to all requirements of County ordinances, rules, regulations, and specifications heretofore or hereafter enacted or established to the maximum extent allowed by law.

(j) The franchisee shall secure encroachment permits in accordance with Title 27, Chapter 27.10 of the Clark County Code.

(k) The franchisee shall maintain records and allow for audits as provided in Clark County Code Title 6.

5.01.080 Rights-of-Way License Agreement Conditions. A rights-of-way license agreement may be granted by the County Commission to a public utility to construct, operate, and maintain its system in specific streets and rights-of-way as authorized routes for non-subscription service only. The approval of a rights-of-way license by the County Commission and its acceptance by the applicant shall be reflected by execution of a rights-of-way license agreement. A rights-of-way license agreement shall incorporate all provisions of this chapter. In addition to authorized routes initially approved in the rights-of-way license agreement, the county manager may approve expansion of a rights-of-way licensee's authorized routes upon written request from the rights-of-way licensee, if he finds that space is available in those rights-of-way, there are no applicable street cut limitations, and the proposed expansion would not interfere with existing or planned public improvements in those rights-of-way.

(a) Any rights-of-way license granted pursuant to this chapter shall be non-exclusive and revocable, in accordance with the terms of the rights-of-way license agreement.

(b) All provisions of this chapter and the rights-of-way license agreement shall be binding upon the rights-of-way licensee, its successors, or assignees.

(c) The rights-of-way license agreement shall be construed in favor of the County and no privilege or exemption shall be inferred from the granting of any rights-of-way license unless it is specifically mentioned in this chapter or in the rights-of-way license agreement.

(d) The granting of any rights-of-way license pursuant to this chapter shall be a privilege and shall not impart to the rights-of-way licensee any property right or title in any rights-of-way, except that the rights-of-way licensee shall retain a utility easement, upon County Commission approval, in the event that the County vacates or abandons any rights-of-way in which the rights-of-way licensee has facilities and the rights-of-way licensee notifies the County of its desire to obtain a utility easement in that right-of-way. The rights-of-way license agreement shall be construed to have granted the non-exclusive permission and authority to use any rights-of-way as provided in this chapter for the construction, operation, and maintenance of facilities underground, on the surface, or above ground. In no event shall this chapter or any rights-of-way license agreement be construed to have granted permission or authority to use any facilities outside of rights-of-way or any public facilities within rights-of-way which are not used for pedestrian or vehicular traffic. Use of such facilities, if permitted, shall be subject to a separate agreement with the County.

(e) The rights-of-way licensee shall at all times during the term of the rights-of-way license 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, upon notice to the rights-of-way licensee at least thirty (30) days before adoption and an opportunity for the rights-of-way licensee to be heard before adoption if requested by the rights-of-way licensee within fifteen (15) days after receipt of the notice, and which apply to the public generally and to the rights-of-way license. Any conflict between the provisions of this chapter and any other present or future lawful exercise of the County police powers shall be resolved in favor of the County police powers.

(f) Any privilege claimed under this chapter or rights-of-way license agreement must apply only to specific streets therein, and such privilege may not exceed but shall be equal to the privilege of any rights-of-way license granted under this chapter or Nevada Revised Statutes Chapters 709 and 711 and shall be subordinate to any other prior lawful occupancy of the rights-of-way.

(g) Any right or power in, or duty impressed upon any officer, employee, department, or Board of the County by virtue of this chapter shall be subject to transfer by the County Commission to any other officer, employee, or Board of the County.

(h) The rights-of-way licensee shall be subject to all requirements of County ordinances, rules, regulations, and specifications heretofore or hereafter enacted or established to the maximum extent allowed by law.

(i) The rights-of-way license shall require a rental fee in exchange for use of rights-of-way.

(j) The rights-of-way licensee shall maintain records and allow for audits as provided in Clark County Code Title 6.

(k) The rights-of-way licensee shall secure encroachment permits in accordance with Title 27, Chapter 27.10 of the Clark County Code.

5.01. 090 Conditions Of Street Occupancy And Facilities Installation.

(a) The franchisee or rights-of-way licensee shall comply with Title 5 and the improvement standards adopted in Title 27 of the Clark County Code, as adopted by the Board of County Commissioners and in effect at time of construction completion, except where retroactive application of new standards is required by federal or state law.

(b) Prior to any work within the rights-of-way, the franchisee or rights-of-way licensee shall obtain an encroachment permit pursuant to Title 27, Chapter 27.10 of the Clark County Code.

(c) When the public improvement designs prepared by the franchisee or rights-of-way licensee are more detailed than, or are not covered by, the improvement standards adopted in Clark County Code Title 27, plans and specifications for construction, reconstruction, installations, and repairs of public improvements shall be sealed by a Nevada registered professional engineer.

(d) Except in the case of an emergency, the franchisee or rights-of-way licensee, who is the initiator of a project in a street or easement upon which residential yards are located and maintained, shall notify residents who are located adjacent to the proposed project at least two (2) days prior to the date that the franchisee or rights-of-way licensee proposes to commence construction. Such notice shall be by written notice in person, by posted notice on the street where the proposed project is scheduled to be built (which notice is to be large enough to be clearly read by passing motorists), by door hanger, or by mail, with a description of the proposed project and the name of the franchisee or rights-of-way licensee together with its business phone number.

(e) All public improvement work performed by the franchisee or rights-of-way licensee in rights-of-way shall be inspected, completed and accepted in accordance with Title 5 and the improvement standards adopted in Title 27 of this code.

(f) It is specifically declared that it is not intended by any of the provisions of any part of this chapter to create for the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this chapter. The duties, obligations, and responsibilities of the County with respect to third parties shall remain as imposed by the general law of the State of Nevada.

(g) Any inspections or subsequent approvals undertaken by the County pursuant to this chapter are undertaken solely to ensure 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.

(h) In the case of damage caused by the franchisee or rights-of-way licensee to any rights-of-way, the franchisee or rights-of-way licensee shall at no cost or expense to the County repair, replace and restore the damaged area in accordance with current improvement standards adopted in Title 27 of this Code.

(i) The franchisee or rights-of-way licensee shall not acquire any vested right or interest in any particular right-of-way location for any of its facilities constructed, operated, or maintained in any existing or proposed rights-of-way, even though such location was approved by the County.

(j) Reconstruction, removal or relocation of a franchisee's or rights-of-way licensee's facilities to accommodate a public improvement shall be provided for in the following manner:

1) The County or Las Vegas Valley Water District, Kyle Canyon Water District, Big Bend Water District or Clark County Sanitation District shall issue to a franchisee or rights-of-way licensee written notice of a need to reconstruct, remove, or relocate any of franchisee's or rights-of-way licensee's facilities which may be in conflict with an existing or proposed public improvement in order to accommodate the installation, maintenance, or use of the public improvement. Such written notice shall include project information equivalent in detail to fifty percent (50%) or more of final design for the public improvement. The franchisee or rights-of-way licensee shall, within thirty (30) days after receiving such written notice from the County, or District as described in this paragraph, present to the director of public works a notice

of intent to reconstruct, remove, or relocate said facilities, and shall, within six (6) months after receipt of written notice from the County or District, or such shorter time period as may be reasonable, reconstruct, remove, or relocate said facilities. Upon request from a franchisee or rights-of-way licensee identifying a recommended location for its facilities, the director of public works shall provide that location or an alternate location within the right-of-way for the franchisee or rights-of-way licensee, if space is available.

(2) Within thirty (30) days after receipt of such written notice from the County, or District as described in paragraph (j)(1) of this subsection, the franchisee or rights-of-way licensee may present a written application and supporting documentation to the director of public works for an extension of time in which to complete reconstruction, removal or relocation of its facilities. The director of public works may grant additional time beyond the time period provided if the additional time requested is due to service, equipment, or material delivery constraints beyond the control and without the fault or negligence of the franchisee or rights-of-way licensee, or if the project described in the written notice is of such a size that the work to be performed by the franchisee or rights-of-way licensee cannot be completed within the allowable time.

(3) If after the issuance of the initial written notice the County, or District as described in paragraph (j)(1) of this subsection, makes a substantial change in the design of the public improvement project, including but not limited to changes in elevation, changes affecting rights-of-way alignment and widths of alignment, the County or District, as described in paragraph (j)(1) of this subsection, shall notify the franchisee or rights-of-way licensee of the details of the substantial change. If the franchisee or rights-of-way licensee determines that such change would cause a delay in reconstruction, removal or relocation of its facilities beyond the time period provided, the franchisee or rights-of-way licensee may, within fourteen (14) days from receipt of notice of such change, petition the director of public works for an extension of time in which to complete reconstruction, removal or relocation of facilities. If the additional time is requested due to service, equipment, or material delivery constraints beyond the control of the franchisee or rights-of-way licensee, or if the public improvement design change is of such a scope that the work to be performed by the franchisee or rights-of-way licensee cannot be completed within the time period allowed, the director may grant an extension of time. If the request for extension of time is denied, the franchisee or rights-of-way licensee may appeal the denial to the County Commission within fourteen (14) days from receipt of notice of denial. The decision of the County Commission shall be final.

(4) The County or District, as described in paragraph (j)(1) of this subsection, shall provide the franchisee or rights-of-way licensee with a final design of the public improvement as soon as it becomes available.

(5) If franchisee or rights-of-way licensee fails to reconstruct, remove, or relocate its facilities as required by this section within the time period agreed upon, the County may reconstruct, remove, or relocate said facilities and charge the cost of reconstruction, removal, or relocation to the franchisee or rights-of-way licensee. The County will not be held liable for any losses or damages due to reconstruction, removal, or relocation of such facilities.

(k) The franchisee or rights-of-way licensee shall, on request of any person holding a permit to move a building, temporarily raise or lower its wires or cables to permit the movement of the building. The expense of temporary removal of raising or lowering of wires shall be paid by the person requesting it, and the franchisee or rights-of-way licensee shall have the authority to require such payment in advance. The franchisee or rights-of-way licensee shall be given not less than thirty (30) days' advance notice to arrange temporary wire or cable alterations.

(l) Whenever, in case of emergency, it becomes necessary to remove any of the franchisee's or rights-of-way licensee's facilities, no charge shall be made by the franchisee or rights-of-way licensee against the County for loss, damage, restoration, and repair.

(m) Franchisee or rights-of-way licensee shall maintain and provide to the County, upon request and at no cost, as-built plans indicating the location of its facilities. Franchisee or rights-of-way licensee may provide, on a voluntary basis, electronic plans showing the general location of its facilities in rights-of-way.

5.01.100 Construction And Technical Standards. Construction practices shall be in accordance with the improvement standards adopted in Title 27 of the Clark County Code. Public utility systems shall be installed, maintained, and operated in accordance with applicable standards defined by a state or federal governmental agency charged with the regulation of such technology.

5.01.110 Franchise Reporting. Each year during the term of the franchise agreement, within thirty (30) days preceding or following the anniversary of the franchise agreement, the franchisee shall submit a written report to the director of administrative services which shall be deemed confidential, shall be maintained by the director of administrative services in a confidential file, and shall be made available only to County officers and employees in the performance of their duties. The written report shall include the following information:

(a) A general description of the facilities anticipated to be installed in rights-of-way during the next year of the franchise agreement of which the franchisee is aware at time of reporting.

(b) A list of persons using the franchisee's facilities in rights-of-way to provide subscription service during the next year of the franchise agreement, of which the franchisee is aware at time of reporting.

5.01.120 Rights-of-Way License Reporting. In addition to any reports required for proper assessment of rental fees, each year during the term of the rights-of-way license agreement, within thirty (30) days preceding or following the anniversary of the rights-of-way license agreement, the rights-of-way licensee shall submit a written report to the director of administrative services which shall be deemed confidential, shall be maintained by the director of administrative services in a confidential file, and shall be made available only to County officers and employees in the performance of their duties. The written report shall include the following:

(a) A general description of the facilities anticipated to be installed in rights-of-way during the next year of the rights-of-way license agreement of which the rights-of-way licensee is aware at time of reporting.

(b) A list of persons that will be using the rights-of-way licensee's facilities in rights-of-way to provide subscription service during the next year of the rights-of-way license, of which the rights-of-way licensee is aware at time of reporting.

5.01.130 Franchise Revocation and Penalties.

(a) After providing notice and an opportunity for the franchisee to be heard, and a reasonable opportunity to cure, a franchise may be revoked by the County Commission if it finds that the franchisee:

(1) has not obtained or maintained the insurance required by this chapter;

(2) has not obtained or maintained the bonds or security obligation required by this chapter;

(3) failed to make payment of fees due County under Title 6 of Clark County Code.

(4) substantially failed to comply with terms or conditions of the franchise;

(5) no longer holds a business license;

(6) no longer holds a Public Utilities Commission certificate of public convenience and necessity if such certificate is required by the laws of the State of Nevada; or

(7) has failed to use a contractor licensed by the State Contractors Board in performing any of its construction, installation, or maintenance services on facilities located in rights-of-way.

(b) If the County Commission finds that the franchisee has failed to comply with any provision of Title 5 or the improvement standards adopted in Title 27 of this code, it may direct that further encroachment permits be denied until such time as the franchisee comes into compliance.

(c) Franchise agreements shall provide that the County Commission, after providing notice and an opportunity for the franchisee to be heard and to cure, may impose fines and other penalties upon franchisees for violations of any provisions of their agreement, or any provisions of the Clark County Code.

5.01.140 Rights-of-Way License Revocation and Penalties.

(a) After providing notice and an opportunity for the rights-of-way licensee to be heard, and a reasonable opportunity to cure, a rights-of-way license may be revoked by the County Commission if it finds that the rights-of-way licensee:

(1) has not obtained or maintained the insurance required by this chapter;

(2) has not obtained or maintained the bonds or security obligation required by this chapter;

(3) failed to make payment of fees due County under Title 6 of Clark County Code;

(4) substantially failed to comply with terms or conditions of the rights-of-way license;

(5) no longer holds a business license;

(6) no longer holds a Public Utilities Commission certificate of public convenience and necessity if such certificate is required by the laws of the State of Nevada; or

(7) has failed to use a contractor licensed by the State Contractors Board in performing any of its construction, installation, or maintenance services on facilities located in rights-of-way.

(b) If the County Commission finds that the rights-of-way licensee has failed to comply with any provision of Title 5 or the improvement standards adopted in Title 27 of this code, it may direct that further encroachment permits be denied until such time as the rights-of-way licensee comes into compliance.

(c) Rights-of-way license agreements shall provide that the County Commission, after providing notice and an opportunity for the rights-of-way licensee to be heard and to cure, may impose fines and other penalties upon rights-of-way licensees for violations of any provisions of their agreement, or any provisions of the Clark County Code.

5.01.150 Removal Of Facilities.

(a) In the event the franchise or rights-of-way license has been revoked, has expired without renewal, or in the event that any facilities have been installed in any rights-of-way without complying with the requirements of this chapter or the franchise or rights-of-way license agreement, or in the event the franchisee or rights-of-way licensee and the County agree that the facility has been abandoned, the franchisee or rights-of-way licensee shall, within thirty (30) days after receipt of notice by the County, commence and thereafter diligently pursue and complete the removal of said facilities from the rights-of-way within a reasonable time, except those facilities which:

(1) are sold to the holder of an unrevoked and unexpired franchise or rights-of-way license, or

(2) the director of public works finds may be abandoned in place without interference with the use of existing or planned public improvement.

(b) The franchisee or rights-of-way licensee shall promptly restore all rights-of-way from which facilities have been removed to their former condition and appearance in accordance with the improvement standards adopted in Title 27 of this Code.

(c) Any facilities to be abandoned in place shall be abandoned in such manner as prescribed by the director of public works and approved by the County Commission at a duly noticed public hearing. Upon abandonment, the facilities shall become the property of the County and the franchisee or rights-of-way licensee shall submit to the director of public works an instrument in writing, transferring to the County the ownership of such facilities.

5.01.160 Transfers And Assignments. In addition to the requirements conditional to the holding of a valid business license per Title 6 of this code, the following conditions for transfer and assignment of franchises and rights-of-way licenses shall apply:

(a) If the franchisee or rights-of-way licensee is not required to hold a certificate of public convenience and necessity issued by the Public Utilities Commission, the franchisee or rights-of-way licensee may not transfer or assign its agreement to any other person without review and approval by the County Commission. The franchisee or rights-of-way licensee must give written notice to the director of administrative services of its intent to transfer and assign the franchise or rights-of-way license and must name the intended transferee and assignee. The intended transferee and assignee must hold a valid County business license pursuant to Clark County Code Title 6 and submit the same information to the director of administrative services as is required for any applicant for a franchise or rights-of-way license in this chapter. Consent to a transfer and assignment by the County Commission shall not be unreasonably withheld.

(b) If the franchisee or rights-of-way licensee holds a certificate of convenience and necessity issued by the Public Utilities Commission, and the transfer and assignment of its certificate of public convenience and necessity has been approved by the Public Utilities Commission, its franchise or rights-of-way license may be transferred and assigned to the same person to whom the certificate of public convenience and necessity was transferred and assigned, or to such other person as approved by the Public Utilities Commission, without the prior approval of the County Commission, except that the transferee and assignee must obtain a valid County business license pursuant to Clark County Code Title 6 within thirty (30) days of transfer or assignment, and the franchisee or rights-of-way licensee and its transferee or assignee must provide a notarized document to the director of administrative services, acknowledging the transfer and assignment and that the transferee and assignee agrees to abide by all terms and conditions of the

franchise or rights-of-way license, signed by the franchisee's or rights-of-way licensee's and its transferee's and assignee's respective officers duly authorized to do so, on a form approved by the director of administrative services. The director of administrative services shall file such notarized document with the franchise or rights-of-way license agreement on file in the County Clerk's office.

5.01.170 Indemnification.

(a) To the maximum extent permitted by Nevada law, the franchisee or rights-of-way licensee 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 system. The franchisee or rights-of-way licensee 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 or rights-of-way licensee shall assume all risks in the operation of the system and shall be solely responsible and answerable for any and all injuries to persons or property arising out of the existence or performance of the franchise or rights-of-way license agreement. The amounts and types of required insurance coverage, as set forth in section 5.01.180 ("Insurance") of this chapter, shall in no way be construed as limiting the scope of indemnity set forth in this Section.

(c) The franchisee or rights-of-way licensee 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 or rights-of-way license agreement.

(d) The franchisee or rights-of-way licensee shall indemnify, save harmless, and defend the County, its officers and employees, individually and collectively, from damages which are incurred by or attributed to the County, including but not limited to costs, expenses, fees, and the actual amount of damage, arising from delays of such reconstruction, removal, or relocation work of the franchisee or rights-of-way licensee, beyond the time period provided for completion of such work, except to the extent that this provision is addressed otherwise in the franchise or rights-of-way license agreement.

5.01.180 Insurance.

(a) Securing and maintaining all insurance coverages, or demonstrating the ability to self-insure, for the minimum limits required herein is a condition of the franchise or rights-of-way license agreement, and no franchisee or rights-of-way licensee shall commence work in county rights-of-way until all insurance requirements have been met.

(b) All primary and excess insurance obtained for meeting the requirements of this section must be provided in compliance with Nevada Revised Statutes, Title 57, and any commercial insurance carrier providing any required coverage must have an A.M. Best rating of A-VII; and

(1) The franchisee or rights-of-way licensee shall provide a certificate of insurance naming Clark County, Nevada, as an additional insured, and stating that the policy will

not be canceled, terminated or altered by the insurer, nor will the insurer state an intention not to renew until thirty (30) days after providing written notification of such to the county manager; and

(2) The franchisee or rights-of-way licensee shall be solely responsible for payment of all premiums for insurance policies required herein.

(c) Within ten (10) days after approval of the franchise or rights-of-way license agreement by the County Commission, the franchisee or rights-of-way licensee shall provide proof of insurance to the director of administrative services, and maintain in full force and effect through the term of the franchise or rights-of-way license agreement the following insurance coverages, insuring against all damages arising out of or resulting from the installation, construction, operation, and maintenance of the system:

(1) General liability insurance, with minimum limits of two million dollars (\$2,000,000) per occurrence, which includes coverage for products, completed operations, blanket contractual liability, independent contractor hazard, broad form property damage, including but not limited to coverage for explosion, collapse and underground hazard.

(2) Automobile Liability insurance, with a minimum combined single limit per occurrence of two million dollars (\$2,000,000), and which includes coverage for non-owned and hired automobile liability. Automobile Liability insurance may be included as part of general liability insurance.

(3) Workers' Compensation insurance in accordance with Nevada Revised Statutes, Chapters 616A, 616B, 616C, 616D and 617.

(d) The minimum limits may be provided for through a single primary insurance policy providing such coverage or through addition of an Umbrella Liability policy written in excess of the General Liability, and Automobile Liability policies.

(e) If insurance coverage is obtained on a claims-made form, the franchisee or rights-of-way licensee shall provide proof of coverage for "prior acts" and proof of coverage for claims reported within two (2) years of any occurrence.

(f) The required insurance may be provided in the form of conventional insurance, self-insurance, or a combination of conventional insurance and self-insurance retention.

(g) The County Commission may approve a plan of self-insurance as meeting the requirements of this section. The franchisee or rights-of-way licensee may apply for such approval by written request to the director of administrative service, which shall include a detailed plan of self-insurance, including retention limits, named excess insurance carrier, if any, and a copy of audited financial statements. The County Commission may impose conditions or requirements, including posting of security. Such conditions or requirements may be unique from one franchisee or rights-of-way licensee to another. The County Commission may, at any time during the term of the franchise or rights-of-way license agreement, revoke approval of a plan of self-insurance, or impose requirements or conditions for continued approval. Failure to comply with the conditions or requirements imposed by the County Commission shall be deemed as failure to meet the requirement for insurance under this section, and as a violation of a condition of the franchise or rights-of-way license agreement.

5.01.190 Security for Performance.

(a) Prior to being issued a franchise or rights-of-way license, as security for compliance with franchise or rights-of-way license agreement terms and Clark County Code, including restoration of rights-of-way in which the franchisee or rights-of-way licensee has initiated projects to construct, maintain, operate, reconstruct, remove or relocate its facilities, the franchisee or

rights-of-way licensee shall provide, and maintain at the minimum level herein specified for the life of the agreement, security to the director of administrative services, in the form of either cash deposited with the director of administrative services, made payable to the Clark County Treasurer, an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond, in the amount of two hundred and fifty thousand dollars (\$250,000), or an amount agreed to by the County Commission, to remain in full force for the term of its franchise or rights-of-way license, any or all of which may be claimed by the County as payment for fees and penalties, and to recover losses resulting to the County from the franchisee's or rights-of-way licensee's failure to perform.

(b) If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

(1) All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.

(2) All bonds shall be issued by a surety company authorized to do business in the state of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision); companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.

(3) The franchisee or rights-of-way licensee shall require the attorney-of-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

(4) All bonds prepared by a licensed non-resident agent must be countersigned by a resident agent per Nevada Revised Statutes, section 680A.300.

(c) The terms for security and bonds contained in franchise and rights-of-way license agreements in effect prior to the adoption of this ordinance will remain in accordance with those agreements until renewal.

(d) If at any time the County draws upon such security fund, the franchisee or rights-of-way licensee shall within thirty (30) days of notice from the County replenish such security fund to the original minimum amount established in this section.

5.01.200 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 non-exclusive franchises or rights-of-way licenses within the County to other persons for the operation of systems pursuant to this chapter and as it may be amended.

5.01.210 Severability. If any provision, section, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this chapter. It is the intent of the County Commission in adopting this chapter that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end, all provisions of this chapter are declared to be severable.

5.01.220 Notice. All notices shall be sent to the franchisee or rights-of-way licensee at the address indicated in the franchise or rights-of-way license agreement. The franchisee or rights-of-way licensee shall notify the director of administrative services of any change of address within ten

(10) working days of such occurrence. Failure to provide notification and any resulting delay in receipt of notice, shall not excuse the franchisee or rights-of-way licensee from any obligation imposed by this chapter or by its franchise or rights-of-way license agreement, nor shall it serve as cause for reduction or removal of any fine or penalty imposed by the County.

5.01.230 Force Majeure. In the event a franchisee's or rights-of-way licensee's performance of any of the terms, conditions or obligations required by this chapter or franchise or rights-of-way license agreement is prevented by a cause or event beyond the control of the franchisee or rights-of-way licensee, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof.