

STATE OF NEVADA
NEVADA STATE FIRE MARSHAL PUBLIC WORKSHOP

July 9, 2014 – 8:00 a.m.

State Public Works Conference Room
515 E. Musser Street, #102
Carson City, NV 89711

MINUTES OF MEETING

Present in Carson City: Pete Mulvihill – Chief, Nevada State Fire Marshal Division
Elaine Pace – Chief of a Volunteer Fire Department, East Fork Fire & Paramedic District
JoAnne Hill – Public Member
Eric Guevin – Fire Marshal, Tahoe-Douglas Fire Protection District
Denesa Johnston – Administrative Assistant, Nevada State Fire Marshal Division
Doug Sartain – President, Certified Fire Protection
Mark Silverman – Vice President, Allstate Fire
Ross Rytting – Truckee Meadows Fire Department
Dennis Pinkerton – State Fire Marshal Division
Tom Martinez – State Fire Marshal Division
Lori DeGristina – State Fire Marshal's Division
Jeff Donahue – Reno Fire Department
Nathan Hastings – Deputy Attorney General, Attorney General's Office
Sylvia Lee – East Fork Fire & Paramedic District
Captain Dave Ruben – Carson City Fire Department

Present in Las Vegas: Donna McCafferty – Division of Public and Behavioral Health, Air Quality and Compliance Program Manager.
Phil Glessner – Communities Care Home
David Frommer – Executive Director, UNLV Planning and Construction
Terry Wilford – Division Chief of Training, Henderson Fire
Annika Day – Henderson Fire
Captain Eddie Cossey – Henderson Fire
Dr. Shawn A. McGivney
Fulton Cochran – Consultant

I. Call to Order, Roll Call and Introductions.

Chief Peter Mulvihill, Chief of the State Fire Marshal Division for the Nevada Department of Public Safety, called to order the Public Workshop, which was held to address two proposed regulations from the State Fire Marshal Division affecting Chapter 477 of the Nevada Administrative Code. He reviewed the agenda, made procedural suggestions for public comment and called roll.

Non-action Item

II. Public Comment

Donna McCafferty commented that the Division of Public and Behavioral Health is hosting a stakeholder meeting for residential care facilities regarding the State Fire Marshal's interpretation and enforcement of regulations that impact the number of Category 2 residents allowed to be within such facilities. The meeting is scheduled for July 23. Invitations will be sent shortly.

David Frommer commended Chief Mulvihill's office and the Legislative Counsel Bureau (LCB) for publicizing and sharing information regarding revisions. He submitted two technical comments related to the NAC477 adjustments in writing and wanted to put them on the record. He discussed the allowance rate for non-sprinkler buildings and asked that the new regulations be amended for a 5,000-square-foot maximum instead of a 2,500-square-foot maximum, coordinating with the Clark County Fire Code. Regarding parking shade structures, he suggested that the definition be broadened so that non-combustible shade structures would be exempt from the sprinkler requirement. This would allow for instances of non-combustible shade structures that are not for parking but for academic or recreational activities, as these structures can be difficult or impossible to sprinkle. Chief Mulvihill confirmed receipt of the written comments and made them part of the record.

III. Review of Chapter 477 of the Nevada Administrative Code for Possible Changes and a Proposed Draft of R125-13. Discussion/Possible Action

Chief Mulvihill stated this is a regulation relating to the qualifications of persons conducting or managing live fire training of firefighters in the state, the qualifications of persons designing live fire training structures and providing for the review of qualified persons of acquired structures to be used in live fire training evolutions.

The regulation amends NAC Section 477.2835, which now requires fire departments to follow NFPA 1403 for live fire training. This regulation followed a live fire training accident in Southern Nevada that caused lost time injuries to four firefighters and damaged personal protective equipment and breathing apparatus. Upon investigation, it was discovered that the instructors were not certified, the person managing the program was not certified, and the structures purpose-built for the live fire training evolution were designed by an individual who misrepresented himself as a licensed engineer. Parts of NFPA 1403 have been added to the regulations to clarify the requirements.

Chief Mulvihill pointed out a typo in Paragraph 5, which says State Fire Marshal hereby adopts by reference NFPA Standard 1401. That should read Standard 1041 and will be corrected in the next draft. Standard 1041 relates to fire service instructor certification.

Public Comment On Proposed Draft of R125-13

Eric Guevin asked to confirm that this regulation doesn't apply to smaller props. Chief Mulvihill replied that live fire training structures, structural live fire training is well-defined in NFPA 1403. He has a high confidence level as to what is covered. He asked attending fire service representatives if they had any question about what exactly this proposed regulation covers. Ross Rytting stated that props fall outside of 1403.

IV. Review of Chapter 477 of the Nevada Administrative Code for Possible Changes and a Proposed Draft of R123-13. Discussion/Possible Action

This is a comprehensive review and update to the regulations of the State Fire Marshal due to legislative changes in the 2011 and 2013 general sessions; an update to licensing requirements to comply with existing statute and industry practices; existing statutory requirements; and other matters properly relating thereto.

Chief Mulvihill reviewed the summary of changes from the Proposed Regulation of the State Fire Marshal Notice of Intent to Act Upon a Regulation. Paragraph 8 addresses an alternate design method for recognizing existing group adult homes. Chief Mulvihill stated that because of exceptional industry reaction to this alternate design method, Sections 4 and 26 will be pulled from the regulations. There will be no changes made to adult group care facilities in this regulation package. The State Fire Marshal Division will work with the health care and home care industry to put together in a separate, stand-alone regulation whatever changes the industry and the state agencies work out together.

Public Comment On Proposed Draft of R123-13

Verbal comments

Chief Mulvihill recognized David Frommer's prior verbal and written comments and asked for clarification. Chief Mulvihill stated that the current proposal is to exempt detached, non-combustible parking shade structures. Mr.

Frommer suggested deleting the word parking, which would exempt all detached, non-combustible shade structures. Chief Mulvihill asked whether it was necessary for the structure to be detached or if the attached metal awnings might also be of value. Mr. Frommer replied that attached metal awnings would be of value, and he would support removing the word detached so as to exempt all non-combustible shade structures. He did caution, however, that there might be practical issues of interpretation between the code review by the Fire Marshal Division versus the code review from the State Public Works Division. Chief Mulvihill said he will continue to work with State Public Works representatives on this item.

An unidentified person addressed Paragraph 6 of the Notice of Intent to Act Upon a Regulation, which deals with the deletion of the investigation requirement imposed on certain contractor categories. He asked for clarification of what exactly this addresses and wanted to ensure that this does not address the fire and life safety companies. Chief Mulvihill said he believed the intention of the division was to streamline the licensing process, to go to an online application and renewal system and to be consistent with requirements between different license disciplines. Under the current system, a background investigation is required only in the category of portable fire extinguishers and fixed fire extinguishing systems. In order to be consistent among license disciplines, either all should require a background investigation or none should, and the budget does not allow for extension of background checks at this time. An unidentified person posited a scenario wherein lack of a background investigation might result in catastrophe and added that lack of budget funds might not be an acceptable excuse in such an event. He suggested keeping the investigation requirement for portable fire extinguishers and fixed fire extinguishing systems and potentially adding an investigation requirement for any licensee of the State Fire Marshal in the realm of fire and life safety. Nathan Hastings raised an issue of legal language interpretation and suggested that the proposed language deletion may not be sufficient to remove the background investigation requirement from the regulation for portable fire extinguishers and fixed fire extinguishing systems.

Jeff Donahue had a question about the cost of a background check. Chief Mulvihill said he did not know and will inquire. Mr. Donahue asked whether the cost of the background check could be borne by industry or in the licensing fee itself. Chief Mulvihill said that since that would be a fiscal impact, it should be a separate measure.

Dr. Shawn McGivney arrived and introduced himself. Chief Mulvihill briefly recapped the meeting. Dr. McGivney asked to give a short public comment and submit material. He stated his appreciation for past meetings and continued conversations. He had a question about the section of the workshop document that states that no industry impact statement is needed. Dr. McGivney disagrees and believes an industry impact statement is essential given the devastation that the changes will cause to the industry financially, socially and to the state. Dr. McGivney said they would like to reserve the right to have the 84-page proposed regulation document reviewed by their code expert because they believe there are other sections that indirectly and directly affect residential care homes, even if it is just on a relative basis for safety. Dr. McGivney said he and Teresa speak on behalf of many in the residential care industry who share concerns regarding how the changes of interpretation by the Office of the Fire Marshal will negatively impact the care given to disabled residents and the industry as a whole. This support is demonstrated by 180 financial impact statements, over 100 community surveys, and attendance at and participation in legislative council meetings. Dr. McGivney commented on other agencies that allegedly represent the industry. He noted he is a paid member of ECHO and has not been informed by its leadership as to their actions on behalf of the residential care home industry to resolve the issues relating to the Office of the Fire Marshal. Dr. McGivney addressed the change in occupancy of April 2012 and March 2014 and said they have a huge negative financial and social impact. He asked for clarification on the effects of the withdrawal of Sections 4 and 26. He believes that the code, which has been proven safe by a 17-year history of no fire deaths, is a good default code while industry analysis and impact is being assessed and provided a related proposal for submission.

Doug Sartain stated a prior concern that Page 14, Section 906.1 was completely stricken. A conversation has clarified that issue. Chief Mulvihill clarified that what is being stricken is the previous revision in the regulations because the model code changed to reflect what was being required. Mr. Sartain said he believes Mark wants to discuss the same thing but on Page 14 with the examination of the internal components.

Mark Silverman spoke on NFPA Standard 10. He encouraged the State Fire Marshal's Office to adopt NFPA 10, no more, no less. Nevada is the only state in the country that requires extinguishers be broken down yearly. No manufacturer recommends that this be done. Mr. Silverman believes this is an undue burden on private business and taxpayers. He suggests yearly inspections, which are required in forty-nine states and most countries. Most fire

extinguishers exist in controlled environments. Doug Sartain said that while he appreciates Mr. Silverman's proposal to adopt NFPA Standard 10, he disagreed. He discussed the annual tear-down proposal, made in 2002. He said that the intent behind the national standard was to service all fire extinguishers on an annual basis in lieu of servicing an extinguisher after every single day it is exposed to temperature exceeding recommendations, in light of Nevada's extreme warm temperatures. He said he believes annual service would save both time and money. He believes that approximately 60 to 70 percent of fire extinguishers are exposed to temperatures for which they are not designed. He said he believes there is no price difference between inspection and teardown, and they should err on the side of caution. Mr. Silverman replied that his customers, including owners of casinos and restaurants in multiple states, question why this is required in Nevada and nowhere else and believe it to be a burden. Eric Guevin asked Mr. Silverman why annual teardown would constitute a burden if the cost is the same as inspection. Mr. Silverman said he doesn't know if the cost is the same. Mr. Sartain said the reality is that Nevada has issues with temperature, there is no cost savings to not do it, and he disagrees with Mr. Silverman. He commended the state in being proactive in writing the codes. He brought attention to the number of extinguisher failures documented because of the annual teardown. Jeff Donahue asked Mr. Sartain to re-read the NFPA section. Mr. Sartain did so: When subject to temperatures at or above their listed rating, store pressure extinguishers that required 12-year hydrostatic date shall be emptied and subject to the applicable maintenance and recharge procedures on an annual basis. Mr. Sartain also stated it would be impractical to provide a separate code for different types of structures, and it would not result in cost savings. Mr. Donahue said that as AHJ, under the national standard, he would expect only to enforce annual teardown on extinguishers that fall into that category of exposure to temperatures beyond their storage rating. Mr. Sartain said all fire extinguishers are subject to annual teardown because of Nevada's extreme temperatures and the impracticability of having multiple servicing requirements. Mr. Donahue raised an issue of occupant-use fire suppression systems. Mr. Sartain suggested writing code mandating fire protection companies train occupants, which is required by OSHA but not enforced. Chief Mulvihill clarified that the current requirement is for annual teardown of portable fire extinguishers. To change from that, there needs to be a burden of proof and broad-based support. Sylvia Lee said that change from the current system could result in confusion and make the job of fire inspection more difficult. Mr. Silverman replied that the proposed change would only mean that annual inspection would be required yearly if the extinguisher is in an atmosphere that does not exceed 100 degrees. Mr. Sartain added that the yearly teardown can help uncover design flaws and other causes of failure that are not due to temperature exposure.

Doug Sartain raised a question on Page 21, Section 477.300, Number 2: A person who performs any of the following work in the state, other than an employee of another, must obtain a license in accordance with this chapter, 477 NRS, and shall require each employee by him or her to perform that work to obtain the appropriate certification of registration, whether it's selling, servicing, maintaining, installing fire extinguishers, and the list goes on. He asked whether the intent was that anybody engaging in any of those activities must have a license. Chief Mulvihill responded that the company is licensed, and the individuals are certificate of registration holders. The company as an entity holds the license. The employees of that company have certificates of registration. Mr. Sartain asked how this might apply to an out-of-state company or individual who contracts with a Nevada company. Chief Mulvihill said that the contractor licensing laws, overseen by the State Contractors Board, would require that company to be appropriately licensed to sub-contract work to the Nevada company. An unidentified man commented that these requirements would be in place in addition to contractor licensing laws. Chief Mulvihill added that complaints about unlicensed, out-of-state companies are forwarded to the Secretary of State and other state agencies are involved to ensure regulation compliance.

Doug Sartain raised a question on Page 33, Section 477.335. Chief Mulvihill clarified that the NFPA standards used to require nothing more than an annual frequency for most inspections. After the hotel fires, quarterly inspections were required, though only the annual inspection had to be done by a licensed contractor. A property manager or building owner could designate a person to perform a cursory visual quarterly inspection. Recent NFPA standards have required some items be inspected on a semi-annual or quarterly basis. The intent of the current draft is to follow the NFPA recommendation when it mandates inspection by a licensed contractor certificate of registration holder and to require quarterly visual inspection by a qualified individual when not addressed or mandated by the NFPA. The intent is for the regulations to reflect that NFPA standards, particularly 72 and 25, require licensed inspection more frequently than on an annual basis. Mr. Sartain asked what constitutes a qualified individual. Chief Mulvihill said it is the responsibility of the building owner or property manager to designate a qualified employee and that employee does not have to be approved by his office.

Doug Sartain addressed Page 36. He asked why this requirement is being stricken. Chief Mulvihill said they received a formal letter from the State Contractors Board stating that they do not license contractors for portable fire extinguishers, and they have no intention of doing so. He said this could be revisited if they do establish a license category for firms that install and maintain portable fire extinguishers in the future. Currently the regulations require a company to obtain something that does not exist and that the agency does not wish to provide.

Nathan Hastings addressed Paragraph 1. He asked if the words "install or" should be stricken for consistency, where it reads a firm that is licensed to install or maintain. Chief Mulvihill responded no because Subparagraphs A and B still apply. Subparagraph C would only apply to the fixed fire extinguishing system. Chief Mulvihill clarified that the firm is licensed by the Division and not by the State Contractors Board.

Doug Sartain addressed Page 46, 477.465, 1D. He wondered when wouldn't this be applicable. Chief Mulvihill responded that government agencies licensed by his office are not required to have a state business license. They obtain an exemption number. This language was added by the legal staff at LCB to comply with a bill from the last session that addressed state business licensing. Some nonprofits may also be exempt from a state business license.

Doug Sartain addressed Page 50, 477.540, Number 2: the owner of any sprinkler system shall conduct or cause to be conducted an annual test of their system. Chief Mulvihill clarified that this section was intended to address sprinkler systems in residential, one- and two-family dwellings. This wording will be revised to reflect the intent.

Written Comments

Chief Mulvihill acknowledged receipt of a comment from David Frommer, the Executive Director of Planning and Construction at UNLV, discussed above.

Captain Dave Ruben from the Carson City Fire Department submitted questions. Captain Ruben asked why the reference document is adopting the 2011 edition of NFPA 96 instead of the 2014 edition. Chief Mulvihill explained that the editions being adopted were published in the 2013 soft-bound volume set put out by NFPA. This is to start the code adoption process with a known quantity and to facilitate provision of multiple sets of these documents to libraries and other government agencies. He added that newer editions may not be fully vetted.

Captain Ruben also found five areas in the regulations where impairment notification varies slightly according to different types of systems when found by a contractor. He suggested that the requirements be made consistent. Captain Ruben suggested that since these are all life safety systems, the notification requirement could be one business day. Having notification requirements ranging from one day to 30 days leads to confusion. An unidentified man added that consistency is desirable but also suggested caution and questioned whether there should be degrees of impairments to avoid burdening agencies with minor impairments that do not constitute a life safety issue. He said he believes one business day notification would work for the industry. An unidentified man referred to categories of distinction, such as between impairment and deficiency. Chief Mulvihill said he supports impairment notification because it removes the responsibility and burden of failure from the contractor after such notification. An unidentified man suggested clarification of what defines an impairment. Chief Mulvihill said he could work on a policy approach. Fulton Cochran stated that they created an appendix chapter adopted by Clark County and Henderson. This document was done as part of the Southern Nevada Fire Code Committee and is an extensive review of this discussion and sets forth regulations and definitions, defining levels of impairment. Mr. Cochran recommended that the group review the appendix chapters as a starting point. An unidentified man asked for comment from industry personnel regarding the fact that kitchen suppression and hood suppression systems are not addressed. Chief Mulvihill responded that the current regulations require next-day notification if a grease removal system is unclean, but there is no specified impairment notification of fire suppression system impairment. Mr. Silverman said they take the same approach as the sprinkler companies, that if the system is not functional, the fire department is notified immediately, but they may allow time for customer correction of minor impairments. Chief Mulvihill asked Mr. Cochran if the appendix document addressed kitchen hood systems, in addition to traditional fire protection systems. Mr. Cochran said he wasn't sure. Sylvia Lee asked Mr. Silverman if an impairment that required immediate notification also would include an impairment tab. Mr. Silverman answered affirmatively, and Chief Mulvihill confirmed this. Chief Mulvihill said they will draft proposed language and meet with representatives of the fire service and industry.

Steven DiGiovanni of the Clark County Fire Department submitted a written comment regarding the annual servicing of fire extinguishers. He suggested differentiating between sprinklered buildings and unsprinklered buildings.

Chief Mulvihill received an email, which he was unable to open, from Lynn Nielson of the City of Henderson. Mr. Nielson also passed on two verbal items to Chief Mulvihill. He was concerned about regulations for the sky lanterns and Chinese lanterns. He noted that the regulations do not specifically prohibit the product. Chief Mulvihill asked Mr. Nielson to provide existing statutes regulating the control of open flame. Mr. Nielson also had comments related to NFPA 13R, which had been previously restricted to no more than two-story buildings. Now the full NFPA definition of 13R will be allowed up to four stories from this point forward. The track record for 13R systems from NFPA has been effective. The cost differential between 13R and 13 is significant, particularly in Southern Nevada.

Chief Mulvihill also stated that written comments received through the close of business Friday will be incorporated into the package.

Chief Mulvihill closed the Public Workshop for R123-13. There will be a redraft followed by a public hearing.

V. Public Comment

Discussion/Possible Action

Fulton Cochran told Mr. Sartain that he believes ICC has a fire extinguisher certification on their contractor side if he wants to follow up. Mr. Sartain thanked him.

Chief Mulvihill thanked Officer Kolpak for his help in Las Vegas.

Chief Mulvihill reiterated that written comments are welcome through the close of business on Friday. He reviewed recent staff changes. The issue on adult care homes is continuing. A stakeholder meeting will be held on July 23 at 10:00 a.m., which will be videoconferenced between Carson City and Las Vegas at State Health's offices. The proposal in Sections 4 and 26 was developed with industry input but met with resistance and has been withdrawn.

Chief Mulvihill thanked everybody for their attendance and input.

VI. Adjournment

Discussion/Possible Action

Chief Mulvihill adjourned the Public Workshop.