

MINUTES

Nevada State Fire Marshal Public Workshop

July 20, 2022

Locations:

State Fire Marshal Division: 107 Jacobsen Way, Carson City, Nevada

And teleconference:

Teleconference to 775-687-0999, Participants Code 47525#

Present:

Joe Rodriguez – Lieutenant, Nevada State Fire Marshal Division
Al Ruiz - Bureau Chief of Fire Protection and Engineering, Nevada State Fire Marshal Division
Mike Dzyak - Chief, Nevada State Fire Marshal Division
Connie Etchison - Nevada State Fire Marshal Division
Nicole Hoekstra - Nevada State Fire Marshall Division
Dale Way - Deputy Fire Chief, Truckee Meadows Fire Protection Dist.
Nathan Hastings - Attorney General's Office

1. CALL TO ORDER (Non-Action Item.)

The meeting was called to order at 9:03 a.m.

2. PUBLIC COMMENT (Non-Action Item.)

There were no public comments.

3. The purpose of the workshop is to solicit comments from the interested persons on the following general topics that may be addressed in the proposed regulations:

Proposed changes to regulations (NAC477) may include but not limited to fireworks transactions, fee increases including fees for Certificates of Compliance, Plans Examination and Inspections. Proposed changes may include replacing or updating words in the text, clarifying language, simplifying categories and other possible suggestions to include document retention of fireworks sales.

Joe Rodriguez stated the purpose of this workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations. We're looking at making a few changes to NAC 477. This may include but not limited to fireworks transactions, fee increases to include Certificates of Compliance, Plans Examination and Inspections. Proposed changes may include replacing and updating words in a text, clarifying language, and simplifying categories and other possible suggestions to include document

retention of fireworks. So I'd like to start with looking at the plans increase or increase in fees.

Al Ruiz stated one of the aspects of this proposed change is an increase to inspection fees and plan review fees and also cleaning up some of the verbiage as to when we do inspections and re-inspections and when we charge and how we charge for these inspections and re-inspections, and also charging for plan resubmittals. NAC 477.287 talks about variance submittals and we're changing this just to include verbiage that the submittals must be submitted by professional design engineer, stamped with their credentials. And we're also including a base fee of 132 per hour or a fraction thereof, and this is for variance request.

Nathan Hastings stated my sense of the way that a workshop like this has to go is that if you had like a certain amount of the public here that going through and giving a general explanation for each one to inform the public's ability to make comments or ask questions or give feedback would be prudent and appropriate. But there's no requirement that like in a workshop like this that you have to put in any of that like on the records, so to speak. There's no record that you have to make and keep. Yes, you have to keep minutes of this meeting, a record of the meeting. But there is no legal requirement to go through and state everything out on the record like of a description of all the changes you're going to make. So from an efficiency standpoint, my suggestion for this meeting would be-again, if you had, I don't know, ten people here or something, certainly you would tell the people we're going to have questions, people online and starting like this and going through, I think, would be a good thing to do. I think basically it's not necessary unless, Chief, if you have specifics and Joe you are here, that you've got the write-up of what the changes are, you could look through it and ask questions about any that you have questions about or make comments on any that you have comments about as a member of the public, so to speak. But otherwise, I don't think you need to go through them all.

Al Ruiz stated in general, what we're attempting to do with fees is to increase fees across the board for inspections and plan review by 20 percent. It's been 20-plus years that we have had a change in fees, so basically what we're trying to do is catch up to what should be appropriate, and it's mostly cost of service for these services and not for profits. So we're just increasing 20 percent because it's been so long that we've done so, and we're past due for that.

Mike Dzyak stated we also have gone to 100 percent fee based as a division. So we can no longer afford to do things that cost us money. We have no general funds to fall back on. Everything we do has to be charged appropriately, which is a big reason for this.

Joe Rodriguez stated I think one other big change that should be noted is fireworks sales. One of the biggest things is maintaining documentation for a minimum of 3 years, and that is in compliance with our IFC, more specifically, for the 603, which states that consumer fireworks records will be maintained for a

minimum of 3 years, and in the matter of interest to public safety, we're looking at the minimum age to purchase fireworks is 18 years of age. There is no state NAC or law that covers that and that's just a matter of public safety.

Nathan Hastings stated when you do any public meeting, in the open law meeting, you have to, as a matter of complying with the statute, have a period of public comment at the beginning of the meeting and a period of comment at the end of the meeting. But you don't have to be in one of those at times of public comment for someone to comment in a workshop on the regulations or ask questions about them. That's this middle part-that's the substance of the meeting that you're in now.

Dale Way asked a question on the age requirement. I support how that's going to or what impact you believe that might have in Southern Nevada with the safe and sane sales. Because right now, the guidelines for Southern Nevada, I believe, when we did that years ago, set the minimum at like 16 because it obviously then you have at least usually some form of identification, but I fully support 18.

Joe Rodriguez stated there is no state law. A lot of this stuff has been put on the counties. So Nye County might say hey, do you know where to buy fireworks in this county [inaudible 00:07:31] age, make it 21, whatever the county ordinance might be. But for statewide, there's no minimum. So there's nothing that really governs like Lander County. I'm not saying they are, but if there is no age.

Mike Dzyak stated in addition to that, it's specific to the 1.3G Division, 1.4G Division, 1.4S, and I don't know where the safe and sane stuff falls under that. I don't have a lot of experience with it, but the reason we went with 18 is that's a consenting adult and basically as a standard, and there has to be something. I mean, just because Clark County says it's 16 to purchase safe and sane, we have all these counties out here that need some kind of regulation because there isn't any when they're buying those higher-grade fireworks in Pahrump or Battle Mountain, and that's really the target of the age determination.

Nathan Hastings stated just to be comprehensive and make sure that we're careful and conservative, just looking here in the chapter of the NAC where this- so this 667, it looks like it's going to be a new section? The authorizing chapter that's cited everywhere and the authorizing NRS chapter that's cited for the authority to make regs is 030. So let me just say that, that's the duties, powers of the Fire Marshal.

Mike Dzyak stated and if you read that chapter, that's where it will say that fire marshal adopts regulations and enforces them in the following areas. If you read it, it'll go right to fireworks as being one of those.

Nathan Hastings asked where it says explosives and pyrotechnics?

Mike Dzyak stated actually, it says “fireworks”, specific. The word “fireworks” is used in the, in NRS 477.030. I think it’s Section B.

Nathan Hastings stated adopt regulations relating to the storage and use of-I’m looking at it. The read would be and the trigger would be-when it says “the storage and use of combustibles, flammables, and fireworks”, therefore fireworks use implies the purchase as well as use. When we’re saying I can regulate use, that includes I can put an age number on the time of purchase.

Mike Dzyak stated I believe it does. If you used a different word, it would exclude other aspects of it and again, my interpretation of the intent was to be able to regulate fireworks and the sales of fireworks as they pertain to the public.

Nathan Hastings states there’s two ways that you can approach a workshop and the rule-making process. from a practical standpoint in terms of the submission to LCB. If I recall, you guys are doing it the way where you are doing the initial workshop right upfront very first before anything is submitted to LCB. You can also submit your draft to LCB, have them work it once, put things in the language and format they want, send it back to you and then do the workshop? The only-not problem, but logistical consideration when you do it this way is you will have the workshop, you will solicit and potentially obtain any public comment, decide whether you want to incorporate it. Again, this isn’t at the adoption hearing stage. You don’t even have to say anything about on the record. You do or don’t incorporate any concepts from the public comment, and then your draft has to go to LCB. Once it comes back from them-I’m going to have to look at this again-whether you have to do another workshop at that stage before the adoption hearing or if LCB doesn’t change significantly, so you put this draft before the public now in this workshop. It’ll come back from LCB with certain changes, depending on whether those are just format kind of stuff or whether there’s anything substantive. We’ll look at this and we’ll talk about it, whether you can move right to adoption stage or we have to do another workshop.

Mike Dzyak stated we’ll do what we need to do.

Nathan Hastings stated the reason I bring it up, though, is in the context of when things get submitted to LCB, they don’t just do like a language thing. Their staff people and staff attorneys do an authority thing too where they say if they-they will look at it and look at any of the proposed provisions, look at the authorizing statute and say whether they have any concerns about does this fit in the scope of the authorizing statute. So I’m comfortable with it. Lots of times something like an age limit, you often will see that more in statute than in regulation.

Mike Dzyak stated if that’s the direction that they ask me to take, then that’s what we’ll take and we’ll go forward, move forward with the, with the other portions of it. I understand we have to create a separate chapter. My goal is not to become the all-powerful fireworks monitor but to get some common-sense things onto the

books. And if LCB feels that that's not clear [inaudible 00:14:25] NRS 477.030, then we'll do it another way.

Nathan Hastings stated I just wanted to [inaudible 00:14:29] There could be some discussion on that.

Dale Way stated just kind of background. I brought it up just because, like I said, I know that-what goes on down there. I fully support 18 because that's what I really wanted, even for the safe and sane booths at that time, and group wise, that didn't pan out. So I think that's definitely appropriate and I guess I was kind of saying that too because it goes back to 030, that language, that one of the things is this is not that time but one of the things I support fully is that Clark County shouldn't be allowed to make its own regulations. I think the state fire marshal needs to set the minimum for the state as had previously been done, and ICC (International Code Council) has been making a bigger push for this nationwide where some cities are not as resilient as they could be because there is no state minimum with codes, whether it be building and fire, and since you set the minimum codes there, I think that's just another area that we need to kind of pay attention to at some point.

Mike Dzyak stated I have had calls from the political aspect-the political player in Clark County that handles most of their BDRs and their session thing. And they are very supportive of this and she was going to call in and I guess something happened. But they're very supportive of this. They're looking for help down there, something to point out, so that's why I felt comfortable across the board. None of this was knee-jerk. The fees, we reached out to our biggest people, the fire service when we put out the public comment. I've announced it at the Board of Fire Services, at the Nevada fire chief's meetings. I've said this was our intention all along. Let's just get some baseline, establish a firework hard deck, if you will.

Nathan Hastings stated another quick follow-up question on the same subject. The industry on like the retail side for the booths like the safe and sane, if a certain percentage of their bread and butter or whatever is in kids, teenagers making purchases, they presumably are going to have a take on this. But there's no one here at the workshop. But it seems to me that in addition to the chance that like LCB might have a take on the statutory authority aspect of it, if industry retail for the fireworks is going to take issue, my thought is that it's better to make sure you know where they're at and what they think, not policy wise but legally. Not that you ask them, hey, do you think that this, do you think that this works, but you ask them their take because they will tell you if they don't like it and they don't like it enough that they're going to make a stink about it, I think that you're better knowing that before you pass the regurgitation than once you go to enforce it and then it's litigation, because in litigation, the take would be the conversation we're having about like does LCB think if it's in the statute. Whether LCB does or not, any entity that has standing to make a claim, they will put forth whether they think it does in a court. There's nobody here from industry

or that's on the phone, but have you had conversations? Do you know whether there's a chance that they're going to balk at that?

Mike Dzyak stated I haven't had conversations with them. I assume they're going to balk at this. I assume that they're going to have issue with any type of regulations placed on them. I can base that on last session when Senator Oren Shaw's [ph] bill went through and they basically want no regulation. They want everybody to leave them alone and, and I understand it, and I don't think anything in here [inaudible 00:19:23] I honestly-we don't deal in safe and sane. The state law says fireworks are illegal unless the county or city body adopts those regulations. So to me, I have to live with what goes on in the counties that adopt those. I guess it could. They have the opportunity, we put the public comment on. If they want to argue for 16 and we feel that's appropriate, then that's what we'll do. But I have to base it on something. You have to start somewhere, in my opinion, and that was say hey, what is an adult? Can an adult buy fireworks? Because we do have a firework law land problem in Nevada. We have a lot of fire started by fireworks. I'm supposed to be the one that establishes rules and regulations to try to mitigate that as best we can and if you have juveniles with fireworks, purchasing fireworks, I don't feel like that was the way we should go. But I anticipate they will argue again.

Nathan Hastings stated so just to be clear, like you are a statutorily authorized policy maker, so I'm not questioning that.

Mike Dzyak stated no, I understand.

Nathan Hastings stated I'm just saying hey, this is an important conversation to have ahead to be proactive and cognizant of what are the chances, and so independent of a workshop, independent of the actual statutory components of the rule-making process that you have to follow and all that, I just think that it would be prudent to think of the best way politically to maybe have there be some like conversations and just get a sense of what the vibe what the vibe is.

Mike Dzyak stated I am 100 percent shocked that there is no one representing the fireworks industry. I was fully prepared. If Clark County knew about the workshop, there was no reason to believe that the fireworks lobby didn't know about the workshop. And I figured this is where we would have those discussions. So this kind of changes things and I'll have Lieutenant Rodriguez reach out to them and just say hey, you guys know this is going and we can get a feel for that. But like I said, I think it's just common sense. And Dale brought up the good point that the 16 down there, I didn't know that. We don't deal in safe and sane. We only deal in the larger fireworks because there's Clark County and-I don't even think Washoe County adopted the safe and sane. It's just Clark County. So they kind of opened that box and now they're-my feeling is like they need some help. They need a hard deck, and I'm trying to give that to them and help them as well.

Mike Dzyak asked if there was more public comment.

Joe Rodriguez stated that was still item number 3. We're exchanging the fees and fireworks possible adoptions for this work program and the final agenda item would be final public comment.

4. PUBLIC COMMENT (Non-Action Item.)

There were no public comments.

5. ADJOURNMENT (Discussion/For Possible Action.)

The meeting was adjourned.