

**ADOPTED REGULATION OF
THE STATE BOARD OF HEALTH**

LCB File No. R101-07

Effective October 31, 2007

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-3, NRS 439.150, 439.200 and 446.940; §4, NRS 439.150 and 439.200.

A REGULATION relating to public health; increasing certain fees relating to permits, plans and certificates for food establishments; and providing other matters properly relating thereto.

Section 1. NAC 446.830 is hereby amended to read as follows:

446.830 1. The Health Division shall charge and collect fees for annual permits and other services in accordance with the following schedule, except as otherwise provided in NRS 576.128 and except in areas where the laws and regulations governing food establishments are administered by local health authorities:

Main Facilities	Fees
For a restaurant, establishment for drinking, main kitchen, bar for beer, snack bar, concession, service bar, portable food unit or buffet	
For the first 40 seats	[\$155] \$200
Plus \$1.50 for each additional seat	
For a restaurant which provides food to take out	

Main Facilities

Fees

For the first 40 seats	[155] 200
Plus \$1.50 for each additional seat	
For each window of a drive-in or service station	55
For a food establishment that has been exempted pursuant to NRS 446.870	50
For a caterer.....	125
For a food establishment within:	
A bed and breakfast facility.....	[50] 166
A charter school, private school or public school	[50] 150
A correctional facility.....	[50] 166
A child care facility	[25] 166

Supporting Facilities

Fees

For a special kitchen, kitchen for the preparation of banquets, kitchen for a bakery, kitchen for the preparation of meat, pantry for a kitchen, garde-manger for cold meat or buffet having an area of:	
500 square feet or less	\$115
More than 500 square feet	130
Portable bars, annual fee for each	85
Barbecue.....	110

Wholesale or Retail Services for Food

Fees

For a market, a service providing candy, package liquor, health food, dry storage, meat, poultry, seafood, refrigerated storage, storage of produce or bakery sales, a food warehouse or a market for produce which has an area of:

Less than 1,000 square feet	[\$150] \$166
1,000 - 3,000 square feet	210
3,001 - 5,000 square feet	230
More than 5,000 square feet	[300] 332

Wholesale or Retail Processors of Food

Fees

For a plant for bottling, processing plant for food, market for meat, processing plant for game, bakery, plant for ice, delicatessen or processing plant for candy which has an area of:

Less than 1,000 square feet	[\$150] \$166
1,000 - 3,000 square feet	210
3,001 - 5,000 square feet	[230] 249
More than 5,000 square feet	[300] 332

For a temporary food establishment, per unit50

For a temporary food establishment which is operated by a religious,
charitable or other nonprofit organization if the sale of food from the
establishment occurs off the premises of the organization, per unit.....25

For a food processing establishment, for each label reviewed..... ~~70~~ 83

For the testing of food products at a food processing establishmentActual costs

2. As used in this section:

- (a) “Bed and breakfast facility” has the meaning ascribed to it in NAC 446.845.
- (b) “Charter school” has the meaning ascribed to it in NRS 385.007.
- (c) “Child care facility” means an establishment licensed pursuant to chapter 432A of NRS to provide care for 10 or more children.
- (d) “Correctional facility” means any local detention facility, county jail, state prison, reformatory or other correctional center, including, without limitation, any facility for the detention of juvenile offenders, operated by or under the supervision of the State or a subdivision of the State for the custody, care or training of offenders.
- (e) “Private school” has the meaning ascribed to it in NRS 394.103.
- (f) “Public school” has the meaning ascribed to it in NRS 385.007.
- (g) “Religious, charitable or other nonprofit organization” means a corporation for public benefit as defined in NRS 82.021.

Sec. 2. NAC 446.835 is hereby amended to read as follows:

446.835 The Health Division shall charge and collect the following fees for reviewing plans for food establishments, except in areas where the laws and regulations governing food establishments are administered by local health authorities:

For a plan for a new establishment.....	[\$100] \$498
Plus an amount equal to the fee for an annual permit for the establishment being reviewed.	
For a plan for remodeling an establishment which has a permit.....	[\$100] 332
Plus an amount equal to one-half of the fee for an annual permit for the establishment after remodeling.	

Sec. 3. NAC 446.840 is hereby amended to read as follows:

446.840 The Health Division shall charge and collect fees for its services in accordance with the following schedule, except in areas where the laws and regulations governing the sanitation of mobile units and servicing depots are administered by local health authorities:

For an annual permit for each mobile unit for food and drink, self-service mobile unit, including a self-service mobile unit for ice cream and candy, or a servicing depot	[\$125] \$166
For reviewing plans of a mobile unit, a self-service mobile unit or a servicing depot	[\$55] 166
For reviewing plans for remodeling a mobile unit, a self-service mobile unit or a servicing depot which has a permit	[\$35] 166

Sec. 4. NAC 446.844 is hereby amended to read as follows:

446.844 1. A holder of a permit issued pursuant to this chapter or chapter 446 of NRS may apply to the Health Division for a certificate of free sale. The application must be submitted on a form approved by the Health Division and include:

- (a) The full name and post office address of the applicant;
- (b) A statement concerning whether the applicant is a natural person, firm or corporation and, if a partnership, the names of the partners, together with their addresses; and
- (c) The signature of the applicant or applicants.

2. Upon receipt of an application for a certificate of free sale and the fee required pursuant to subsection 4, the Health Division shall determine whether the applicant is in compliance with the provisions of this chapter and chapter 446 of NRS. If the Health Division determines that the applicant is in compliance with the provisions of this chapter and chapter 446 of NRS, the Health Division may issue a certificate of free sale to the applicant.

3. A certificate of free sale issued pursuant to this section is not transferable from person to person or from place to place.

4. The Health Division shall charge and collect ~~[\$20]~~ **\$41** for each certificate of free sale.

5. As used in this section, “certificate of free sale” means a certificate issued by the Health Division which verifies compliance with the provisions of this chapter and chapter 446 of NRS.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R101-07**

The State Board of Health adopted regulations assigned LCB File No. R101-07 which pertain to chapters 446 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Pursuant to NRS 233B.0608 (2)(a), BHPS has consulted with owners and officers of all small businesses that are likely to be affected by the proposed regulation via informal meetings, telephone and written correspondence.

Comment was solicited from the regulated community, in that each food establishment licensee was sent a copy of the proposed regulations and the small business impact questionnaire on August 3, 2007. Additionally, all known interested persons were provided with copies of the proposed regulations. Notice of proposed changes were sent to all Bureau offices, main county libraries and facilities on the Health Division listing for posting of proposed regulations. All the above were notified by direct mailing of scheduled workshops. Notice of proposed workshop was published on August 5, 2007 in the Reno Gazette-Journal, Las Vegas Review-Journal, Nevada Appeal and the Elko Daily Free Press. The public workshop is being held at 9:30 a.m. on August 21, 2007, by videoconference between Bureau of Licensure and Certification, 1550 East College Parkway, Suite 158, Carson City, Nevada, Bureau of Licensure and Certification, 4220 South Maryland Parkway, Suite 810, Las Vegas, Nevada, and Great Basin College, Griswold Hall, 701 Walnut Street, Elko, Nevada.

Summary of Response

Only one (1) person attended the workshop.

One person testified/commented at the public workshop. Virginia Beck, Dept. of Education, voiced her concern over the fee increase for a food establishment within a child care facility from \$25 to \$166. It was explained that the fee was raised to cover half of the cost of doing the inspection.

Fifteen (15) telephone calls were received relating to NAC 446.

Approximately 52 Small Business Impact Questionnaires (SBIQ) were received. 44 were from small businesses and the other 8 from big businesses. The statistics below are from the comments of the 44 small businesses.

1. Twenty-six (26) businesses commented that the changes would have “no” adverse economic effect on their business and it would have no beneficial effect on their business.

2. Eighteen (18) businesses commented that the changes would have an adverse economic effect on their business. Four (4) establishments stated that the fee increase could put them out of business.

3. Twelve (12) businesses commented that the changes would have an indirect adverse affect on their business. Most of these businesses commented that it would require them to increase the prices of the food for their customers.

4. Three (3) businesses commented that the changes would cause them to have less money to operate in an already cash strapped environment.

5. One business commented that the fees for a plan review for a new food establishment was way too high and it would make it hard for a small business to get off the ground.

6. One business commented that the changes might require the tuition at the school to be increased to cover their food budget.

7. One business commented, “how can increased taxes benefit my business.”

A summary of the response can be obtained by contacting:

Bob Stulac
Environmental Health Specialist
Environmental Health Section
Bureau of Health Protection Services
4150 Technology Way, Suite 300
Carson City, Nevada 89706
Telephone: 775-687-7532
Telefax: 775-687-7552

2. The number of persons who:

(a) Attended the Hearing: Seven (7) in Carson City, and one (1) in Las Vegas.

(b) Testified at the Hearing: Six (6).

(c) Submitted to the agency written comments: One (1).

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

See item #1 above,

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation.

Due to concerns raised at the public hearing regarding the fees for temporary food establishments, the fees for these establishments will remain the same and will not be increase as proposed.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case include both the adverse and beneficial effects, and both immediate and long term effects.

A. Anticipated effects on the businesses which NAC 446 regulates:

1. Adverse: Permit fees will increase, however, the majority of the questionnaires stated that the increased fees will not have an adverse economic effect.
2. Beneficial: Better food safety protection to the businesses customers from increased inspections.
3. Immediate: There will be better assistance and presence at food establishments to help ensure compliance with the food code and to prevent foodborne illness outbreaks.
4. Long Term: None

B. Anticipated effects on the public:

1. Adverse: None anticipated.
2. Beneficial: Reduced risk of contracting a foodborne illness and an increased presence by health inspectors at food establishments which will help ensure good wholesome, unadulterated food is served.
3. Immediate: None
4. Long Term: Reduced risk of contracting a foodborne illness and an increased presence by health inspectors at food establishments which will help ensure good wholesome, unadulterated food is served.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The estimated cost to the agency for implementing the enforcement of the proposed regulations is minimal.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, name the regulating federal agency.

There is no overlap or duplication of regulations with this proposed regulation.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulation does not have any provisions which are more stringent than any federal regulation.

9. If the regulation provides a new fee or increase an existing fee, the total amount the agency expects to collect and the manner in which the money will be used.

The Health Division expects to collect additional fee revenue of \$427,637.00 per year from the increased fees (existing fees). It is planned that this money will fund the inspection and enforcement of the food establishment program which includes ensuring establishments are inspected at the frequencies established in the Nevada Revised Statutes (NRS).