



## MEMORANDUM

DATE: 11/23/2020

TO: Jon Pennell, DVM, Chairperson  
State Board of Health

FROM: Lisa Sherych, Secretary  
State Board of Health

RE: Case #711, Front Sight  
Request for a Variance to NAC 446.742, "Restriction from operating at a fixed Location"

Nevada Administrative Code (NAC) 446.742(1) & (2) states:

1. A mobile unit must not be operated from a specific fixed location, other than a special event, for more than 4 hours.
2. If restrooms are not available to the food employees, a mobile unit may not stay longer than 1 hour in any one location unless prior approval is received from the health authority.

### **STAFF REVIEW**

Front Sight submitted a request for variance from the requirements of NAC 446.742(1) – (2) on October 7th, 2020. Front Sight is requesting approval to permanently operate a mobile unit from a fixed location at their property.

The subject mobile unit was purchased in early 2019 prior to obtaining a health permit from the Environmental Health Section of the Division of Public and Behavioral Health (DPBH-EHS). DPBH-EHS staff informed Front Sight during the plan review process that they would need a servicing area for preparation and storage of their food and that they could not remain parked longer than one hour without a restroom. DPBH-EHS staff at the time also erroneously approved Front Sight to operate the mobile unit from a fixed location as long as toilets were installed.

Front Sight was unaware of these requirements and requested to be allowed to build an onsite servicing area at the site for prep and storage of their supplies. DPBH-EHS approved construction of the servicing area on June 24, 2019. Front Sight intended to use the existing restrooms at their training center for the employees and patrons of the mobile unit. The closest restroom to the mobile unit is three hundred feet. To meet the requirements of NAC 446.582(3), Front Sight has obtained a portable toilet trailer serviced by Joe's Sanitation for the use of mobile unit employees. Joe's Sanitation has a valid permit with the Division to operate as a Septic Tank Pumping Contractor. The trailer contains a flush toilet and lavatory with hot and cold water under pressure and is situated approximately five feet from the mobile unit and servicing area.

The mobile unit has a moderately low-risk menu consisting primarily of cold sandwiches and salads prepared to order. Although there are benches near the mobile unit that can seat up to 15 patrons, orders are generally to go as customers bring their food to the classrooms. Additional non-sewered toilets are available for the convenience of waiting customers and flush toilets are available near the classrooms where food is most likely to be consumed.

Per Table 422.1 of the 2021 Uniform Plumbing Code (as adopted by reference) one toilet is acceptable for an establishment of this size. The Nye County Building Department approved the plans for construction under equivalent local regulations.

### **INTENT OF THE REGULATIONS**

NAC 446.742 requires a mobile unit to move every four hours and if a restroom is not available, the mobile unit may not stay longer than one hour at one location.

The intent of the regulation is to ensure:

1. Employees have access to sanitary toilet and hand washing facilities before returning to the public areas and preparing food.
2. Adequate sanitation on board to ensure safe food preparation and prevent the accumulation of refuse and sewage that may attract pests by encouraging operators to return to the servicing area between meals.

### **DEGREE OF RISK TO PUBLIC HEALTH**

There is little to no risk to the public health in allowing Front Sight mobile unit to park at their training facility without moving the unit. They have installed a portable restroom equipped with a handwashing sink under pressure and flushable toilet serviced by a licensed septic tank pumping contractor. They have provided two additional portable restrooms with hand wash sinks next to them for customers use. The mobile unit is there specifically to service the students at the facility and is not open to the general public nor will they attend any temporary food events in the county.

Dry storage will be in the servicing area on shelving above the six-inch requirement. The servicing area has two doors, and both are seal to prohibit entrance of any pests. The doors will remain closed during any food preparation.

Front Sight has the resources at their location to follow all provisions of NAC 446 regarding the safe preparation and service of food without moving every four hours.

### **EXCEPTIONAL AND UNDUE HARDSHIP**

Front Sight states that strict application of NAC 446.742 would cause an exceptional financial hardship. Denial of the variance application would require Front Sight to build a bathroom. Front Sight has already gone to the expense of putting in the servicing area, having it properly plumbed, getting approval of their water system as a public water system and purchasing an portable toilet trailer.

This is an undue and exceptional hardship because the mobile unit and servicing area floor plan and construction were approved by DPBH-EHS with the stipulation that they put in a nearby toilet.

### **PUBLIC COMMENT RECEIVED**

Notice of the hearing was posted on the Division of Public & Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way office in Carson City, NV by November 9, 2020. The Division of Public & Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

**STAFF RECOMMENDATION**

DPBH staff recommend the State Board of Health approve Case #711, Front Sight's request for a variance to NAC 446.742(1) & (2), with the following conditions:

1. Front Sight must ensure that if the portable toilet trailer at any time fails or becomes otherwise inoperable that the food establishment immediately cease operation, close for business and notify DPBH-EHS until it is repaired.
2. If the mobile unit closes due to failure or inoperability of the toilet facility, or due to pest activity, it must remain closed until DPBH-EHS approves the food establishment to reopen.

**PRESENTER**

Lindsey Doolittle, Environmental Health Specialist IV, Environmental Health Section, DPBH