






TO: SOUTHERN NEVADA DISTRICT BOARD OF HEALTH **DATE:** October 25, 2007

RE: *Adopt Procedure for Aggrieved Business to Object to a Rule by the Governing Body*

PETITION #39-07

That the Southern Nevada District Board of Health *adopt the Procedure for Aggrieved Business to Object to a Rule by the Governing Body.*

PETITIONERS:

Stephen R. Minagil, Esq., *Legal Counsel* 
Michael Walsh, *Director of Administration* 
Lawrence Sands, DO, MPH, *Chief Health Officer* 

DISCUSSION:

Nevada Revised Statutes (NRS) 237.100 (4) states that each governing body of a local government shall provide a procedure for an aggrieved business to object to a rule adopted by the governing body, and further states that the procedure must be filed with the clerk of the local government and available upon request at no charge.

The Southern Nevada District Board of Health as the governing body of the Southern Nevada Health District has not to date adopted a procedure for an aggrieved business to object to a rule adopted by the Board.

The procedure satisfies the statutory obligation of the Board to provide a procedure for an aggrieved business to object to a rule adopted by the Board as governing body of the Southern Nevada Health District, and provides direction for an aggrieved business to file a petition for consideration by the Board as to whether the petition has merit, and if so, whether the governing body may take action to amend the rule to which the business objected.

Based thereon, it is requested that the Board adopt the attached Procedure for Aggrieved Business to Object to a Rule by the Governing Body.

FUNDING:

No funds are required for the above requested item.

PROCEDURE FOR AGGRIEVED BUSINESS TO OBJECT TO A RULE BY THE GOVERNING BODY

WHEREAS, Nevada Revised Statutes (NRS) 237.100 (4) states that each governing body of a local government shall provide a procedure for an aggrieved business to object to a rule adopted by the governing body, and further states that the procedure must be filed with the clerk of the local government and available upon request at no charge;

WHEREAS, the Southern Nevada District Board of Health as the governing body of the Southern Nevada Health District has not to date adopted a procedure for an aggrieved business to object to a rule adopted by the Board;

WHEREAS, the following procedure satisfies the statutory obligation of the Board to provide a procedure for an aggrieved business to object to a rule adopted by the Board as governing body of the Southern Nevada Health District, and provides direction for an aggrieved business to file a petition for consideration by the Board as to whether the petition has merit, and if so, whether the governing body may take action to amend the rule to which the business objected;

BASED THEREON, the following shall hereafter be considered the procedure for an aggrieved business to object to a rule adopted by the Southern Nevada District Board of Health:

1. "Business" is defined as set forth in NRS 237.040, copy attached.
2. "Rule" is defined as set forth in NRS 237.060, copy attached.
3. A business that is aggrieved by a rule adopted by the Southern Nevada District Board of Health (Board) may object to all or part of said rule by filing a petition with the Board within 30 days of the date on which the rule was adopted. The date on which the rule was adopted means the date on which the Board took action and voted to approve or adopt the rule objected to.
4. The petition is deemed filed with the Board upon hand delivery or by delivery via certified mail, return receipt requested, to the office of the Chief Health Officer, serving as Executive Secretary of the Board. The calculation of time for filing is extended three days in case of mailing by certified mail, return receipt requested.

5. The petition shall be in writing and shall designate which of the two grounds set forth in NRS 237.100 (2) the petition is based on:
 - (a) a business impact statement was not prepared, or
 - (b) the business impact statement that was prepared did not consider or significantly underestimated the economic effect of the rule on the particular business. There are no additional grounds upon which an objection may be based.
6. In order for the Board to determine whether the petition has merit, the petition shall also include a specification of facts which support the designated ground upon which the petition is based. The petition shall also include the petitioner's name, address and telephone number.
7. The petition shall be placed on the Agenda of the regularly scheduled Board meeting not less than 14 days but not more than 60 days after receipt of the petition, and the Board shall then determine whether the petition has merit. If the Board determines that the petition has merit, it may take action to amend the rule to which the business objected.

ADOPTION OF RULES AFFECTING BUSINESSES

NRS CROSS REFERENCES.

City ordinances generally, NRS 266.105-266.118
 County ordinances generally, NRS 244.095-244.115
 Town ordinances generally, NRS 269.155-269.165

NRS 237.030 Definitions. As used in NRS 237.030 to 237.150, inclusive, unless the context otherwise requires, the words and terms defined in NRS 237.040, 237.050 and 237.060 have the meanings ascribed to them in those sections.
 (Added to NRS by 1999, 2072; A 2001, 755)

NRS 237.040 "Business" defined. "Business" means a trade or occupation conducted for profit.
 (Added to NRS by 1999, 2072)

NRS 237.050 "Local government" defined. "Local government" means a political subdivision of this state, including, without limitation, a city, county, irrigation district, water district or water conservancy district.
 (Added to NRS by 1999, 2072)

NRS 237.060 "Rule" defined.

1. "Rule" means:

- (a) An ordinance by the adoption of which the governing body of a local government exercises legislative powers; and
- (b) An action taken by the governing body of a local government that imposes, increases or changes the basis for the calculation of a fee that is paid in whole or in substantial part by businesses.

2. "Rule" does not include:

- (a) An action taken by the governing body of a local government that imposes, increases or changes the basis for the calculation of:
 - (1) Special assessments imposed pursuant to chapter 271 of NRS;
 - (2) Impact fees imposed pursuant to chapter 278B of NRS;
 - (3) Fees for remediation imposed pursuant to chapter 540A of NRS;
 - (4) Taxes ad valorem;
 - (5) Sales and use taxes; or
 - (6) A fee that has been negotiated pursuant to a contract between a business and a local government.
- (b) An action taken by the governing body of a local government that approves, amends or augments the annual budget of the local government.
- (c) An ordinance adopted by the governing body of a local government pursuant to a provision of chapter 271, 271A, 278, 278A, 278B or 350 of NRS.
- (d) An ordinance adopted by or action taken by the governing body of a local government that authorizes or relates to the issuance of bonds or other evidence of debt of the local government.

(Added to NRS by 1999, 2072; A 2001, 755; 2005, 2370)

NRS CROSS REFERENCES.

Consolidated Local Improvements Law, NRS ch. 271
 Impact fees for new development, NRS ch. 278B
 Planned development, NRS ch. 278A
 Planning and zoning, NRS ch. 278
 Remediation of quality of water, NRS 540A.250-540A.285
 Tourism Improvement District Law, NRS ch. 271A

NRS 237.100 Objection to adopted rule: Petition; procedure.

1. A business that is aggrieved by a rule adopted by the governing body of a local government on or after January 1, 2000, may object to all or a part of the rule by filing a petition with the governing body that adopted the rule within 30 days after the date on which the rule was adopted.

2. A petition filed pursuant to subsection 1 may be based on the following grounds:

(a) The governing body of the local government or its designee failed to prepare a business impact statement as required pursuant to NRS 237.080; or

(b) The business impact statement prepared by the governing body or its designee pursuant to NRS 237.080 did not consider or significantly underestimated the economic effect of the rule on businesses.

3. After receiving a petition pursuant to subsection 1, the governing body of a local government shall determine whether the petition has merit. If the governing body determines that the petition has merit, the governing body may take action to amend the rule to which the business objected.

4. Each governing body of a local government shall provide a procedure for an aggrieved business to object to a rule adopted by the governing body. The procedure must be filed with the clerk of the local government and available upon request at no charge.

(Added to NRS by 1999, 2073; A 2005, 1479)

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Administrative Law and Procedure ⇔ 392, 405.5.

Municipal Corporations ⇔ 594.

WESTLAW Topic Nos. 15A, 268.

C.J.S. Municipal Corporations §§ 146, 154-157, 160-162.

C.J.S. Public Administrative Law and Procedure §§ 161, 168-170, 178, 182-197, 199, 205-207.