



Soft Lights Foundation
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Light should guide us, not blind us.

July 31, 2026

VIA EMAIL

Daniel McGonagle, Senior Legal Counsel
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Re: A Shared Conundrum — NFPA 1900's Flashing-Mode Warning Light Specification, NHTSA's Steady-Burning Requirement, and ADA Title II Exposure Across YCPARMIA Member Agencies

Dear Sir or Madam:

I write to all five of you together, rather than separately, because the City of Woodland's October 21, 2025 denial of my accommodation request (enclosed as Exhibit A) makes clear that this is not five separate local disputes. It is one structural problem that runs through all of you: NFPA sets a flashing-mode warning light specification that does not clearly comply with NHTSA's steady-burning requirement under 49 C.F.R. § 571.108; member cities adopt that specification as their entire ADA analysis without independently evaluating it; and YCPARMIA underwrites the resulting risk across every member agency that relies on the same defense. Addressing each of you separately would let each treat this as someone else's problem to solve first. I do not think that serves any of you, so I am addressing it to all of you at once.

I want to say plainly at the outset: I do not think any of you created this problem, and I am not writing to score points against any one of you. NHTSA had the opportunity to resolve this cleanly in their March 29, 2007 letter to NFPA, and did not. NFPA inherited an ambiguous federal record and built a specification on top of it. Cities and their insurers inherited NFPA's specification and reasonably treated it as authoritative. Each link in that chain made a defensible decision given what it knew at the time. What I am asking each of you to consider is that the chain, taken as a whole, no longer holds up — and that recognizing this now, together, is a considerably better position than each of you separately defending the same theory in litigation later.

I. What Exhibit A Actually Shows

Woodland's October 21, 2025 letter denies my accommodation request, but the reasoning it gives is worth reading closely, because it does not rest on an independent City evaluation of the effect of flashing warning lights on individuals with autism spectrum disorder, photosensitive epilepsy, migraine, or PTSD. It rests on NFPA. The letter states that the Department “follows the National Fire Protection Association's (NFPA) Standard 1901 for warning lamps... developed by the NFPA after exhaustive research and expert input,” that the standards are “the nationally recognized best practices,” and it directs me to “communicate directly with the NFPA” about my concerns. It further states that the City's vehicles “come from manufacture pre-fitted with NFPA-compliant warning apparatuses,” and treats that fact as the basis for denying the request as an undue financial and administrative burden.

In other words, the City's ADA analysis is NFPA's analysis, adopted by reference. That is not a criticism unique to Woodland — it is, as far as I am aware, how every city in this correspondence approaches emergency vehicle lighting, because that is what NFPA 1900 is for. But it means the legal soundness of each city's ADA defense rises and falls with the legal soundness of NFPA's specification. I have spent the past month in direct correspondence with NFPA's Senior Legal Counsel establishing, in detail, that the specification does not rest on solid ground. I am enclosing that record as Exhibit B so each of you can evaluate it directly rather than take my characterization of it on faith.

II. Two Problems Exhibit A Does Not Resolve, and One It Creates

A. NFPA's Process Is Not the City's Self-Evaluation

28 C.F.R. § 35.105 requires each public entity, individually, to evaluate its own services, policies, and practices for compliance with Title II — including light-based warning systems. Adopting NFPA's specification without independently assessing its effect on residents with photosensitive disabilities is not a substitute for that evaluation; it is the absence of one. Woodland's letter does not describe an independent evaluation. It describes reliance on NFPA's.

B. The Undue-Burden Analysis Answers a Different Request Than the One the Law Actually Supports

Woodland's letter treats the request as one for a novel, city-specific lighting standard — reduced brightness, fewer lamps, no digital flashing — and reasonably concludes that inventing and re-engineering such a standard would be costly. But that is not the request that federal law already supports. NHTSA's own interpretive letters and litigation record, discussed in Exhibit B, establish that fire apparatus auxiliary warning lamps are already required to be steady burning under 49 C.F.R. § 571.108, absent specific permission NHTSA has never given for flashing operation. A request that a City bring its equipment into compliance with an existing federal requirement is not the same undue-burden analysis as a request to design something new, and Woodland's letter does not distinguish between the two.

C. Reliance on the California Vehicle Code May Not Survive Preemption

Woodland's letter leans heavily on California Vehicle Code provisions authorizing flashing red, blue, and amber warning lamps as the reason it cannot deviate from current practice.

But FMVSS 108 is a federal motor vehicle safety standard, and 49 U.S.C. § 30103(b) preempts state safety standards covering the same aspect of vehicle performance. If NHTSA's steady-burning requirement governs the same aspect of performance as the Vehicle Code provisions Woodland cites, those provisions may be preempted to the extent they conflict — which would mean the state-law authorization Woodland treats as dispositive does not resolve the federal question at all. Counsel for the cities has taken the position that state law preempts federal law here and that state law occupies the whole of this field. Counsel may certainly advance that argument, but the Supremacy Clause of the United States Constitution, the express preemption provision at 49 U.S.C. § 30103(b), California's own statutory deference to federal standards — Vehicle Code § 26103(c) provides that where a Federal Motor Vehicle Safety Standard covers the same aspect of performance as a state equipment provision, the provisions of that standard “shall prevail” — and the Eighth Circuit's final-agency-action holding in *Brake Plus* together present substantial barriers to that argument's success.

III. Requirement Versus Enforcement — and Why the ADA Closes the Gap Between Them

The reason flashing auxiliary lighting has proliferated across fire apparatus, police vehicles, and other emergency and utility vehicles nationwide is not that NHTSA determined it complies with FMVSS 108. It is that NHTSA has, for decades, deferred to the States on enforcement of installation and use decisions for this category of vehicle — a discretionary enforcement posture, not a substantive finding of compliance. That distinction matters enormously for the entities on this letter, because the ADA does not depend on NHTSA's enforcement choices at all. Title II's effective-communication requirement, 28 C.F.R. § 35.160(a)(1), applies directly to public entities regardless of whether NHTSA ever brings a FMVSS 108 enforcement action. A city is not shielded from ADA liability because NHTSA has chosen not to enforce the steady-burning requirement against it. The two obligations are enforced through entirely separate mechanisms, and a gap in one does not excuse the other.

IV. Why YCPARMIA's Position Is Distinct From — and More Exposed Than — Any Single Member City's

I am including YCPARMIA in this letter for a reason specific to a risk pool's position that does not apply to any individual city. Woodland's defense theory — reliance on NFPA's specification and the California Vehicle Code as a complete answer to an ADA accommodation request — is very likely the same defense theory Davis and Winters would raise if presented with the same request, because all three cities' fire departments follow the same NFPA standard and operate under the same state vehicle code. If that shared defense theory has the structural weaknesses identified in Section II above, YCPARMIA's exposure is not limited to a single claim against a single member; it is aggregated across every member agency currently relying on the same theory. A single adverse determination against any one member on this issue does not stay contained to that member — it becomes a serious problem for the pool's evaluation of every other member asserting the identical defense. YCPARMIA is, in my view, the party best positioned to evaluate this exposure across the membership before it is tested claim by claim, rather than after.

V. This Request Is Not Isolated, and a City-by-City Defense Serves No One

I am not raising this issue only with the five of you. I have sent, or am in the process of sending, substantially similar accommodation requests to the Cities of Vacaville, Fairfield, and Rocklin, and I intend to continue expanding this effort to additional jurisdictions. Separately, the Soft Lights Foundation has submitted correspondence raising this same underlying conflict — NHTSA's steady-burning requirement — to AASHTO and to other national standards-setting bodies whose specifications inform state and local vehicle-lighting practice.

I mention this not to pressure any one recipient, but because it changes the calculation each of you is actually making. A defensive, city-by-city posture — in which each jurisdiction independently denies or litigates the same request, on the same NFPA-derived theory, until a court eventually forces a different outcome somewhere — is not a productive use of any city's or any risk pool's resources. It does not make first responders or the public safer: drivers without a photosensitive or neurological disability receive the same warning from a steady-burning lamp that they receive from a flashing one, and NHTSA's own record establishes that steady-burning operation is not merely permitted but is the specific design NHTSA affirmatively evaluated and approved when NFPA asked in 2007. And a city-by-city defense does not resolve the underlying ADA non-discrimination problem; it only postpones the point at which each jurisdiction addresses it, while additional denial letters, additional incidents, and additional jurisdictions accumulate on the same unexamined theory in the meantime.

I raise one further consideration only because it is a legitimate part of the calculation each institution here is already making, not as a threat: defending this position is not free. Best Best & Krieger LLP now represents both the City of Woodland and the City of Winters. BBK is a capable firm, and a defended ADA Title II matter that proceeds through discovery and motion practice commonly runs into six figures — frequently in the range of \$100,000 to \$250,000 per matter — before any damages exposure is even reached. For YCPARMIA, that cost does not stay contained to a single member. Multiplied across every member agency currently relying on the same NFPA-derived theory, defense costs alone represent a substantial and avoidable draw on the pool's resources, before the underlying question is ever resolved.

Damages exposure is a separate and more serious consideration. The Supreme Court confirmed last year that deliberate indifference is the operative standard for compensatory damages under Title II and the Rehabilitation Act: knowledge that a harm to a federally protected right is substantially likely, coupled with a failure to act on that likelihood. *A.J.T. v. Osseo Area Schools, Independent School District No. 279*, 605 U.S. 335 (2025); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138–39 (9th Cir. 2001). I note this only to be transparent about how the record now being built may be read later. A denial issued without an independent self-evaluation, followed by continued inaction after receiving detailed notice — first through Exhibit A's own reasoning, and now through this letter identifying the specific legal gaps in that reasoning — is the kind of sequence that tends to support a deliberate indifference finding rather than defeat one. I raise this not to threaten litigation, but because a clear-eyed view of that exposure, alongside the cost of defense described above, is part of what makes the policy change described in this letter a genuinely better option than maintaining the current course.

There is a genuine and immediate benefit to changing course now, before this issue is tested in litigation in one or more of the growing number of jurisdictions where it has been raised, rather than after: a policy change costs nothing, as set out below; it resolves

the ADA exposure directly rather than manages around it; and it avoids both the defense costs described above and the risk of an adverse ruling in any one of these jurisdictions becoming persuasive authority against every other city, risk pool, and standards body still defending the position that ruling rejected. None of that benefit is available to a jurisdiction that waits to be the one a court rules against.

VI. A Practical Way Forward

I recognize that the reflexive institutional response to a letter like this is to treat it as an opening move in litigation and respond accordingly. I am asking each of you to consider that a defend-at-all-costs posture is a considerably worse position here than a coordinated, practical one, for a simple reason: the underlying legal exposure does not improve with time or with a firmer denial letter. It is already documented, in writing, in Exhibit A. What changes with time is how many additional denial letters, incidents, and claims accumulate on the same unexamined theory before someone addresses it.

With that in mind, I would ask each recipient to consider the following, offered in a spirit of resolution rather than confrontation:

To NFPA:

Review the analysis in Exhibit B directly, including whether a Tentative Interim Amendment addressing the flashing-mode minimum for fire apparatus auxiliary warning devices is warranted ahead of the next full revision cycle. A narrow, timely correction here, confirming NHTSA's steady burning requirement, does more to protect NFPA's membership than continued reliance on an enforcement-deference reading its own cited authority does not support.

To the City of Woodland, City of Davis, and City of Winters:

Undertake, or complete, an actual self-evaluation under 28 C.F.R. § 35.105 of light-based emergency vehicle warning systems, independent of NFPA's specification. Separately, and more immediately: direct fire and police department staff to operate existing warning light systems in steady-burning mode rather than flashing mode, effective now, wherever the equipment's existing controls permit it. This is a policy directive, not a capital project. Most modern warning light controllers already include a steady-burn setting alongside their flash patterns; where that is true, the change costs nothing and requires no re-engineering, no procurement, and no fleet replacement. It also directly answers Woodland's own undue-burden analysis, which addressed only the cost of re-engineering equipment to reduce brightness or alter its physical configuration — not the cost of configuring existing equipment to run in a mode it may already support. There is no undue burden in directing staff to change a setting.

To YCPARMIA:

Consider convening the affected member agencies to evaluate this shared exposure jointly, rather than leaving each city to independently defend the same theory in separate, uncoordinated proceedings. A single coordinated response is very likely more cost-effective for the pool than several independent ones reaching different results.

I am glad to meet with any or all of you — individually or together — to walk through this analysis, answer questions, or discuss what a workable interim path might look like. I

would genuinely prefer that outcome to the alternative, and I believe each of you, on reflection, would as well.

VII. Enclosures

Exhibit A: City of Woodland ADA Denial Letter (October 21, 2025).

Exhibit B: Correspondence with NFPA General Counsel's office (July 4 — July 31, 2026), including analysis of NHTSA Interpretation No. 06-007886rls, NHTSA's June 27, 2024 and December 13, 2024 interpretive letters, and NFPA 1900 § 10.7.10.

Respectfully submitted,

/s/ Mark Baker
President, Soft Lights Foundation
mbaker@softlights.org

/s/ Mark Baker
Individual, Yolo County Resident
mbaker@moonlightadvocacy.org

Disclosure: An artificial intelligence system was utilized in the drafting of this letter. The author has exercised diligence in reviewing its contents and reserves the right to correct or supplement any errors that may be identified.

EXHIBIT A



300 FIRST STREET | WOODLAND, CA 95695

530-661-5850 | CITYOFWOODLAND.GOV

Mark Baker
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1520 E. Covell Blvd., Ste. 5-467
Davis, CA 95616
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October 21, 2025

*Re: Americans with Disabilities Act Requests for Accommodation- Auxiliary Firetruck
Flashing Lights and Sirens and Police Vehicle Flashing Lights*

Dear Mr. Baker,

The City of Woodland ("City") is in receipt of your letter dated September 20, 2025, and your email dated October 14, 2025, in which you request reasonable accommodations related to the City's use of flashing warning lamps and sirens on emergency vehicles. For the reasons set forth in this letter, your requests for reasonable accommodation are denied.

In your September 20, 2025, letter, you describe an incident which occurred on September 18, 2025, while you were driving in the City, wherein two Woodland Fire Department trucks passed by your vehicle. The fire trucks were responding to an emergency call with their emergency warning lamps and sirens activated. In your October 14, 2025, email, you describe another incident while you were driving in the City wherein you passed a City Police Department vehicle with its multi-colored warning lamps activated. Your submissions state that you were distressed during both of these encounters as you are unable to tolerate the intensity and digital flashing of LED lights due to your autism spectrum disorder. In your October 14 submission, you request that the City modify its emergency vehicles to reduce the intensity of emergency vehicle warning lamps and reduce the volume of emergency vehicle sirens.

The Americans with Disabilities Act

The City takes seriously its obligations under the Americans with Disabilities Act ("Act") and it carefully considers all requests for reasonable accommodations/modifications. The Act generally provides that no individual with a disability may be denied the "benefits of the services, programs, or activities of a public entity" or discriminated against on the basis of their disability. (42 U.S.C.A. § 12132.) Under the Act's implementing Regulations, local governments

must make reasonable modifications to their policies and practices to accommodate people with disabilities, unless it can be shown that the requested modification would fundamentally alter the nature of the service, program or activity or impose an undue financial and administrative burden on the agency. (28 C.F.R. § 35.130, subd. (a); 28 C.F.R. § 35.164.) One such reasonable modification under the implementing Regulations is the requirement that local governments take “appropriate steps to ensure that communications with ... members of the public ... with disabilities are as effective as communications with others.” (28 C.F.R. § 35.160, subd. (a).)

In your submissions, you ask the City for modifications to its emergency vehicles to ensure that the City engages in effective communication with you when emergency warning lights and sirens are used. You state that such warning lights and sirens are “communications”, and they are “not as effective with me as the communications are with individuals without disabilities because the flashing lights and sirens severely impair my ability to see, think, and concentrate.” Specifically, in your October 14 request, you ask that City emergency vehicles be subjected to reasonable modifications which involve the following: “set an upper limit on the intensity of the flashing lights, set an upper limit on the number of flashing lights per vehicle, prohibit the use of digital on/off flashing lights, and/or set an upper limit on the intensity of the sirens” and for the use of lower-volume sirens.

As explained further below, the City is unable to offer you the modifications to the warning lamps and sirens that you request in your submissions. However, as a reasonable accommodation of your disability of autism spectrum disorder, which renders you unable to tolerate flashing lights and sirens, the City is hereby offering to provide you with a map indicating the location of fire and police stations, and other sites such as medical centers where emergency vehicles typically originate from or travel to. This map will enable you to take alternative routes while driving. Accordingly, please provide the City with the locations and times you usually travel within the City. However, you should know that even with the ability to take such routes, the City cannot guarantee that you will never encounter emergency vehicles with activated warning lamps and sirens, since emergency vehicles will travel on any City street and to any place, sometimes with emergency warning systems activated, as public safety needs dictate. In addition to this accommodation offered by the City, the City is aware of certain steps you might consider taking of your own accord to reduce your exposure to bright lights and sounds, such as the use of glare-reducing glasses, side window tints on your vehicle, and hearing protection.

The California Vehicle Code Establishes Uniform Standards for Emergency Vehicles Operated by Local Agencies in California

Authorized emergency vehicles are regulated at the State level under the Vehicle Code (“Code”) and the Department of the California Highway Patrol’s Regulations. The City is bound by law to follow these standards. Accordingly, the issues you raise in your letter would be better directed to the State authorities which set these standards, rather than to the City which follows them by law.

An authorized emergency vehicle under the Code includes “[a]ny publicly owned vehicle” operated by “[a]ny local agency ... employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by

those officers in the performance of their duties” and “[a]ny ... fire department of any public agency” (Veh. Code § 165, subd. (b)(1)-(2).) This definition encompasses the fire trucks and police vehicles addressed in your submissions. Under Section 21 of the Vehicle Code, to ensure uniformity of traffic regulation across the State, local governments such as the City have limited powers to regulate matters covered by the Code, such as emergency vehicles and the traffic rules they operate under. (Veh. Code § 21.)

Under the Code, “every authorized emergency vehicle shall be equipped with at least one steady burning red warning lamp visible from at least 1,000 feet to the front of the vehicle to be used as provided in this code,” and in addition, “authorized emergency vehicles may display revolving, flashing, or steady red warning lights to the front, sides or rear of the vehicles.” (Veh. Code §§ 25252, subds. (a)-(b); 25252.5, subds. (a)-(c).) Additionally, police vehicles may display: “steady burning or flashing white lights to either side mounted above the roofline of the vehicle” during the performance of their duties; “a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals;” “a steady or flashing blue warning light visible from the front, sides, or rear of the vehicle”; and “flashing or revolving amber warning lights to the front, sides, or rear of the vehicle”. (Veh. Code §§ 25259, subd. (b); 25277; 25258, subds. (a)-(b); 25259.)

Sirens may only be equipped on and used by authorized emergency vehicles. (Veh. Code § 27002.) The intent of this law is abundantly clear: sirens serve a vital public safety function in distinguishing emergency vehicles from others. The technical requirements for emergency vehicles sirens, including sound levels, are set forth in Title 13 of the California Code of Regulations, and these do not provide the City with the discretion to equip its emergency vehicles with an 80dB siren as you request. (13 Cal. Code Regs. § 1020 et seq.)

By law, to be exempt from road rules during an emergency response, emergency vehicles *must* activate front warning lamps and sirens to alert other road users to yield the right of way. (Veh. Code §§ 21806, 21055; *Monroy v. City of Los Angeles* (2008) 164 Cal. App. 4th 248, 257.) Therefore, for City emergency vehicles to be able to make the fastest possible response when called to a critical incident, its vehicles must use such equipment to alert others to clear the roadway. The City cannot avoid this legal requirement of a front warning light and siren as an accommodation for your disability and still be able to respond to emergencies in an appropriate timeframe.

Furthermore, under the Code, the display of different-colored warning lights is integral to many police functions such as redirecting traffic, parking enforcement, signaling to vehicles, and engaging in law enforcement. (*See e.g.* Veh. Code §§ 30, 25258, 25259, 2800.1). In particular, by law, blue warning lamps *may only* be used on emergency vehicles operated by specified peace officers. Accordingly, blue lamps serve a particularly important function in distinguishing such vehicles from other emergencies and special hazard materials, which may display red, white or amber warning lamps. (Veh. Code § 25258.) Again, the City’s law enforcement responses would be hampered without the ability to alert other drivers to a law enforcement presence via a blue warning lamp.

The State has adopted further technical specifications for police and fire emergency vehicle sirens and warning lights, both mandatory and optional, in Division 2 of Title 13 of the

California Code of Regulations, which the City also follows as required by law and as public safety needs dictate. These Regulations cover specifications such as the luminous intensity warning lights, color, and flash rates. (13 Cal. Code Regs. Div. 2.) Thus, whenever the City opts to incorporate warning systems permitted under state law, it must abide by these state-level standards. As suggested above, your concerns with the brightness of these warning lamps may therefore be better directed to the California Highway Patrol during the next update to these Regulations pertaining to emergency vehicles.

The Warning Lights and Sirens Used By the City's Fire Vehicles Follow the National Fire Protection Association Best Practices and Yolo Emergency Communications Agency Policies on Use of Warning Lamps and Sirens

Further, in the interests in public safety, and within the parameters of the Regulations, the Department also follows the National Fire Protection Association's (NFPA) Standard 1901 for warning lamps, which call for side lamps, designate flash rates, and other specifications. These standards were developed by the NFPA after exhaustive research and expert input. They are utilized nationwide and the NFPA standards are the nationally recognized best practices in fire emergency response. Accordingly, you may wish to communicate directly with the NFPA your concerns about the impact of warning lights and sirens on individuals with autism spectrum disorder as an issue for the NFPA to consider in updating its standards.

In addition to this, the Woodland Fire Department follows the procedures adopted by its dispatch agency, the Yolo Emergency Communications Agency (YECA), which utilizes industry's best practices in determining whether an incident requiring emergency response is a code-3 (lights and siren) or code-2 (no lights and siren) response. The determination of a response's code status is made based on the severity of the emergency as communicated by the 911 caller. By following the YCEA's policy on utilization of warning systems, the Department has taken reasonable steps to reduce disturbances to other road users while ensuring the Department makes an appropriate emergency response to all call-outs.

The Requested Modification/s to the Warning Lights on the City's Emergency Vehicles Would Reduce Public Safety

Even if State law allowed the City to deviate from State standards for its emergency vehicle warning equipment, the use of sirens and warning lights on emergency vehicles serve a vital public safety purpose and modifying them as you request would impose an undue safety risk. Sirens and warning lights are legally required to alert road users that an emergency vehicle will be passing by at speed and under an exemption from the usual rules of the road. In the Department's view, adopting all permitted warning systems under State law in accordance with the NFPA standards represents the most effective way to make such an alert to other road users, and deviation from such standards would pose an unacceptable reduction in safety for the City's residents.

Indeed, as a matter of public safety and of compliance with the Americans with Disabilities Act, the City must ensure effective communication with road users and pedestrians who may be deaf, hard of hearing, blind, or visually impaired. In the Department's view, the

standards currently followed by the City provide the best available mechanisms to engage in the effective communication of emergency responses to individuals with such disabilities.

The Requested Accommodations Would Impose an Undue Financial and Administrative Burden Upon the City

Finally, even if the law and public safety considerations allowed the City to modify its emergency warning vehicle systems in the ways you suggest, replacement or re-engineering of the City's state-of-the-art vehicle equipment as an accommodation for your disability would pose an undue financial and administrative burden.

For example, the City's fire vehicles come from manufacture pre-fitted with NFPA-compliant warning apparatuses. The warning light equipment is engineered to operate at a specified electrical load. Modification of this lighting equipment on the vehicles to reduce its brightness as you request email would require wholesale re-engineering the vehicle's electrical system—at a significant cost. Re-engineering the City's police vehicle fleet would pose similar technical and cost challenges. Accordingly, under the ADA's undue burden standard, the City has determined that re-engineering the City's police and fire vehicles would divert an unacceptable amount of funding and effort away from its emergency response functions, which protect the safety of Woodland's residents.

This letter constitutes the City's response to your request for accommodations and effective communication in relation to Department emergency vehicles. If this response does not satisfactorily resolve the concerns you have reported, you may appeal the decision within 15 calendar days after receipt of this response to the City Manager. If you wish to appeal, please send your appeal letter to:

City of Woodland
300 First Street
Woodland, CA 95695
Attn: City Manager

Please let me know if you have any questions.

Sincerely,



Lauryn Wiens
Management Analyst

ADA Coordinator
City of Woodland

EXHIBIT B



Soft Lights
Foundation

Light should guide us, not blind us.

July 4, 2026

Suzanne Gallagher, General Counsel
National Fire Protection Association (NFPA)
sgallagher@nfpa.org

**Re: Formal Notice — Standards-Liability and Negligence Exposure
Arising from NFPA’s Continued Specification of Flashing-Mode Fire
Apparatus Warning Lights in Conflict with FMVSS 108’s Steady-
Burning Requirement**

Dear Ms. Gallagher:

I write in two capacities: as President of the Soft Lights Foundation, a nonprofit organization advocating for equitable public access and safety for individuals with photosensitive disabilities, and as an individual Yolo County, California resident with a photosensitive disability who is personally harmed by high-intensity flashing LED warning lights on fire apparatus and other emergency vehicles built and equipped to NFPA specifications. This letter provides formal notice to the National Fire Protection Association of specific, documented, and legally significant risk exposure arising from NFPA’s continued promulgation, through NFPA 1900 and its predecessor NFPA 1901, of minimum flash-rate requirements for fire apparatus warning lights, in light of (1) the steady-burning requirement of Federal Motor Vehicle Safety Standard 108, 49 C.F.R. § 571.108(S6.2.1); (2) NFPA’s own longstanding actual knowledge that its flashing-light specifications do not comply with that federal standard, evidenced by NFPA’s own inquiry to NHTSA on this exact question; (3) the May 18, 2026 decision of the United States Court of Appeals for the Eighth Circuit in *Brake Plus NWA, Inc. v. Department of Transportation*, No. 24-2951, holding that NHTSA Chief Counsel interpretive letters constitute final, judicially reviewable agency action; and (4) peer-reviewed research documenting that flashing high-intensity LED devices — the same technology NFPA specifies for fire apparatus — cause severe, statistically documented photobiological harm, including “unbearable” glare, to a significant share of the public, particularly at night, when emergency deployments are most common. This is not a hypothetical or abstract concern; as detailed in Section VI below, it is presently unfolding in active federal litigation and in parallel notice already provided to a regional public risk pool.

**I. FMVSS 108’s Steady-Burning Requirement and the Absence of Any
Fire-Service Exemption**

Federal Motor Vehicle Safety Standard 108, codified at 49 C.F.R. § 571.108, is the preemptive federal standard governing lamps and associated equipment on all motor vehicles operated on public roads, including fire apparatus. Section S6.2.1 prohibits any auxiliary lamp from impairing the effectiveness of a federally required lamp. NHTSA's Chief Counsel has long interpreted this provision as requiring auxiliary lamps — those not among the lamps FMVSS 108 itself designates as flashing signals — to operate in steady-burning mode, not in a flashing, strobing, or pulsing mode. NHTSA's Chief Counsel reaffirmed this position in interpretive letters dated June 27, 2024, and December 13, 2024.

Critically, FMVSS 108 contains no fire-service or emergency-vehicle exemption from this steady-burning requirement. NHTSA has confirmed this directly to NFPA, in an exchange described below.

II. NFPA's Own Correspondence with NHTSA Establishes Actual, Longstanding Knowledge

NFPA is not a stranger to this issue. NHTSA's Office of Chief Counsel previously responded directly to an inquiry from NFPA's own NFPA 1901 technical committee regarding a proposed revision that would have allowed lower-level rear flashing warning lamps on fire apparatus to burn steady when the service brakes are applied — that is, a proposal to add a steady-burning mode, not to preserve or expand flashing. In that response, NHTSA Interpretation No. 06-007886rls, the Chief Counsel confirmed that FMVSS 108 does not specifically list emergency warning lamps for fire and other emergency vehicles among those permitted to flash, and stated that NHTSA traditionally defers to the judgment of the States as to the installation and use of emergency lighting devices on state-owned or state-regulated vehicles.

That deference is an enforcement posture, not a substantive exemption. NHTSA's statement addresses only whether the agency will pursue enforcement against a State's installation-and-use decisions for emergency lighting; it does not, and as a matter of administrative law cannot, authorize a State to override S6.2.1's steady-burning impairment standard itself. A federal motor vehicle safety standard promulgated under the Safety Act preempts conflicting state requirements, see 49 U.S.C. § 30103(b); an agency's decision not to pursue enforcement against a category of state actor is a matter of enforcement discretion, and does not amend the standard or create a legal exemption from it. Notably, the very proposal NHTSA did not reject in its 2006 letter was itself for a steady-burning configuration operating alongside the OEM brake lamps — precisely the outcome S6.2.1 requires. NHTSA's letter is therefore best read not as blessing flashing-mode auxiliary lamps on fire apparatus, but as confirming, twice over, that steady-burning remains the compliant configuration: once by declining to identify any fire-service exception to the flashing prohibition, and again by approving only a steady-burning proposal.

In other words, roughly two decades ago, NFPA's own technical committee asked NHTSA the precise question this letter raises, and NHTSA's answer confirmed there is no blanket fire-apparatus exemption from the steady-burning requirement — only a policy of enforcement deference to the States on installation and use, which is a distinct question from whether the underlying federal standard permits

flashing at all. NFPA’s current standard — NFPA 1900, effective January 1, 2024, which consolidated and replaced NFPA 1901 — continues to specify minimum flash rates, generally between 60 and 240 flashes per minute, for front, side, and rear warning lamps, without incorporating a steady-burning option as a standard configuration and without any documented, updated legal analysis reconciling that specification with S6.2.1 in light of NHTSA’s 2024 letters or the Eighth Circuit’s *Brake Plus* decision. An organization with NFPA’s documented, decades-long actual knowledge that its specification does not comply with the steady-burning requirement, including the distinction between enforcement deference and substantive exemption, cannot credibly claim surprise.

III. The Brake Plus Decision Confirms This Conflict Is Now Judicially Enforceable

On May 18, 2026, the Eighth Circuit held, in a 2-1 decision in *Brake Plus NWA, Inc. v. Department of Transportation*, No. 24-2951, that NHTSA Chief Counsel interpretive letters — issued after a multi-year investigation by an official with delegated authority and applying FMVSS 108’s steady-burning requirement to specific aftermarket devices — constitute final agency action reviewable under the Administrative Procedure Act, applying the two-prong test of *Bennett v. Spear*, 520 U.S. 154 (1997). The panel majority found that NHTSA’s determination carried direct legal consequences; Judge Kobes dissented on the ground that the letters imposed no direct legal obligation, but the majority controls.

The result is that NHTSA’s steady-burning interpretation of FMVSS 108 S6.2.1 — the same interpretation NHTSA gave directly to NFPA in 2006 — is no longer merely persuasive guidance; it is a judicially confirmed, final agency position. Any organization that continues to specify or promote flashing-mode auxiliary lamps after actual notice of NHTSA’s letters and the *Brake Plus* ruling does so with full knowledge that the specification does not comply with binding federal law. This letter constitutes that actual notice to NFPA.

IV. Peer-Reviewed Evidence: Flashing LED Devices Cause “Unbearable” Glare

Robertson and Fitzpatrick (Texas A&M Transportation Institute, 2013), an FHWA-sponsored study prepared for the Transportation Research Board, tested 71 participants and measured the discomfort glare of rapid-flashing LED beacons — the same rapid-flash LED technology NFPA specifies for fire apparatus warning systems. Participants rated the devices as “comfortable,” “irritating,” or “unbearable.” The findings with direct relevance to NFPA are:

(a) At the minimum intensity setting, approximately one percent of participants rated the device as unbearable — meaning that in any community served by NFPA-specified apparatus, a statistically predictable number of residents experience unbearable glare from flashing warning lights.

(b) At maximum intensity, nearly 50 percent of participants rated the device as unbearable, and the probability of an unbearable rating was approximately 13 times greater at night — precisely when fire apparatus warning lights are most heavily used and most visually intense.

(c) The study authors found that as discomfort glare increases, observers are more likely to look away from the source. A driver, pedestrian, or fireground worker who cannot sustain visual attention near an apparatus emitting maximum-intensity flashing light faces an independent safety hazard, separate from the disability-discrimination and preemption issues raised above.

(d) Fire apparatus warning systems are typically encountered at closer range and higher aggregate intensity than pedestrian RRFBs, and in more acute emergency contexts. The Robertson findings therefore likely represent a conservative lower bound of the glare hazard posed by NFPA-specified fire apparatus lighting — the actual exposure is likely greater.

V. Categories of Legal Exposure to NFPA

A. Negligent Standard-Setting and Failure to Warn. Courts have long recognized that a standards-development organization that voluntarily undertakes to promulgate safety standards, knowing the industry will conform its products to them, owes a duty of reasonable care in doing so, and can be held liable in negligence for failing to exercise that care or for failing to warn once aware of a hazard or legal conflict. See *King v. National Spa & Pool Institute, Inc.*, 570 So. 2d 612, 616 (Ala. 1990) (a standard-setting association’s voluntary undertaking “made it foreseeable that harm might result to the consumer if it did not exercise due care”). NFPA’s position is materially similar, and arguably more acute: NFPA has actual, documented knowledge — from its own inquiry to NHTSA — that its flash-rate specifications do not comply with a binding federal safety standard, and it has since received additional NHTSA interpretive letters and a federal appellate decision reinforcing that position, without revising NFPA 1900 to require, or even offer, steady-burning compliance as a standard configuration.

B. Downstream Reliance and Certification Exposure. Fire apparatus manufacturers market and certify their lighting systems as compliant with NFPA 1901/1900, and municipal purchasers and fire departments rely on that certification as their due-diligence benchmark for both operational safety and federal regulatory compliance. Every public agency that equips its fleet to NFPA’s flashing-light minimums, believing that doing so satisfies its own federal compliance obligations, is relying on a specification NFPA knows sits in tension with FMVSS 108. That reliance chain runs directly back to NFPA.

C. Downstream ADA Title II Exposure. Public entities that adopt NFPA 1900 without independently analyzing its photobiological impact on individuals with photosensitive disabilities may fail their own duty to conduct a self-evaluation of light-based warning systems under 28 C.F.R. § 35.105. Title II further requires that communications with individuals with disabilities be as effective as communications with others. 28 C.F.R. § 35.160(a)(1). For individuals whose photosensitive disabilities cause flashing light to trigger seizures, migraines, or panic attacks, a flashing warning signal is not simply a less effective version of a steady-burning one; it can incapacitate the very person it is meant to warn, turning a safety device into a barrier that denies those individuals effective communication and equal access to the roadway and to public spaces near an emergency scene. Member agencies routinely cite NFPA’s specification as the basis for their lighting practices, making NFPA a foreseeable source of the information those agencies rely

on, and a foreseeable subject of discovery, in ADA Title II litigation concerning emergency-vehicle lighting.

D. Tort Liability Through Glare-Induced Crash Causation. As described in Section IV, unbearable glare causes a physiological aversion reflex. A driver, pedestrian, or fireground worker who cannot sustain visual attention near an apparatus emitting maximum-intensity flashing light under NFPA's own minimums may miss hazards that a steady-burning configuration would not obscure. Receipt of this letter, with the Robertson study cited, establishes that NFPA had actual notice of this hazard going forward.

VI. A Current, Concrete Illustration: Woodland and the YCPARMIA Notice

This is not a hypothetical concern. The City of Woodland, California, a member agency of a regional public risk pool serving Yolo County, has referenced NFPA's fire apparatus standards in litigation I have brought against it, captioned *Baker v. City of Woodland*, No. 2:26-cv-00091-DAD-AC (E.D. Cal.), which raises claims under Title II of the ADA, Section 504 of the Rehabilitation Act, and related state law concerning emergency-vehicle warning systems. Woodland has pointed to NFPA compliance as support for its position that its warning-light equipment meets its safety and accessibility obligations, without independently addressing FMVSS 108 S6.2.1, the 2024 NHTSA interpretive letters, or the *Brake Plus* decision. Woodland's position is a real-world illustration of the reliance risk described in Section V.B and V.C above: a municipality is treating NFPA's standard as a compliance touchstone, while the standard itself has not been updated to bring its flashing-light specification into compliance with binding federal law, or to warn adopting agencies that the specification does not comply.

I have separately provided formal notice of this same underlying noncompliance — the FMVSS 108 steady-burning requirement, the 2024 NHTSA letters, and the *Brake Plus* decision — to the Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA), the risk pool covering Woodland and its neighboring jurisdictions, so that the pool's counsel and risk managers are independently aware of the exposure. I mention Woodland's litigation and the YCPARMIA notice here not to suggest that NFPA bears responsibility for the outcome of that individual case, but because it shows, in a live and current matter, exactly how public agencies rely on NFPA's standard as their compliance benchmark. NFPA is uniquely positioned to close that gap, for Woodland and for every similarly situated agency, by clarifying the standard or issuing interim guidance to its membership.

VII. A Low-Cost Remedy Is Readily Available

The remedy is not novel to NFPA. NFPA's own 1901 technical committee considered, and NHTSA did not reject, a steady-burning alternative for rear lower-zone lamps as far back as 2006. NFPA's technical committee should revisit and adopt, at minimum, a steady-burning compliance option across all warning-light zones in NFPA 1900, consistent with FMVSS 108 S6.2.1, with intensity levels capped consistent with SAE J595 Class 1 minimums — the level at which the Robertson study found unbearable ratings drop to approximately one percent. This

is achievable through firmware and controller updates to existing light-bar technology, without hardware replacement across the fleet, and would bring NFPA 1900 into compliance with FMVSS 108 while also addressing the photobiological hazard, in a single revision cycle.

VIII. Requested Actions by NFPA

I request that NFPA take the following steps within thirty (30) days of receipt of this letter:

1. Acknowledge receipt of this notice in writing and confirm that it has been routed to NFPA's Standards Council, the NFPA 1900 Technical Committee, and General Counsel;
2. Undertake and document a good-faith legal review reconciling NFPA 1900's flash-rate specifications with FMVSS 108 § S6.2.1, NHTSA's June 27, 2024, and December 13, 2024 interpretive letters, and the Eighth Circuit's *Brake Plus* decision;
3. Initiate a public-input cycle to consider a steady-burning compliance option and reduced-intensity default across all warning-light zones, consistent with the remedy described above;
4. Advise NFPA's membership, pending revision, that flashing-mode auxiliary lamps on fire apparatus do not comply with FMVSS 108's steady-burning requirement — notwithstanding NHTSA's enforcement deference to the States — so that individual departments and manufacturers may make informed risk decisions; and
5. Consider whether NFPA's eventual clarification or guidance can be shared directly with YCPARMIA and similarly situated public risk pools and member agencies, including the City of Woodland, so that agencies currently citing NFPA compliance in support of their own federal and disability-access obligations can rely on an accurate, updated understanding of the standard.

I am committed to a cooperative resolution and am available to discuss the evidence and the proposed remedy with NFPA's Standards Council or General Counsel's office at any time.

Respectfully submitted,

/s/ Mark Baker
President, Soft Lights Foundation
mbaker@softlights.org

/s/ Mark Baker
Individual, Yolo County Resident
mbaker@moonlightadvocacy.org

For resources on responsible outdoor lighting, visit www.softlights.org

Disclosure: An artificial intelligence system was utilized in the drafting of this letter. The author has exercised diligence in reviewing its contents and reserves the right to correct or supplement any errors that may be identified.

July 31, 2026

VIA EMAIL

Mr. Mark Baker
Soft Lights Foundation
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Email: mbaker@softlights.org

Re: Correspondence to S. Gallagher Dated July 4, 2026

Dear Mr. Baker:

We reviewed your July 4, 2026 correspondence to Suzanne Gallagher regarding NFPA 1900¹ and your allegations concerning the standard's optical warning system requirements. After carefully considering your assertions, we respectfully disagree with your characterization of the applicable law, the underlying facts, and the National Fire Protection Association ("NFPA") standards development process.

First, the decision in *Brake Plus* cited in your correspondence does not support your position. That case concerned the sale of aftermarket electronic modules that caused a vehicle's center high-mounted stop lamp to brighten and dim four times before remaining illuminated when the driver applied the brakes. The issue before the court was whether those aftermarket modules were compatible with the requirements of Federal Motor Vehicle Safety Standard ("FMVSS") No. 108, codified at 49 C.F.R. § 571.108, which requires required stop lamps to be steady-burning rather than flashing.

Those facts bear little resemblance to the warning devices addressed in NFPA 1900. The optical warning systems required by NFPA 1900 are emergency warning devices installed on fire apparatus. They are not center high-mounted stop lamps or other required stop lamps subject to FMVSS No. 108's steady-burning requirement. Accordingly, the steady-burning requirement applicable to required stop lamps under FMVSS No. 108 does not apply to flashing emergency warning devices installed on fire apparatus.

Indeed, FMVSS No. 108 expressly permits the installation of additional lamps and lighting equipment, provided that such equipment does not impair the effectiveness of the lighting devices required by the federal standard. This principle was specifically addressed by the National Highway Traffic Safety Administration ("NHTSA") in its March 29, 2007 correspondence to NFPA, which analyzed this very issue and confirmed that emergency warning

¹ Please note that NFPA 1901 has been combined into a new consolidated standard, NFPA 1900.

lighting may be used so long as it does not impair the effectiveness of lighting equipment required under FMVSS No. 108.

Accordingly, we see no factual or legal basis for your assertion that NFPA engaged in negligent standards development by including the challenged provisions in NFPA 1900. To the contrary, the record demonstrates that NFPA has acted consistently with its mission by facilitating a balanced, consensus-based process through which subject matter experts evaluate technical information, applicable law, evolving technologies, and public safety considerations in developing its standards.

Your letter also references research suggesting that certain rapid-flash LED warning systems may cause discomfort for some members of the public and asserts that feasible alternatives exist that may reduce light intensity while maintaining safety. NFPA's standards development process is specifically designed to evaluate precisely these types of technical issues.

Our records indicate that although you have established an NFPA account, you have not participated in the standards development process by submitting either a Public Input or a Public Comment regarding NFPA 1900. The research and information you reference are exactly the types of technical materials that the responsible Technical Committee welcomes and evaluates when determining whether revisions to a standard are warranted. We encourage you to participate in future revision cycles should you wish to present your research and recommendations for committee consideration.

Following receipt of your correspondence, we coordinated with the staff liaison responsible for NFPA 1900 and reviewed the committee history concerning warning systems. That review confirmed that the subject of emergency warning lighting has been considered during multiple recent revision cycles. The current edition of NFPA 1900 reflects the Technical Committee's continued responsiveness to evolving lighting technologies and stakeholder concerns.

Among other changes, recent editions expressly reference FMVSS No. 108 to ensure that lighting configurations permitted by the standard do not interfere with federally required lighting equipment. In addition, the Technical Committee considered lower-level flashing warning lights and revised the standard to provide greater flexibility regarding lighting mode characteristics, provided that the applicable performance requirements of NFPA 1900 are satisfied and the lighting configuration does not impair compliance with FMVSS No. 108.

For these reasons, NFPA respectfully disagrees with your assertion that the development of NFPA 1900 was negligent or otherwise legally deficient. Rather, the history of the standard demonstrates an active and deliberative consensus process that has continually evaluated available research, technological developments, regulatory requirements, and public comments in developing and revising the standard.



**NATIONAL FIRE
PROTECTION ASSOCIATION**

1 Batterymarch Park | Quincy, MA 02169-7471

NFPA appreciates your interest in this important public safety issue and encourages your participation in future standards development activities should you wish to present additional technical information for the Technical Committee's consideration.

Sincerely,

Daniel McGonagle
Senior Legal Counsel
dmcgonagle@nfpa.org

cc: Suzanne Gallagher, NFPA
Ken Holland, NFPA
Barry Chase, NFPA
Chris Dubay, NFPA



Soft Lights
Foundation

Light should guide us, not blind us.

Soft Lights Foundation
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July 31, 2026

VIA EMAIL

Daniel McGonagle, Senior Legal Counsel
National Fire Protection Association (NFPA)
dmcgonagle@nfpa.org

Re: Reply to NFPA's July 31, 2026 Correspondence — Unaddressed Final-Agency-Action, ADA, and Intensity-Limit Issues Concerning NFPA 1900's Flashing-Mode Warning Light Specification

Dear Mr. McGonagle:

Thank you for your July 31, 2026 letter responding to my July 4, 2026 correspondence to Ms. Gallagher. I appreciate that NFPA treated the notice seriously and provided a substantive reply. Respectfully, however, that reply does not engage the dispositive legal issues my letter raised. It addresses a different holding within *Brake Plus* than the one I actually cited, omits the two interpretive letters that are the operative federal authority, identifies no fire-apparatus exemption from the steady-burning requirement anywhere — including in NHTSA's own litigation defending that requirement — does not address the Americans with Disabilities Act obligations my letter raised, does not identify any maximum-intensity limit that would answer the photobiological evidence I presented, and does not reconcile NFPA 1900 § 10.7.10's own impairment standard with NHTSA's determination that flashing auxiliary lamps impair the effectiveness of required lamps. I write to identify each of these gaps so that NFPA's Standards Council and Technical Committee have an accurate record before them.

I. *Brake Plus* Was Cited for Its Holding on Final Agency Action, Not for Its Center-Stop-Lamp Facts

Your letter distinguishes *Brake Plus NWA, Inc. v. Department of Transportation* on the ground that the case involved aftermarket modules affecting a center high-mounted stop lamp, while NFPA 1900's optical warning systems are not center high-mounted stop lamps subject to FMVSS 108's steady-burning requirement. That distinction responds to a point my letter did not make. My July 4 letter cited *Brake Plus* for a single, narrow holding: that NHTSA Chief Counsel interpretive letters constitute final, judicially reviewable agency action under the *Bennett v. Spear* test. That holding does not turn on which lamp was at issue in the underlying dispute; it establishes the legal status of NHTSA's interpretive letters generally, including the letters addressed below. Your July 31 letter does not dispute, distinguish, or even acknowledge that holding.

II. NFPA's Response Does Not Address the June 27, 2024 or December 13, 2024 NHTSA Interpretation Letters

My letter's central factual predicate was NHTSA's June 27, 2024 and December 13, 2024 interpretive letters reaffirming that auxiliary lamps not designated as flashing signals under

FMVSS 108 must operate in steady-burning mode. Your response discusses only NHTSA's March 29, 2007 correspondence to NFPA. It does not mention, distinguish, or otherwise address the 2024 letters at all. The December 13, 2024 letter states the rule in terms that leave no room for a fire-apparatus reading: "NHTSA has long interpreted FMVSS No. 108 to require that all auxiliary lamps be 'steady burning,' with the sole exception of auxiliary lamps that supplement required lamps that flash, such as turn signals." That is a general rule with a single, named exception, and fire apparatus warning lamps are not it. Because *Brake Plus* establishes that this category of interpretive letter is final agency action reviewable under the APA, an NFPA response that omits the two most recent and most directly applicable letters has not answered the notice — it has answered a twenty-year-old exchange while leaving the current governing interpretation, and its express exception, un rebutted.

III. NFPA Has Identified No Fire-Apparatus Exemption from the Steady-Burning Requirement

Your letter states that "the steady-burning requirement applicable to required stop lamps under FMVSS No. 108 does not apply to flashing emergency warning devices installed on fire apparatus." No statutory or regulatory citation supports that statement, and none appears anywhere in your letter. Section S6.2.1 governs impairment by auxiliary lamps generally; it contains no fire-service or emergency-vehicle carve-out, and NFPA has not identified one. The 2007 correspondence you cite, like NHTSA's 2006 letter to NFPA's own technical committee, describes enforcement deference to the States regarding installation and use decisions — an enforcement posture, not a substantive exemption from S6.2.1's impairment standard. My July 4 letter addressed that distinction directly at Section II; your response does not engage it.

Indeed, the language your letter quotes — that FMVSS 108 "expressly permits the installation of additional lamps and lighting equipment, provided that such equipment does not impair the effectiveness of the lighting devices required by the federal standard" — is itself the S6.2.1 impairment test. Restating that standard does not answer whether NFPA 1900's specified flash rates satisfy it; it simply confirms that the test applies.

IV. NHTSA's Own Litigation Position Confirms There Is No Fire-Apparatus, Police, or Utility-Vehicle Exception

NHTSA's position on the steady-burning requirement is not limited to interpretive letters; the agency has defended that requirement in litigation. In *Brake Plus NWA, Inc. v. Department of Transportation*, the Department of Justice, on NHTSA's behalf, filed an opposition brief defending the steady-burning requirement of FMVSS 108 as a longstanding, consistently applied rule, using the phrase "steady burning" more than forty times.¹ Nowhere in that brief does NHTSA suggest that fire trucks, police vehicles, or other utility vehicles are exempt from the steady-burning requirement. NHTSA had every reason to raise such an exemption if one existed — it would have simplified the agency's defense considerably — and did not. An agency that has litigated its own regulation at length, and never once mentioned a fire-service or emergency-vehicle exception, is not a source for the exception NFPA's letter assumes.

V. NFPA's Response Does Not Address the ADA Title II Issues Raised in My Letter

Section V.C of my July 4 letter identified a distinct category of exposure: public entities that adopt NFPA 1900 without independently evaluating its effect on individuals with photosensitive disabilities may fail their own duty to conduct a self-evaluation of light-based warning systems

¹ <https://www.softlights.org/wp-content/uploads/2026/07/NHTSA-Opposition.pdf>

under 28 C.F.R. § 35.105, and Title II separately requires that communications with individuals with disabilities be as effective as communications with others under 28 C.F.R. § 35.160(a)(1). Your July 31 letter does not mention the ADA, either provision, or the effective-communication standard at all. That omission matters because member agencies — as illustrated by the City of Woodland's reliance on NFPA compliance in litigation I identified in Section VI of my letter — look to NFPA's specification as their compliance benchmark for exactly this obligation.

The population affected by this omission is not small or speculative. Intense flashing light of the kind NFPA 1900 specifies as a minimum is a documented trigger of seizures in individuals with photosensitive epilepsy, of migraine attacks in individuals with photophobia, and of sensory overload, panic attacks, or acute distress in individuals with autism spectrum disorder or post-traumatic stress disorder. For these individuals, a flashing warning light is not a less convenient version of a steady one; it can be actively disabling at the moment it is encountered. NFPA 1900's silence on this population creates a compliance trap for the public entities that adopt it: a city or fire district that equips its apparatus to NFPA 1900's flashing-light minimums can be in full compliance with NFPA's standard and still face ADA Title II liability under 28 C.F.R. § 35.160(a)(1) for failing to provide effective communication to exactly these individuals, because NFPA compliance and ADA compliance are not the same obligation and your July 31 letter does not acknowledge that they can diverge. NFPA is positioned to close that gap for its membership; leaving it unaddressed does not make it disappear, it simply shifts the risk onto the public entities that reasonably relied on NFPA's standard as their compliance benchmark.

VI. NFPA Has Not Identified Any Maximum Luminous-Intensity Limit

Your letter states that the Technical Committee “considered lower-level flashing warning lights and revised the standard to provide greater flexibility regarding lighting mode characteristics.” Flexibility toward lower intensity is not the same as a ceiling on maximum intensity, and your letter identifies no maximum luminous-intensity limit in NFPA 1900 comparable to the SAE J595 Class 1 cap I proposed in Section VII of my letter. That omission leaves unanswered the Robertson and Fitzpatrick findings cited in Section IV of my letter: that at maximum intensity, nearly half of study participants rated comparable rapid-flash LED devices as “unbearable,” with the likelihood of an unbearable rating approximately thirteen times greater at night. Flexibility to reduce intensity does not protect the public if the standard imposes no ceiling on how high intensity may go.

VII. NFPA 1900 § 10.7.10 Already Requires Compliance with 49 C.F.R. § 571.108, and NFPA Cannot Take a Position on That Requirement Contrary to NHTSA's Own

Your letter states that recent editions of NFPA 1900 “expressly reference FMVSS No. 108 to ensure that lighting configurations permitted by the standard do not interfere with federally required lighting equipment.” That reference is not a general aspiration; it is a specific, mandatory provision. NFPA 1900 § 10.7.10 states: “The optical warning devices shall not impair the effectiveness of lighting devices required under 49 CFR 571, FMVSS 108 including headlights, turn signals, clearance lights, and brake lights.” That is S6.2.1's impairment standard, adopted verbatim into NFPA's own standard as a mandatory requirement of NFPA 1900 itself.

The question your letter does not answer is who determines what “impair the effectiveness” means under 49 C.F.R. § 571.108. NHTSA does, and NHTSA has already answered it: the agency's June 27, 2024 and December 13, 2024 interpretive letters, consistent with decades of prior interpretations, hold that flashing, pulsing, or strobing auxiliary lamps impair the effectiveness of steady-burning required lamps — which is the entire basis for the steady-

burning requirement in the first place. NHTSA did not reach that conclusion in the abstract; it is the reason the steady-burning requirement exists as a distinct compliance obligation separate from FMVSS 108's photometric intensity tables. If flashing auxiliary lamps did not impair the effectiveness of required lamps, there would be no steady-burning requirement to interpret.

That impairment is not merely theoretical, and it is not disputed only by disability advocates and NHTSA. Emergency-service professionals describe the identical phenomenon in their own trade literature. Police Chief magazine, published by the International Association of Chiefs of Police, reported: "Officers who have participated in a multicar response know what it is like to follow a car with intense flashing lights and not be able to see the brake lights as a result." Scott Potter, Police Vehicle Warning Signals — An Innovative Approach to Officer Safety, Police Chief Magazine (May 2, 2018). That is a firsthand, real-world description of exactly the impairment 49 C.F.R. § 571.108(S6.2.1) and NFPA 1900 § 10.7.10 exist to prevent: intense flashing auxiliary lighting rendering a required steady-burning lamp — the brake light — effectively invisible to the following driver. The hazard is not confined to civilian drivers behind fire apparatus; it is documented by law enforcement describing their own experience following other emergency vehicles.

NFPA is therefore not free to interpret its own § 10.7.10 impairment standard to permit exactly the conduct NHTSA has determined impairs effectiveness under the same federal provision NFPA 1900 incorporates by reference. NFPA 1900 does not contain an independent definition of "impair the effectiveness" under 49 C.F.R. § 571.108; it borrows NHTSA's. Continuing to specify minimum flash rates for optical warning devices while § 10.7.10 simultaneously requires that those devices not impair the effectiveness of required lamps under FMVSS 108, as NHTSA has defined that term and as officers in the field have independently reported experiencing, is not a defensible reconciliation of NFPA 1900 with the very federal standard it cites — it is a conflict within NFPA 1900 that your July 31 letter does not acknowledge, let alone resolve.

VIII. Renewed Request

I do not read your July 31 letter as a final position, given that it does not reach the issues above. I renew the request in Section VIII of my July 4 letter, and ask specifically that NFPA's Standards Council and the NFPA 1900 Technical Committee be provided this reply along with the original notice, and that NFPA's substantive response address, at minimum: (1) the legal effect of *Brake Plus*'s final-agency-action holding on the June 27, 2024 and December 13, 2024 NHTSA letters; (2) the specific statutory or regulatory basis, if any, for treating fire apparatus as exempt from S6.2.1's steady-burning requirement, given that NHTSA has identified none in its interpretive letters or in its own litigation defense of that requirement; (3) the ADA Title II self-evaluation and effective-communication provisions identified above; (4) whether NFPA 1900 imposes, or will consider imposing, a maximum luminous-intensity limit for warning-light zones; and (5) how NFPA reconciles § 10.7.10's incorporation of the FMVSS 108 impairment standard with NHTSA's own determination, in its 2024 interpretive letters, that flashing auxiliary lamps impair the effectiveness of required steady-burning lamps.

I remain committed to a cooperative resolution and am available to discuss these issues with NFPA's Standards Council or General Counsel's office at any time.

Respectfully submitted,

/s/ Mark Baker
President, Soft Lights Foundation
mbaker@softlights.org

/s/ Mark Baker
Individual, Yolo County Resident
mbaker@moonlightadvocacy.org

Disclosure: An artificial intelligence system was utilized in the drafting of this letter. The author has exercised diligence in reviewing its contents and reserves the right to correct or supplement any errors that may be identified.



July 31, 2026

Daniel McGonagle, Senior Legal Counsel
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Re: Supplemental Notice — A Close Reading of NHTSA Interpretation Letter No. 06-007886rls (March 29, 2007), the Sole Authority Cited in Your July 31, 2026 Letter

Dear Mr. McGonagle:

Your July 31, 2026 letter's discussion of federal law rests entirely on one document: NHTSA Chief Counsel Anthony M. Cooke's March 29, 2007 letter to NFPA's Carl E. Peterson, Interpretation No. 06-007886rls. Because that single letter is carrying the full weight of NFPA's position, and because its language is layered with qualification, I write separately — apart from my earlier July 31, 2026 letter — to address that letter alone, in the order its own sentences appear, so there is no ambiguity about what it does and does not say.

I. The Letter States the General Rule Before It States Any Exception

The letter's operative legal framework appears in a single paragraph, and it states a default rule, not a fire-service exception: “additional lamps and lighting equipment may be voluntarily provided but are subject to S5.1.3, which prohibits installation of additional equipment that impairs the effectiveness of lighting equipment required by [the] standard. We also note that S5.5.10(d) of the standard generally requires that all lamps, including auxiliary lighting, must be steady burning, unless otherwise specifically permitted.” Two things follow directly from NHTSA's own words. First, the baseline rule is steady burning for all lamps, auxiliary or otherwise, with departures allowed only where “specifically permitted.” Second, any additional lamp — including a fire apparatus warning lamp — remains independently subject to the impairment prohibition regardless of what else the letter goes on to say. Nothing in the remainder of the letter revokes either rule.

I note for the record that FMVSS 108 was reorganized later that same year, in the final rule published December 4, 2007 (72 Fed. Reg. 68,234), effective September 1, 2008. The impairment and steady-burning provisions this letter cites as S5.1.3 and S5.5.10(d) are the direct predecessors, under that reorganization, of what your own July 31 letter and NFPA 1900 § 10.7.10 both now cite as S6.2.1. The substance NHTSA articulated in 2007 is the same substance in force today.

II. NHTSA Confirms Fire Apparatus Warning Lamps Are Not Listed Among Lamps Permitted to Flash

Applying that framework to the lamps NFPA asked about, the letter states: “As indicated above, additional lamps are permitted but must not impair the effectiveness of required

lighting equipment. We note that FMVSS No. 108 does not specifically list emergency warning lamps for fire and other emergency vehicles as ones that may flash.” That sentence is not hedging — it is a direct answer. NHTSA looked for a flashing exception covering fire apparatus warning lamps and reported that none exists in the standard. Your July 31 letter does not mention this sentence.

III. “Traditionally Defer to the Judgment of the States” Is an Enforcement Posture, Not a Compliance Ruling

Immediately after confirming there is no flashing exception in the standard's text, the letter continues: “However, as the agency has explained in previous interpretation letters, we traditionally defer to the judgment of the States as to the installation and use of emergency lighting devices on such state owned or regulated vehicles.” This sentence is doing a great deal of work in your July 31 letter, so it is worth being precise about what it says and does not say. NHTSA does not say the flashing lamps comply with S5.1.3 or S5.5.10(d). It does not say the flashing lamps are exempt from either provision. It says NHTSA, as an enforcement matter, traditionally defers to the States on installation and use decisions for this category of vehicle. An agency's practice of not pursuing enforcement against a category of state actor is a discretionary enforcement posture; it is not a substantive determination that the underlying conduct satisfies the standard, and it does not amend the standard's text. NFPA's own letter to NHTSA presupposed this distinction — it asked what the standard requires, not merely whether NHTSA polices state fire departments.

IV. The Letter's Only Non-Impairment Finding Applies to a Steady-Burning Redesign, Not to Continued Flashing

The letter then turns to the specific question NFPA actually asked: whether allowing the rear warning lamps to burn steady — not flash — during braking would create a federal conflict. NHTSA's analysis of that proposal is the only place in the entire letter where the agency performs an actual impairment analysis and reaches a conclusion: “Recognizing that we traditionally defer to the judgment of the States as to the installation and use of flashing emergency devices on fire apparatus, we have also considered whether the modified design concept you ask about would impair the effectiveness of required lighting equipment. It is our opinion that it would not.” The design NHTSA approved was for lamps to “burn steady when the service brakes are applied” — the opposite of the flashing operation NFPA 1900 specifies as a minimum. NHTSA's stated basis for that finding was narrow: “Thus, as a practical matter, the lamps would, in situations where the fire apparatus is responding and calling for the right-of-way, operate as supplemental stop lamps with the same color as the required stop lamps.”

This matters because it is the only sentence in the letter that could be read as a green light, and it is a green light for the opposite of what NFPA 1900 specifies. NHTSA approved moving a fire apparatus lamp toward steady burning; it did not approve, and was never asked to approve, continued flashing. Extending this letter's conclusion to justify flashing-mode lamps inverts what the letter actually decided.

V. Color Match Alone Does Not Satisfy the Independent Steady-Burning Requirement

NHTSA's stated rationale for its one favorable finding rested on color — that the redesigned lamps would be red, matching the required stop lamps. It did not rest on, and

did not need to rest on, any finding about flash pattern, because the proposal being evaluated was already steady-burning. Color match and steady burning are two separate conditions under NHTSA's own framework: S5.5.10(d) imposes a temporal, operational requirement (steady versus flashing) that is independent of a lamp's color. A flashing lamp does not become compliant with S5.5.10(d) by sharing the color of a required lamp; color equivalence answers a different question than the one S5.5.10(d) asks. Nothing in this letter suggests otherwise, and nothing in it purports to evaluate whether a flashing, color-matched lamp would satisfy S5.5.10(d) — because that was never the question NFPA posed in 2006.

VI. Nothing in the Letter Constitutes “Specific Permission” to Flash

S5.5.10(d)'s baseline, as NHTSA itself states it, is steady burning “unless otherwise specifically permitted.” This letter is the entirety of NFPA's cited authority for treating fire apparatus warning lamps as specifically permitted to flash. It does not contain that permission. It confirms the lamps are not listed among those FMVSS 108 designates as flashing signals; it describes enforcement deference, not a substantive exemption; and its only affirmative finding concerns a steady-burning design. A letter that never says “flashing fire apparatus warning lamps do not impair the effectiveness of required lighting” cannot be read as the specific permission S5.5.10(d) requires before departing from the default rule.

VII. This Reading Is Consistent with NHTSA's Later, More Direct Interpretations

I address NHTSA's June 27, 2024 and December 13, 2024 interpretive letters at length in my July 31, 2026 letter and do not repeat that analysis here, since this letter is limited to the 2007 correspondence your July 31 letter relies on. I note only that the reading set out above is fully consistent with, and directly confirmed by, NHTSA's own later description of its “longstanding interpretation” in the December 13, 2024 letter: that FMVSS 108 “does not permit the ‘emergency warning lights’ to be installed as original equipment because they are auxiliary lighting that is not steady burning and would impair the effectiveness of required lamps.” Nothing in the 2007 letter departs from that longstanding position; if anything, the 2007 letter's careful confinement of its only favorable finding to a steady-burning proposal anticipates it.

VIII. The ADA Closes the Enforcement Gap NHTSA's Deference Leaves Open

The reason cities and counties are today surrounded by auxiliary flashing lights on fire trucks, police cars, utility vehicles, garbage trucks, tow trucks, and other vehicles is traceable directly to the enforcement posture this letter describes: NHTSA's practice of deferring to the States on installation and use, rather than pursuing the steady-burning requirement itself against individual jurisdictions. That deference explains why the requirement has gone largely unenforced at the federal level. It does not mean the requirement has gone away, and it does not mean deference is the only avenue available to enforce it.

The Americans with Disabilities Act supplies an independent enforcement path that does not depend on NHTSA's enforcement discretion at all. Title II's effective-communication requirement, 28 C.F.R. § 35.160(a)(1), applies directly to the public entities that operate this equipment, regardless of whether NHTSA ever brings an enforcement action under FMVSS 108. A city is not shielded from ADA liability because NHTSA has chosen not to

enforce S5.5.10(d)/S6.2.1 against it; the two statutes impose separate obligations, enforced by separate mechanisms, and a public entity's exposure under one does not depend on the other being enforced first.

Once the ADA is read alongside NHTSA's steady-burning requirement rather than in isolation from it, the enforcement gap that has allowed flashing auxiliary lamps to proliferate closes. NHTSA's deference explains why federal enforcement has not filled that gap; it does not mean no obligation exists, and it does not immunize NFPA's specification from a legal framework NHTSA's deference never purported to displace. The only position available to NFPA that is consistent with both bodies of law is to confirm to its membership that auxiliary lamps on fire apparatus must be steady burning.

IX. Renewed Request

I ask that NFPA's Standards Council and the NFPA 1900 Technical Committee review Interpretation No. 06-007886rls directly, in full, alongside this letter, rather than relying on the characterization offered in your July 31 response. I renew my request that NFPA identify the specific sentence, in this letter or any other NHTSA authority, in which the agency states that flashing fire apparatus warning lamps do not impair the effectiveness of required lighting equipment under 49 C.F.R. § 571.108. If no such sentence exists — and I do not believe one does — then NFPA 1900's flashing-mode minimums rest on an enforcement-deference inference this letter does not support, applied to a lamp configuration this letter never approved.

I remain available to discuss this letter, or the underlying interpretation, with NFPA's Standards Council or General Counsel's office at any time.

Respectfully submitted,

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Disclosure: An artificial intelligence system was utilized in the drafting of this letter. The author has exercised diligence in reviewing its contents and reserves the right to correct or supplement any errors that may be identified.