

## **IDAPA 38 - DEPARTMENT OF ADMINISTRATION**

### **38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**DOCKET NO. 38-0406-1201**

#### **NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is May 14, 2012.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has amended the current temporary rule promulgated and adopted under Docket No. 38-0406-1201. This agency action for this amendment to the temporary rule is authorized pursuant to Section 67-5226 and 67-5907, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the temporary rule and a statement of any change between the text of the temporary rule and text of the amended temporary rule with an explanation for any changes:

The chapter is amended to clarify the priority of the state of Idaho's maintenance and improvement of state property. The chapter is also amended to explain that an event or exhibit may continue to use state property indefinitely if the event or exhibit does not use state property for a twenty-four (24) hour period between each consecutive seven (7) day period.

The text of the original temporary rule was published in the [May 2, 2012 Idaho Administrative Bulletin, Vol. 12-5, pages 91 through 98.](#)

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that amending the temporary rule is appropriate for the following reasons:

House Bill No. 693, passed by the 2012 Idaho Legislature, provides authority for the Director of the Department of Administration to promulgate rules governing use of the facilities governed by these rules. The Bill directed that the rules be promulgated within thirty (30) days of the Bill's effective date.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**ACCEPTANCE OF WRITTEN PUBLIC COMMENT:** Although not required by law, the Department of Administration will accept written public comment for the purpose of developing proposed rules at the address set forth below through 5:00 p.m. on Friday, June 15, 2012.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this temporary rule, contact Teresa Luna, Director, at (208) 332-1826.

DATED this 14th day of May, 2012.

Teresa Luna  
Director  
Department of Administration  
650 w. State St.  
P. O. Box 83720  
Boise, ID 83720-0013  
Phone: (208) 332-1826  
Fax: (208) 334-2307

**This Chapter Is Being Reprinted Here In Its Entirety As Amended**

**THE FOLLOWING IS THE AMENDED TEXT OF THE TEMPORARY RULE  
FOR DOCKET NO. 38-0406-1201**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the Capitol Mall Properties and other state facilities. (4-17-12)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." (4-17-12)T

**02. Scope.** These rules contain the provisions for use of the exterior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities." Rules governing the use of the exterior of the Capitol are codified under IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (4-17-12)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department's office. (4-17-12)T

**003. ADMINISTRATIVE APPEALS.**

These rules do not provide for appeals of the requirements for use of the State Facilities. (4-17-12)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (4-17-12)T

**005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.**

**01. Office Hours.** The Department is open from 8:00 a.m. to 5:00 p.m. except Saturday, Sunday, and legal holidays. (4-17-12)T

**02. Mailing Address.** The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (4-17-12)T

**03. Street Address.** The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (4-17-12)T

**04. Website Address.** The Department's website address is <http://adm.idaho.gov/>. (4-17-12)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (4-17-12)T

**007. SEVERABILITY.**

Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (4-17-12)T

**008. -- 099. (RESERVED)**

**100. DEFINITIONS.**

**01. Capitol Mall Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Properties do not include the Idaho State Capitol or its grounds. (4-17-12)T

**02. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (4-17-12)T

**03. Department.** The Department of Administration. (4-17-12)T

**04. Director.** The Director of the Department of Administration or his designee. (4-17-12)T

**05. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception or gathering of people held at the State Facilities. As used in this definition, a rally is a gathering of two (2) or more people for the purpose of actively promoting a cause or position. A rally is not the transit of individuals, without stopping to promote a cause or position, through the State Facilities. (4-17-12)T

**06. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (4-17-12)T

**07. Multi-agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. (4-17-12)T

**08. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. (4-17-12)T

**09. Private Event.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (4-17-12)T

**10. Public Use.** Use that is not an Event, Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. (4-17-12)T

**11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (4-17-12)T

**12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (4-17-12)T

**13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (4-17-12)T

**14. State Facilities.** The Capitol Mall Properties, the Multi-agency Facilities, and the Other State Properties. Use of the phrase "at the State Facilities" shall include the exterior of buildings, exterior of improvements and the grounds and real property comprising the State Facilities. (4-17-12)T

**15. State Maintenance and Improvements.** Maintenance or improvement of the State Facilities by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes but is not limited to grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes but is not limited to the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (5-14-12)T

**101. (RESERVED)**

**102. MULTI-AGENCY FACILITIES.**

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department.

(4-17-12)T

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (4-17-12)T

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (4-17-12)T

**103. -- 199. (RESERVED)**

**200. USE OF STATE FACILITIES.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Facilities are available for use by the public for the following: (4-17-12)T

**a.** Events. Events not within Subsection 200.01.c. of this rule shall be held only in the locations and during the hours set forth in these rules. Events, including Private Events, shall not exclude any member of the public from attending the Event. (4-17-12)T

**b.** Exhibits. Exhibits not within Subsection 200.01.c. of this rule shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. (4-17-12)T

**c.** State Events and Exhibits. State Events and Exhibits may occur in any portion of the State Facilities. The Director may waive all or a portion of these rules for a State Event or Exhibit. (4-17-12)T

**02. Limited Uses By the Public.** Except as provided otherwise in these rules, the State Facilities are available for use by the public for Private Events. Private Events must not interfere with Public Use of the State Facilities, including but not limited to tours and the conduct of public business. (4-17-12)T

**03. Prohibited Uses.** The following uses are prohibited at the State Facilities: (4-17-12)T

**a.** Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: (4-17-12)T

**i.** Events for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (4-17-12)T

**ii.** Concessions authorized by law. (4-17-12)T

**iii.** Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. (4-17-12)T

**b.** Camping. Pursuant to Section 67-1613, Idaho Code, camping is prohibited at the State Facilities. Camping includes use of the State Facilities for living accommodation purposes such as sleeping, making preparations for sleeping, cooking, storing personal belongings, and using a tent or other shelter for sleeping. (4-17-12)T

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Facilities. State Events and Exhibits shall have priority over public Events and Exhibits, Public Use, and Private Events. ~~(4-17-12)T~~ (5-14-12)T

**201. EVENT AND EXHIBIT DURATION.**

The duration of an Event or Exhibit shall not exceed eleven (11) consecutive hours, or seven (7) consecutive days, including time for set-up and clean-up. An Event or Exhibit may continue to use the State Facilities after a seven (7) consecutive day period if the Event or Exhibit does not use the State Facilities for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Facilities set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Facilities.

~~(4-17-12)T~~(5-14-12)T

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. (4-17-12)T

**203. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. (4-17-12)T

**204. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Facilities set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Facilities. (4-17-12)T

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Events, Exhibits, and Public Use of the State Facilities shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the State Facilities include, but are not limited to, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. (4-17-12)T

**02. Interference with Access.** Events, Exhibits, and Public Use of the State Facilities shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Facilities. (4-17-12)T

**302. HOURS AND LOCATIONS OF USE.**

**01. Hours.** The hours for Events and Exhibits at the State Facilities are 7:00 a.m. to 6:00 p.m. Events and Exhibits shall not interfere with State Maintenance and Improvements in accordance with the maintenance and improvement schedule published at the website address set forth in Section 005 of these rules. ~~(4-17-12)T~~(5-14-12)T

**02. Locations.** Event and Exhibits are not permitted at the parking facilities set forth in Section 67-5709(2)(b), Idaho Code. In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, all Events and Exhibits at the State Facilities shall be at least fifteen (15) feet from the exterior walls and windows of buildings. (4-17-12)T

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this Section. (4-17-12)T

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used at the State Facilities. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where

requested by Security Personnel, law enforcement or a state employee or agent supervising a State Facility, users must store non-motorized transportation in a designated storage area on the exterior of a State Facility. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (4-17-12)T

**305. ANIMALS.**

The following shall apply to animals at the State Facilities: (4-17-12)T

**01. Wildlife.** Unless authorized by the Director no person shall: (4-17-12)T

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the State Facilities. (4-17-12)T

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. (4-17-12)T

**02. Domestic Animals.** (4-17-12)T

**a.** Domestic animals are not allowed at the State Facilities unless leashed and under the control of the person bringing the animal to the State Facility. (4-17-12)T

**b.** The person bringing the animal to the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (4-17-12)T

**306. LANDSCAPING.**

Unless authorized by the Director, no person shall: (4-17-12)T

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. (4-17-12)T

**02. Grass.** Dig in or otherwise damage grass areas at the State Facilities. (4-17-12)T

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the State Facilities. (4-17-12)T

**04. Landscaping Materials.** Move or alter landscaping materials at the State Facilities, including but not limited to rock, edging materials, and bark or mulch. (4-17-12)T

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. (4-17-12)T

**307. FOOD AND BEVERAGES.**

Consumption of food and beverages at the State Facilities is subject to the following: (4-17-12)T

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Facilities. (4-17-12)T

**02. Alcohol.** Alcohol may not be consumed or distributed at the State Facilities. (4-17-12)T

**308. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. (4-17-12)T

**309. FIRES, CANDLES, AND FLAMES.**

No fires, candles, or other sources of open flame are permitted at the State Facilities. (4-17-12)T

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (4-17-12)T

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (4-17-12)T

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (4-17-12)T

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (4-17-12)T

**05. Attaching, Affixing, Leaning, or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Facilities not designed for that purpose or on any Permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Facilities or embedded into the ground, including but not limited to placement of a stake, post or rod into the ground to support materials. (4-17-12)T

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the State Facilities or any systems or utilities of the State Facilities, including but not limited to fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (4-17-12)T

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Facilities that such material is not discarded outside of designated trash receptacles. (4-17-12)T

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel may inspect: (4-17-12)T

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (4-17-12)T

**02. Items.** Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of destructive or disruptive uses at the State Facilities. (4-17-12)T

**312. PROHIBITED ITEMS.**

Explosives, missiles, chemicals or other incendiary devices are not permitted at the State Facilities. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove any club, bat, or other item that can be used as a weapon from the State Facilities. (4-17-12)T

**313. SOUND LEVEL AND AMPLIFICATION.**

Sound amplification may not be used at the State Facilities. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Facilities. Security Personnel, law enforcement or a state employee or agent supervising a State Facility may discontinue an Event or Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. (4-17-12)T

**314. UTILITY SERVICE.**

Events, Exhibits, and the public may not use the utility services of the State Facilities; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include but are not limited to electrical, sewage, water, heating, and geothermal services. The

Director may terminate the use of utilities if such use interferes with the utility services of the State Facilities or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (4-17-12)T

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons off of the State Facilities and delay or postpone any Event, Exhibit or other activity until the emergency or threat is abated. (4-17-12)T

**316. COMPLIANCE WITH LAW.**

All use of the State Facilities shall comply with applicable law, including but not limited to fire and safety codes. (4-17-12)T

**317. HEALTH, SAFETY, AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. (4-17-12)T

**02. Items Return to Proper Location.** Users shall return all items, including but not limited to movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. (4-17-12)T

**03. Public Health.** No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (4-17-12)T

**04. Personal Safety and Firearms.** No person, except for authorized law enforcement personnel, shall discharge firearms, pneumatic weapons, air rifles, spring guns, bows and arrows, slings or any other form of weapon or otherwise purposefully or negligently endanger, damage, or injure the property or the life of any person or animal at the State Capitol Exterior. (4-17-12)T

**05. Fireworks.** No person shall possess or use fireworks on the State Capitol Exterior. (4-17-12)T

**318. -- 399. (RESERVED)**

**400. LIABILITY AND INDEMNIFICATION.**

**01. User Retains Liability.** Individuals, entities, and organizations using the State Facilities are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Facilities. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays at the State Facilities for use in an Event or Exhibit. (4-17-12)T

**02. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (4-17-12)T

**03. Indemnification.** Any individual, entity, or organization permitted to use the State Facilities is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions, or causes of action, together with any and all losses, costs, or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Facilities. (4-17-12)T

**04. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. (4-17-12)T

**401. -- 999. (RESERVED)**