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ARPROTECTED

**IDAPA 38
TITLE 04
CHAPTER 06**

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

000. LEGAL AUTHORITY.

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the state properties in the Capitol Mall and other state facilities. (3-27-13)

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.” (3-27-13)

02. Scope. These rules contain the provisions for use of the exterior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Office 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.” (3-27-13)

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. (3-27-13)

003. ADMINISTRATIVE APPEALS.

These rules do not provide for appeals of the requirements for use of the State Facilities. (3-27-13)

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (3-27-13)

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

01. Office Hours. The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (3-27-13)

02. Mailing Address. The Department’s mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (3-27-13)

03. Street Address. The Department’s principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (3-27-13)

04. Website Address. The Department’s website address is <http://adm.idaho.gov/>. (3-27-13)

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-27-13)

007. SEVERABILITY. IN CAPITOL MALL & OTHER STATE FACILITIES

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. (3-27-13)

008. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (3-27-13)
- 02. Capitol Annex.** The grounds, exterior of buildings, exterior of improvements, and real property located at 514 West Jefferson Street, Boise, Idaho and occupying block 65 as shown on the Boise City original townsite plat filed in the Ada County Recorder's office in Book 1 on page 1. (3-27-13)
- 03. Capitol Mall Office 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 Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (3-27-13)
- 04. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (3-27-13)
- 05. Department.** The Department of Administration. (3-27-13)
- 06. Director.** The Director of the Department of Administration or his designee. (3-27-13)
- 07. Multi-Agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. (3-27-13)
- 08. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. (3-27-13)
- 09. Parking Facilities.** The facilities, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(b), Idaho Code. (3-27-13)
- 10. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (3-27-13)
- 11. Public Use.** Use that is not: (3-18-14)
- a.** A State Event or Exhibit; (3-18-14)
 - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; or (3-18-14)
 - c.** State Maintenance and Improvements. (3-18-14)
- 12. 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. (3-27-13)
- 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. (3-27-13)
- 14. State Facilities.** The Capitol Mall Office Properties, the Capitol Annex, the Multi-agency Facilities, the Parking 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. (3-27-13)
- 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. (3-27-13)

011. -- 100. (RESERVED)

101. OTHER STATE PROPERTIES.

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (3-27-13)

01. Idaho State Historical Society Properties. (3-27-13)

a. The following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: (3-27-13)

- i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (3-27-13)
- ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (3-27-13)
- iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (3-27-13)
- iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (3-27-13)
- v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (3-27-13)
- vi. Pierce Courthouse, located in Pierce, Idaho. (3-27-13)
- vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (3-27-13)

b. The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (3-27-13)

- i. Subsection 010.06. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (3-27-13)
- ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize Private Events or Exhibits and the exclusion of members of the public from attending Private Events and Exhibits. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from a Private Event or Exhibit. (3-27-13)
- iii. Section 302. "Maintenance and Improvements" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless otherwise designated at the property, or posted on the Idaho State Historical Society website. (3-18-14)

iv. Subsection 305.02. "Domestic Animals" shall apply unless a sign at the property specifies that domestic animals are not permitted. (3-27-13)

c. The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: commercial use; Public Use; Private Events or Exhibits; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; fireworks displays; and, use of utilities. (3-18-14)

102. MULTI-AGENCY FACILITIES.

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

(3-27-13)

01. Lewiston State Office Building. Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (3-27-13)

02. Idaho Falls State Office Building. Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (3-27-13)

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 Public Use. (3-18-14)

02. Prohibited Uses. The following uses are prohibited at the State Facilities: (3-27-13)

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: (3-27-13)

i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (3-27-13)

ii. Concessions authorized by law. (3-27-13)

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. (3-27-13)

b. Camping. (3-27-13)

c. Private Events and Exhibits. (3-27-13)

03. Priority of Uses. State Maintenance and Improvements shall have priority over all other use of the State Facilities. (3-18-14)

201. (RESERVED)

202. EQUIPMENT AND SUPPLIES.

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. (3-27-13)

203. ESTABLISHMENT OF PERIMETERS.

Security Personnel and law enforcement may establish perimeters separating participants in Public Use of the State Facilities or State Events and Exhibits. Participants in and observers of any Public Use or State Events and Exhibits shall observe perimeters set pursuant to this section. (3-18-14)

204. AREA CLOSURES.

The Director may direct that any portion of the State Facilities be closed for Public Use upon a finding that the closed portion of the State Facilities has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Facilities closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Facilities. Circumstances presenting an imminent danger of damage to the State Facilities include, but are not limited

to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (3-18-14)

205. -- 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 Public Use of the State Facilities. (3-18-14)

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference with Primary Use of Facility or Real Property. 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. (3-18-14)

02. Interference with Access. 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. (3-18-14)

302. MAINTENANCE AND IMPROVEMENTS.

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (3-18-14)

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. (3-27-13)

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. (3-27-13)

305. ANIMALS.

The following shall apply to animals at the State Facilities: (3-27-13)

01. Wildlife. Unless authorized by the Director no person shall: (3-27-13)

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. (3-27-13)

b. No person shall feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. (3-27-13)

02. Domestic Animals. (3-27-13)

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. (3-27-13)

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. (3-27-13)

306. LANDSCAPING.

Unless authorized by the Director, no person shall: (3-27-13)

01. Plants. Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. (3-27-13)

02. Grass. Dig in or otherwise damage grass areas at the State Facilities. (3-27-13)

03. Irrigation Equipment. Interfere with, damage or remove irrigation equipment at the State Facilities. (3-27-13)

04. Landscaping Materials. Move or alter landscaping materials at the State Facilities including, but not limited to, rock, edging materials, and bark or mulch. (3-27-13)

05. Climbing. Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. (3-27-13)

307. FOOD AND BEVERAGES.

Consumption of food and beverages at the State Facilities is subject to the following: (3-27-13)

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. (3-27-13)

02. Alcohol. Alcohol may not be consumed or distributed at the State Facilities. (3-27-13)

308. SMOKING.

All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. (3-27-13)

309. FIRES, CANDLES, AND FLAMES.

No fires, candles, or other sources of open flame are permitted at the State Facilities. (3-27-13)

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. (3-27-13)

02. Railings and Stairways. No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (3-27-13)

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. (3-27-13)

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. (3-27-13)

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. (3-27-13)

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. (3-27-13)

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. (3-27-13)

08. Surface Markings. Users shall not use any material to mark on any surface of the State Facilities including chalk, paint, pens, ink, or dye. (3-27-13)

311. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel or law enforcement may inspect: (3-27-13)

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (3-27-13)

02. Items. Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the State Facilities. (3-27-13)

312. PROHIBITED ITEMS.

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat, or other item that can be used to injure, damage, or harm persons or property. (3-27-13)

313. RESERVED

314. UTILITY SERVICE.

The public may not use the utility services of the State Facilities other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use 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. (3-18-14)

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 activity until the emergency or threat is abated. (3-18-14)

316. COMPLIANCE WITH LAW.

All use of the State Facilities shall comply with applicable law including, but not limited to, fire and safety codes. (3-27-13)

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

01. Clean Condition After Use. Users shall leave the State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (3-27-13)

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 use. (3-18-14)

03. Public Health. No person shall excrete human waste at the State Facilities 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. (3-27-13)

04. Fireworks. No person shall possess or use fireworks at the State Facilities. (3-27-13)

318. -- 399. (RESERVED)

400. LIABILITY AND INDEMNIFICATION.

01. 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. (3-27-13)

02. 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 Public Use of the State Facilities. (3-18-14)

401. -- 999. (RESERVED)

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