



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

---

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Senators MCKENZIE, Fulcher, Malepeai and  
Representatives LOERTSCHER, Crane, Smith

**FROM:** Eric Milstead - Principal Legislative Research Analyst

**DATE:** June 04, 2012

**SUBJECT:** Amendments to Temporary Rules

IDAPA 38.04.06 - Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities - Amendment to Temporary Rule - Docket No. 38-0406-1201

IDAPA 38.04.08 - Rules Governing Use of Idaho State Capitol Exterior - Amendment to Temporary Rule - Docket No. 38-0408-1201

We are forwarding these amendments to two temporary rules to you for your information only. No analyses were done by LSO. These rules are posted on our web site. Please call with any questions - 334-4845. Thank you.

---

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
[www.legislature.idaho.gov](http://www.legislature.idaho.gov)

## 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

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

**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, 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

**(BREAK IN CONTINUITY OF SECTIONS)**

**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

**(BREAK IN CONTINUITY OF SECTIONS)**

**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

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**  
**38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR**  
**DOCKET NO. 38-0408-1201**  
**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. 38-0408-1201. 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 105 through 115](#).

**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

**THE FOLLOWING IS THE AMENDED TEXT OF THE TEMPORARY RULE  
FOR DOCKET NO. 38-0408-1201**

**100. DEFINITIONS.**

**01. 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

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

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

**04. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception or gathering of people held on the State Capitol Exterior. 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. An Event is not the transit of individuals, without stopping to promote a cause or position, through the State Capitol Exterior. (4-17-12)T

**05. 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

**06. Jefferson Steps.** The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. (4-17-12)T

**07. Permit.** A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. (4-17-12)T

**08. 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

**09. 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

**10. 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

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

**12. State Capitol Exterior.** The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder's office in book 1 on page 1. The State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. (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 Maintenance and Improvements.** Maintenance or improvement of the State Capitol Exterior 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

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. EVENT AND EXHIBIT DURATION.**

- 01. Duration.** The duration of an Event or Exhibit on the State Capitol Exterior, including time for set-up and clean-up, shall not exceed the following: (4-17-12)T
- a.** Four (4) consecutive hours on the Jefferson Street Steps; (4-17-12)T
  - b.** Eleven (11) consecutive hours on the State Capitol Exterior; (4-17-12)T
  - c.** Seven (7) consecutive days on the State Capitol Exterior. An Event or Exhibit may continue to use the State Capitol Exterior after a seven (7) consecutive day period if the Event or Exhibit does not use the State Capitol Exterior for twenty-four (24) hours or more between each seven (7) consecutive day period; and ~~(4-17-12)T~~(5-14-12)T
  - d.** Beyond the hours for Event or Exhibit use of the State Capitol Exterior set forth in Section 302 of these rules. (4-17-12)T
- 02. Removal of Exhibits.** 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 Capitol Exterior. (4-17-12)T

**(BREAK IN CONTINUITY OF SECTIONS)**

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

- 01. Hours.** The hours for Events and Exhibits on the State Capitol Exterior are as follows: (4-17-12)T
- a.** General Hours. The general hours for Events and Exhibits 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
  - b.** Legislative Sessions. When either house of the legislature or a legislative committee is in session prior to or following general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the session and closed thirty (30) minutes after adjournment of the legislative body conducting business. (4-17-12)T
  - c.** Public Events in the State Capitol. When any Event is publicly scheduled in the interior of the Idaho State Capitol outside the general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the Event and closed thirty (30) minutes after the published time for the conclusion of the Event. (4-17-12)T
- 02. Locations.** 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 on the State Capitol Exterior shall be on the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior, and shall be at least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. Events or Exhibits may use the Jefferson Street Stairs for podiums, equipment, standing, and seating, subject to compliance with fire and safety codes. No persons shall place items on, sit or stand on stairways other than the Jefferson Street Steps. (4-17-12)T