

Dear Senators LODGE, Guthrie, Stennett, and
Representatives CRANE, Armstrong, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Administration:

IDAPA 38.04.06 - Rules Governing Use of State Property in the Capitol Mall, Multi-Agency
Facilities, and Other State Properties (ZBR Chapter Rewrite) - Proposed Rule (Docket
No. 38-0406-2201);

IDAPA 38.04.07 - Rules Governing Use of the Interior of State Property in the Capitol Mall and Other
State Facilities (ZBR Chapter Repeal) - Proposed Rule (Docket No. 38-0407-2201);

IDAPA 38.04.08 - Rules Governing Use of Idaho State Capitol (ZBR Chapter Rewrite) - Proposed
Rule (Docket No. 38-0408-2202);

IDAPA 38.04.09 - Rules Governing Use of the Chinden Office Complex (ZBR Chapter Repeal) -
Proposed Rule (Docket No. 38-0409-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/07/2022. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/04/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondoff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Drafting Attorney - Ryan Bush
DATE: September 19, 2022
SUBJECT: Department of Administration

IDAPA 38.04.06 - Rules Governing Use of State Property in the Capitol Mall, Multi-Agency Facilities, and Other State Properties (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 38-0406-2201)

IDAPA 38.04.07 - Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities (ZBR Chapter Repeal) - Proposed Rule (Docket No. 38-0407-2201)

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(1) IDAPA 38.04.06 - Rules Governing Use of State Property in the Capitol Mall, Multi-Agency Facilities, and Other State Properties

Summary and Stated Reasons for the Rule

The Department of Administration submits notice of proposed rulemaking at IDAPA 38.04.06 - Rules Governing Use of State Property in the Capitol Mall, Multi-Agency Facilities, and Other State Properties (ZBR Chapter Rewrite). The proposed chapter rewrite is being done pursuant to the Governor's Zero-Based Regulation executive order. Previous chapters governing use of these properties were repealed in companion Docket Nos. 38-0407-2201 and 38-0409-2201. This chapter rewrite includes rules for the following:

- (1) Use of state properties other than the Capitol Mall including the Idaho State Historical Society, the Division of Veterans Services, Department of Labor properties, the Chinden Office Complex, and other multi-agency facilities;
- (2) Authorized and prohibited uses of the state facilities;
- (3) Limitations on uses;
- (4) Prohibited items; and
- (5) Health, safety, and maintenance of state facilities.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted because the changes are not considered substantive. There is no fiscal impact anticipated with this rulemaking.

Statutory Authority

The proposed rulemaking appears to be within the statutory authority granted to the Department in Section 67-5709, Idaho Code.

(2) IDAPA 38.04.08 - Rules Governing Use of Idaho State Capitol

Summary and Stated Reasons for the Rule

The Department of Administration submits notice of proposed rulemaking at IDAPA 38.04.08 - Rules Governing Use of Idaho State Capitol (ZBR Chapter Rewrite). The proposed chapter rewrite is being done pursuant to the Governor's Zero-Based Regulation executive order. The previous chapter governing use of this property was repealed in companion Docket No. 38-0407-2201. This chapter rewrite includes rules for the following:

- (1) Authorized and prohibited uses of the Capitol;
- (2) Restrictions and limitations on use including items subject to search, prohibited items, and removal of items;
- (3) Establishment of perimeters and area closures; and
- (4) Permitting for use of a specified area of the Capitol.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted because the changes are not considered substantive. There is no fiscal impact anticipated with this rulemaking.

Statutory Authority

The proposed rulemaking appears to be within the statutory authority granted to the Department in Section 67-1604, Idaho Code.

cc: Department of Administration
Kim Rau

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 38 – DEPARTMENT OF ADMINISTRATION

38.04.06 – RULES GOVERNING USE OF STATE PROPERTY IN THE CAPITOL MALL, MULTI-AGENCY FACILITIES, AND OTHER STATE PROPERTIES

DOCKET NO. 38-0406-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Administration is performing a critical and comprehensive review of the statutes and existing rules chapter. The Department is rewriting this chapter under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero-Based Regulation](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes being contemplated are not considered substantive and are expected to affect only the rule's format and duplication with other related rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Bailey, (208) 332-1825.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this August 5, 2022.

Steve Bailey, Deputy Director
Department of Administration
650 W. State Street
Room 100
Boise, Idaho 83720
steven.bailey@adm.idaho.gov
(208) 332-1825

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0406-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

**38.04.06 – RULES GOVERNING USE OF STATE PROPERTY IN THE CAPITOL MALL,
MULTI-AGENCY FACILITIES, AND OTHER STATE PROPERTIES**

SUBCHAPTER A – GENERAL PROVISIONS

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, Multi-agency Facilities, and Other State Properties. ()

001. SCOPE.

These rules contain the provisions for use of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. ()

002. -- 009. (RESERVED)

010. GENERAL DEFINITIONS.

The definitions in this section may be supplemented or modified by definitions in separate subchapters. ()

01. Camping. Any activity prohibited under Section 67-1613, Idaho Code. ()

02. Capitol Annex. The Interior and Exterior of the 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. ()

03. Capitol Mall Office Properties. The Interior and Exterior of the 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. ()

04. Commemorative Installation. Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. ()

05. Common Space. The portion of a State Facility that is not Tenant Space. Common Space includes, but is not limited to, interior lobbies not within Tenant Space and restrooms not accessed through Tenant Space. Common Space does not include Tenant Space or any area marked "private," "no admission," "staff only," or similarly designated as not open to the public. ()

06. Department. The Department of Administration. ()

07. Director. The Director of the Department of Administration or his designee. ()

08. Display. An attended exhibition or installation of physical items during an Event. ()

09. Event. Any activity including, but not limited to, arts or cultural presentations, weddings, dinners, award ceremonies, memorials, and seminars. ()

10. Exhibit. Exhibitions or installations of physical items outside of an Event including, but not limited to, commemorative installations, floral displays, art objects, historical artifacts, and cultural objects. ()

11. **Exterior.** The exterior of a State Facility, including the real property, the grounds, and the improvements on the exterior of the State Facility. ()
12. **Interior.** The interior spaces within a State Facility. ()
13. **Multi-Agency Facilities.** The Interior and Exterior of the properties set forth in Section 102 of these rules. ()
14. **Other State Properties.** The Interior and Exterior of the properties property set forth in Section 101 of these rules. ()
15. **Parking Facilities.** The Interior and Exterior of the properties set forth in Section 67-5709(2)(b), Idaho Code. ()
16. **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. ()
17. **Public Use.** Use that is not: ()
- a. A State Event or Exhibit; ()
- b. Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; ()
- c. State Maintenance and Improvements; or ()
- d. Use by a Tenant. ()
18. **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. ()
19. **State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ()
20. **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. ()
21. **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” includes the Exterior and Interior of the State Facilities. Use of the singular “State Facility” means any of the properties within the definition of State Facilities. ()
22. **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, turf installation and repair, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and window 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. ()
23. **Tenant.** A state of Idaho officer, official, agency, board or commission or a public agency or a private individual or entity with a license or lease to use a State Facility. ()
24. **Tenant Space.** The portion of the Exterior licensed or leased to a private individual or entity and

the portion of the Interior occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. ()

011. -- 100. (RESERVED)

**SUBCHAPTER B – APPLICATION TO OTHER STATE PROPERTIES
AND MULTI-AGENCY FACILITIES**

101. OTHER STATE PROPERTIES.

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

01. Idaho State Historical Society Properties. ()

a. The following properties owned or operated by the Idaho State Historical Society are Other Properties under these rules: ()

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. ()

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. ()

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. ()

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. ()

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. ()

vi. Pierce Courthouse, located in Pierce, Idaho. ()

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. ()

b. The following sections of these rules 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.: ()

i. Subsection 010.07. “Director” means the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. ()

ii. Subsection 200.01. “Authorized Uses by the Public” applies 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. ()

iii. Section 302. “Maintenance and Improvements” applies 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. ()

iv. Subsection 305.02. “Domestic Animals” applies unless a sign at the property specifies that domestic animals are not permitted. ()

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. ()

- 02. Idaho Division of Veterans Services Properties.** ()
- a.** The following properties owned or operated by the Idaho Division of Veterans Services are “Other State Properties” under these rules: ()
- i. Idaho Division of Veterans Services Central Support Office, located at 351 Collins Road, Boise, Idaho. ()
- ii. Idaho State Veterans Home – Boise, located at 351 Collins Road, Boise, Idaho. ()
- iii. Idaho State Veterans Home – Lewiston, located at 821 21st Avenue, Lewiston, Idaho. ()
- iv. Idaho State Veterans Home – Pocatello, located at 1957 Alvin Ricken Drive, Pocatello, Idaho. ()
- v. Idaho State Veterans Home – Post Falls, located at 590 S. Pleasant View Road 101, Post Falls, Idaho. ()
- vi. Idaho State Veterans Cemetery – Boise, located at 10100 N. Horseshoe Bend Road, Boise, Idaho. ()
- vii. Idaho State Veterans Cemetery – Blackfoot, located at 2651 Cromwell Lane, Blackfoot, Idaho. ()
- b.** The following subsections of these rules apply to the Idaho Division of Veterans Services properties set forth in Paragraph 101.02.a. of these rules only as modified by this Paragraph 101.02.b.: ()
- i. Subsection 010.07. “Director” means the Chief Administrator of the Division of Veterans Services when these rules are applied to the Idaho Division of Veterans Services properties set forth in Paragraph 101.02.a. of these rules. ()
- ii. Subsection 200.01. “Public Use” shall not apply to the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules. Such properties include the exterior courtyards, patios, gardens, outside yards, and other similar residential spaces directly adjacent to the homes. ()
- iii. Subsection 200.02.a. “Prohibited Uses” applies except those concessions at the Idaho Division of Veterans Services properties authorized by the Director are not commercial activity prohibited by these rules. ()
- iv. Subsection 200.02.b. “Prohibited Uses” applies except those activities conducted by residents or staff of the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules may include the indicia of camping set forth in Section 67-1613, Idaho Code. ()
- v. Subsection 200.02.c. “Prohibited Uses” applies except as set forth in this subsection. ()
- (1) 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. ()
- (2) Burial services conducted by the Idaho State Veterans Cemeteries set forth in Paragraphs 101.02.a.vi. and vii. exclude the public. The public may not use portions of such cemeteries during burial services as directed by cemetery staff. ()
- vi. Subsection 305.01.b. “Wildlife” applies except that the Director may authorize residents and staff of the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules to feed wildlife. ()
- vii. Subsection 305.02. “Domestic Animals” applies except that the Director may authorize domestic

animals in the interior of the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules. ()

viii. Subsection 307.02. “Alcohol” applies except as authorized by the Director for the prescribed medical treatment of a resident of the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules. ()

ix. Subsection 309. “Fire, Candles, and Flames” applies except that the Director may authorize the use of flames for the cooking of food by staff, contractors, and lessees or licensees. ()

x. Subsection 310.08 “Surface Markings” applies except transitory chalk may be used in areas and at times designated by the Director at the State Veterans Homes set forth in Paragraph 101.02.a.ii. to v. of these rules. ()

x. Subsection 317.04 “Fireworks” applies except fireworks displays authorized by the Director. ()

03. Idaho Department of Labor Properties. ()

a. The following properties owned or operated by the Idaho Department of Labor are “Other State Properties” under these rules: ()

i. 600 N. Thornton Street, Post Falls, Idaho. ()

ii. 613 Ridley Village Road, Suite C, Sandpoint, Idaho. ()

iii. 1158 Idaho Street, Lewiston, Idaho. ()

iv. 4514 Thomas Jefferson Street, Caldwell, Idaho. ()

v. 317 W. Main Street, Boise, Idaho. ()

vi. 219 W. Main Street, Boise, Idaho. ()

vii. 420 Falls Avenue, Twin Falls, Idaho. ()

viii. 127 West 5th Street North, Burley, Idaho. ()

ix. 430 North 5th Avenue, Pocatello, Idaho. ()

x. 1515 East Lincoln Road, Idaho Falls, Idaho. ()

b. Subsection 010.07. “Director” means the Director of the Department of Labor when these rules are applied to the Idaho Department of Labor properties set forth in Paragraph 101.03.a. of these rules. ()

102. MULTI-AGENCY FACILITIES.
These rules apply to the following Multi-agency Facilities managed and administered by the Department. ()

01. Lewiston State Office Building. Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. ()

02. Idaho Falls State Office Building. Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. ()

03. Chinden Office Complex. The Chinden Office Complex is located in Boise, Idaho and bounded to the north by West Chinden Boulevard, to the west by North Cloverdale Road, to the east by North Five Mile Road, and to the south by the Jones-Stiburek, Orchid Point, De Meyer Estates No. 7, Hickories No. 1, 9 and 12, Hickories East and EMS Avenue Subdivisions. The Chinden Office Complex includes Buildings 1 through 8 and the grounds

adjacent to such buildings. ()

103. -- 199. (RESERVED)

SUBCHAPTER C – GENERAL RULES FOR PUBLIC USE

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. ()

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

a. Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and persons may not solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: ()

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

ii. Concessions authorized by law. ()

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. ()

iv. The conduct of business by a Tenant. ()

b. Camping. ()

c. Private Events and Exhibits. ()

03. Priority of Uses. State Maintenance and Improvements have priority over all other use of the State Facilities. ()

04. Limitations on Public Access and Use. ()

a. Public Access to the Interior. Public access to the Interior and to Tenant Space is limited to the conduct of business with a Tenant. ()

b. Common Space. The public shall not use the Common Space for Events, Exhibits, or Displays. ()

c. Hours of Use. ()

i. Unless otherwise provided in these rules or when extended hours are posted at the public entrance to a State Facility, the hours for public access to the Interior of the State Facilities are 8 a.m. to 5 p.m. on State Business Days. ()

ii. The hours of use of the Parking Facilities are governed by IDAPA 38.04.04, “Capitol Mall Parking Rules.” ()

iii. The hours for public access to the Exterior of the Chinden Office Complex are from sunrise to sunset. ()

d. Restricted Areas. Areas of the State Facilities marked “private,” “no admission,” “staff only,” or similarly designated as not open to the public are not available for public use. ()

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. ()

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. ()

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. ()

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 apply to all Public Use of the State Facilities. The lease or license of Tenant Space may vary from these rules for use by the Tenant, its employees, and its invited guests. Subchapters of these rules applicable to a State Facility may vary from the rules in Sections 200 through 399 of these rules for Public Use of the State Facility. ()

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. The primary use of the State Facilities also includes the conduct of business by Tenants leasing or licensing a portion of the State Facility. ()

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. ()

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 Department's website. 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. ()

303. MOTORIZED VEHICLES.

01. Operation on Designated Areas. Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. ()

02. Parking. Parking of motorized vehicles at the Capitol Mall is governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Except as provided in IDAPA 38.04.04, Public Use of the State Facilities for parking is limited to the period the operator or passengers are using the State Facility in compliance with these rules. Unless approved by the Director, the public shall not park motorized vehicles overnight at the State Facilities. Public parking

may be limited to designated parking areas. ()

03. Towing. Motorized vehicles parked outside of designated parking areas and times may be towed without notice at the vehicle owner's expense. ()

04. Excluded Vehicles. Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. ()

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. ()

305. ANIMALS.

The following apply to animals at the State Facilities: ()

01. Wildlife. Unless authorized by the Director, persons may not: ()

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. ()

b. Feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. ()

02. Domestic Animals. ()

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. ()

b. The person bringing the animal to the Exterior of the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and immediately remove all fecal matter deposited by the animal. ()

c. Animals are not allowed at the Interior unless the animal is a service animal necessary to assist individuals with disabilities or an animal in the service of Law Enforcement. The person bringing the animal to the Interior shall have in his possession the equipment necessary to remove the animal's urine and feces and immediately remove all urine and feces deposited by the animal. ()

306. LANDSCAPING.

Unless authorized by the Director, no person shall: ()

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

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

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

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

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

307. FOOD AND BEVERAGES.

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

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. ()

02. Alcohol. Alcohol may not be consumed or distributed at the State Facilities. ()

308. SMOKING.

All persons shall observe the smoke free entrance notices and smoke or vape only in designated Exterior areas. Smoking and vaping is not allowed in the Interior. ()

309. FIRES, CANDLES, AND FLAMES.

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

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. ()

02. Railings and Stairways. Items may not be placed on railings or stairways and no persons shall sit or stand on railings or stairways. ()

03. Tossing or Dropping Items. Items may not be tossed or dropped over railings or from one level of a facility to another level or to the ground. ()

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. ()

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. Items may not 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. ()

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. ()

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. ()

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. ()

311. ITEMS SUBJECT TO SEARCH.

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

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

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. ()

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. ()

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. ()

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. ()

316. COMPLIANCE WITH LAW.

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

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. ()

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. ()

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. ()

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

318. REMOVAL OF ITEMS.

All items brought to the State Facilities by the public shall be removed at the conclusion of the person's use of the State Facility and prior to the expiration of each day's hours of use by the public. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the State Facilities. ()

319. -- 399. (RESERVED)

400. LIABILITY.

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. ()

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. ()

401. -- 499. (RESERVED)

SUBCHAPTER D – RULES FOR PUBLIC USE OF THE CHINDEN OFFICE COMPLEX

500. ADDITIONAL DEFINITIONS.

The following additional definitions apply to Public Use of the Chinden Office Complex: ()

01. Recreational Facilities. Facilities designated by the Director for Recreational Use. ()

02. Recreational Use. Use for leisure or athletic purposes such as picnicking and sports practices or informal sports games. ()

501. USE OF RECREATIONAL FACILITIES.

The Director may authorize reservation of Recreational Facilities under this section by a Tenant and the exclusion of members of the public from use of Recreational Facilities during reserved periods. Unless reserved by a Tenant, Recreational Facilities are available for Recreational Use by the public on a first-come, first-used basis from sunrise to sunset daily. ()

502. ALCOHOL.

Section 307 of these rules is modified by this section. Alcohol may be consumed or distributed in the Tenant Space at the Chinden Office Complex if such space is licensed or leased to a private individual or entity. ()

503. FIRES, CANDLES, AND FLAMES.

Section 309 of these rules is modified by this section. Fires and other sources of open flame are permitted in designated barbecue facilities at the Chinden Office Complex. ()

504. USE OF WATERWAYS.

No person shall swim, fish, or wade in waterways at the Chinden Office Complex. Persons bringing domestic animals to the Chinden Office Complex shall not permit the animal to swim or wade in waterways at the Chinden Office Complex. Waterways include ponds, ditches, and canals. ()

505. -- 999. (RESERVED)

IDAPA 38 – DEPARTMENT OF ADMINISTRATION

38.04.07 – RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES

DOCKET NO. 38-0407-2201 (ZBR CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Administration is performing a critical and comprehensive review of the statutes and existing rules chapter. As a result of the review, the Department has made the determination to repeal this chapter under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero-Based Regulation](#). Necessary provisions have been retained and included in companion docket no. 38-0406-2201 published in this bulletin.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the repeal of this chapter will result in the reduction of regulatory burden.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Bailey, (208) 332-1825.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this August 5, 2022.

Steve Bailey, Deputy Director
Department of Administration
650 W. State Street
Room 100
Boise, Idaho 83720
steven.bailey@adm.idaho.gov
(208) 332-1825

IDAPA 38.04.07 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 38 – DEPARTMENT OF ADMINISTRATION
38.04.08 – RULES GOVERNING USE OF IDAHO STATE CAPITOL
DOCKET NO. 38-0408-2202 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Administration is performing a critical and comprehensive review of the statutes and existing rules chapter. The Department is rewriting this chapter under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero-Based Regulation](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes being contemplated are not considered substantive and are expected to affect only the rule's format and duplication with other related rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Bailey, (208) 332-1825.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this August 5, 2022.

Steve Bailey, Deputy Director
Department of Administration
650 W. State Street
Room 100
Boise, Idaho 83720
steven.bailey@adm.idaho.gov
(208) 332-1825

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0408-2202
(Zero Based Regulation (ZBR) Chapter Rewrite)

38.04.08 – RULES GOVERNING USE OF IDAHO STATE CAPITOL

000. LEGAL AUTHORITY.

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds after consultation with the governor, the presiding officers of the senate and house of representatives, and the Capitol Commission. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities, subject to the provisions of Section 67-1602, Idaho Code, which determines the control and allocation of space in the Idaho State Capitol, and after making the consultations required in Section 67-1604, Idaho Code. ()

001. SCOPE.

These rules contain the provisions for use of the Idaho State Capitol. ()

01. Application to Space Controlled by the Idaho Legislature. The Idaho legislature is exempt from the application of the Idaho Administrative Procedure Act, pursuant to Section 67-5201(2), Idaho Code. Space within the Idaho State Capitol controlled by the Idaho legislature is governed by Section 67-1602(3), Idaho Code, and rules enacted under the procedures of the Idaho legislature. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Camping. Any activity prohibited under Section 67-1613, Idaho Code. ()

02. Capitol Commission. The Idaho State Capitol Commission established in Section 67-1606, Idaho Code. ()

03. Commemorative Installation. Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. ()

04. Department. The Department of Administration. ()

05. Director. The Director of the Department of Administration or his designee. ()

06. Display. An attended exhibition or installation of physical items during an Event. ()

07. Event. Any activity including, but not limited to, arts or cultural presentations, weddings, dinners, award ceremonies, memorials, and seminars. ()

08. Exhibit. Exhibitions or installations of physical items outside of an Event including, but not limited to, commemorative installations, floral displays, art objects, historical artifacts, and cultural objects. ()

09. 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 on its grounds. ()

10. Idaho State Capitol. The building and grounds governed by chapter 16, title 67, Idaho Code, and 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 Idaho State Capitol is bounded by the following streets: State Street, Sixth Street,

- Jefferson Street, and Eighth Street. ()
11. **Interior.** The interior spaces within the Idaho State Capitol. ()
12. **Jefferson Steps.** The building entrance at the second floor of the Idaho State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the sidewalk along Jefferson Street. ()
13. **Law Enforcement.** An officer of the Idaho state police, Ada County sheriff's office, or Boise City police granted authority to enforce the laws of the state of Idaho and ordinances for the Idaho State Capitol pursuant to Section 67-1605, Idaho Code, or any peace officer as defined in Section 19-5101, Idaho Code, or an equivalent law enforcement officer in the service of the United States who is authorized by law or the Idaho State Police to exercise jurisdiction at the Idaho State Capitol. ()
14. **Legislative Galleries.** The areas of the Interior overlooking the Senate and the House and accessed from the fourth floor of the Interior. ()
15. **Legislative Hearing Rooms.** A room in the Interior holding a meeting of a committee of the Idaho legislature. ()
16. **Permit.** A written authorization issued by the Director allowing use of the Idaho State Capitol as set forth in the Permit. A Permit serves as a reservation to use a portion of the Idaho State Capitol with the priority for use set forth in Subsection 200.04 of these rules. ()
17. **Presiding Officer.** The Presiding Officer of the Senate is the President Pro Tempore. The Presiding Officer of the House is the Speaker. The Presiding Officer of a standing, joint, or special legislative committee is the legislator chairing the committee hearing. ()
18. **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. ()
19. **Private Space.** The portion of the Interior that is not Public Space. ()
20. **Public Space.** The portion of the Interior that is maintained by the Department pursuant to Section 67-1602(1), Idaho Code, and is not designated as closed to the public by being marked "private," "no admission," "staff only," or similarly designated as not open to the public. ()
21. **Public Use.** Use that is not: ()
- a. A State Event or Exhibit; ()
 - b. Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; or ()
 - c. State Maintenance and Improvements. ()
22. **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. ()
23. **State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. ()
24. **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. ()
25. **State Maintenance and Improvements.** Maintenance or improvement of the Idaho State Capitol

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. ()

011. -- 199. (RESERVED)

200. USE OF IDAHO STATE CAPITOL.

01. Authorized Uses by the Public. ()

a. Except as provided otherwise in these rules, the Exterior and the Public Space is available for Public Use. ()

b. Public access to Private Space occupied by a state of Idaho officer, official, agency, board or commission, including an elected official other than a legislator, is limited to the conduct of business with the occupant of the space. ()

c. Unless otherwise directed by the Presiding Officer, public access to space controlled by the Idaho legislature is limited to the Legislative Galleries, Legislative Hearing Rooms, and the conduct of legislative business with a legislator. ()

d. Temporary and permanent placement of Exhibits in the Public Space shall be reviewed by the Capitol Commission in accordance with Section 67-1608(3), Idaho Code. Placement of Exhibits does not include Displays during a Public Use permitted by these rules. ()

02. Prohibited Uses. The following uses are prohibited at the Idaho State Capitol: ()

a. Commercial Activity. The Exterior and the Public Space shall not be used for any activity conducted for profit and persons may not solicit to sell any merchandise or service on the Exterior or in the Public Space. Events promoting an industry, product or service in the Public Space under a Permit are not prohibited by this rule if the Event is limited to Displays, distribution of information, including literature, or both and participants are not soliciting orders or contracts for a product or service. ()

b. Camping. ()

c. Private Events and Private Exhibits. ()

03. Priority of Uses. State Maintenance and Improvements has priority over all other use of the Idaho State Capitol. The conduct of business by the public entity or official occupying or controlling Private Space shall have priority over Public Use of the Idaho State Capitol. Public Use held under a Permit has priority over other Public Use. ()

04. Use of Space Controlled by the Idaho Legislature. Use of space controlled by the Idaho legislature, including Public Use, is governed by chapter 16, title 67, Idaho Code, and the rules adopted by the Idaho legislature as described in Subsection 001.03 of these rules. ()

201. (RESERVED)

202. EQUIPMENT AND SUPPLIES.

Except as provided in these rules, the Department will not provide equipment or supplies for use on the Idaho State Capitol. Where requested in a Permit application for use of the Jefferson Street Steps or the Public Space, the Department shall provide a podium and a public address system, unless such equipment is being repaired or replaced. ()

203. ESTABLISHMENT OF PERIMETERS.

Security Personnel and Law Enforcement may establish perimeters separating participants in Public Use of the Idaho State Capitol or State Events or Exhibits. Participants in and observers of any Public Use or State Events or Exhibits shall observe perimeters set pursuant to this section. ()

204. AREA CLOSURES.

The Director may direct that any portion of the Idaho State Capitol be closed for Public Use upon a finding that the closed portion of the Idaho State Capitol has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the Idaho State Capitol 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 Idaho State Capitol. Circumstances presenting an imminent danger of damage to the Exterior 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. ()

205. -- 299. (RESERVED)

300. RESTRICTIONS AND LIMITATIONS ON USE.

The restrictions and limitations on use of the Idaho State Capitol set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the Idaho State Capitol. ()

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference With Primary Use of Idaho State Capitol. Events, Exhibits, and Public Use of the Idaho State Capitol shall not interfere with the primary use of the Idaho State Capitol. The primary uses of the Idaho State Capitol are legislative proceedings, 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 Idaho State Capitol. ()

02. Interference With Access. Public Use of the Idaho State Capitol 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 Idaho State Capitol. ()

302. LOCATIONS AND HOURS.

01. Interior Hours. The hours for Public Use and public access to the Interior shall include the periods in which public meetings and other activities open to the public are held within the Interior. The hours for Public Use will be posted, where feasible, to the website containing official Idaho State Capitol information. Participants in Public Use of the Interior shall exit the Interior at the conclusion of the hours for Public Use. Public hours shall not be reduced during Public Use authorized under these rules unless an emergency or threat exists under Section 315 of these rules. ()

02. Exterior Use Locations. In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire, health, and safety codes, Public Use on the Exterior shall be: ()

a. On the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the Exterior; and ()

b. At least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. ()

303. MAINTENANCE AND IMPROVEMENTS.

Public Use shall not interfere with State Maintenance and Improvements. 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. ()

304. 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 is governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to individuals with a disability are not motorized vehicles for the purposes of this section. ()

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

Bicycles, skates, skateboards, and scooters may not be used at the Idaho State Capitol. Users of all other non-motorized transportation must remain on designated pathways during use of the Exterior. Where indicated by a posted notice or where requested by Security Personnel, Law Enforcement or a state employee or agent supervising the Idaho State Capitol, users must store non-motorized transportation in a designated storage area on the Exterior. Wheelchairs and other equipment providing individual mobility to individuals with a disability are not non-motorized transportation for the purposes of this section. ()

306. ANIMALS.

The following apply to animals on the Idaho State Capitol: ()

01. Wildlife. Unless authorized by the Director persons may not: ()

a. Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the Exterior. ()

b. Feed, give or offer food or any noxious substance to a wild animal on the Exterior. ()

02. Domestic Animals. ()

a. Domestic animals are not allowed on the Exterior unless leashed and under the control of the person bringing the animal to the Exterior. ()

b. Domestic animals are not allowed in the Interior unless the animal is a service animal necessary to assist individuals with disabilities or an animal in the service of Law Enforcement. Animals allowed under this rule must be leashed and under the control of the person bringing the animal to the Interior. ()

c. The person bringing the domestic animal to the Exterior Idaho State Capitol shall have in his possession the equipment necessary to remove the animal's fecal matter and immediately remove all fecal matter deposited by the animal. The person bringing the animal to the Interior shall have in his possession the equipment necessary to remove the animal's urine and feces and immediately remove all urine and feces deposited by the animal. ()

307. LANDSCAPING AND IMPROVEMENTS.

Persons other than state employees or contractors designated by the Director may not: ()

01. Plants. Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the Exterior. ()

02. Grass. Dig in or otherwise damage grass areas on the Exterior. ()

03. Irrigation Equipment. Interfere with, damage or remove irrigation equipment on the Exterior. ()

04. Landscaping Materials. Move or alter landscaping materials on the Exterior including, but not limited to, rock, edging materials, and bark or mulch. ()

05. Climbing. Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements at the Idaho State Capitol. ()

308. FOOD AND BEVERAGES.

Consumption of food and beverages at the Idaho State Capitol is subject to the following: ()

01. Consumption May Be Prohibited. The consumption of food and beverages, including water, may be prohibited by a notice posted at the entrance to all or a portion of the Exterior. Each authority granted control of a portion of the Interior as described in Section 67-1602, Idaho Code, may prohibit the consumption of food and beverages, including water, in that portion of the Interior by posting a notice at one (1) or more of the entrances to the portion of the Interior under its control. ()

02. Alcohol. Alcohol may not be consumed or distributed on the Exterior or the Public Space. ()

309. SMOKING AND VAPING.

All persons shall observe the smoke free entrance notices and shall smoke or vape only in designated areas of the Exterior. Smoking and vaping is not allowed in the Interior. ()

310. FIRES, CANDLES, AND FLAMES.

No fires, candles or other sources of open flame are permitted at the Idaho State Capitol. ()

311. 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. ()

02. Railings. Items may not be placed on railings and persons may not sit or stand on railings. ()

03. Tossing or Dropping Items. Items may not be tossed or dropped over railings or from one (1) level of the Idaho State Capitol or improvements at the Idaho State Capitol to another level or to the ground. ()

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 Idaho State Capitol, or to restrict the flow of individuals using the facility, or to restrict emergency egress or ingress. ()

05. Attaching, Affixing, Leaning or Propping Materials. Posters, placards, banners, signs, and Displays, including any printed materials, shall not be affixed on any surface of the Idaho State Capitol or on any Exhibit or Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and Displays must be free-standing or supported by individuals. Items may not be leaned or propped against any surface of the Idaho State Capitol or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. ()

06. Materials Causing Damage to Surfaces. 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 on the Idaho State Capitol or any systems or utilities of the Idaho State Capitol including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. ()

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 Idaho State Capitol that such material is not discarded outside of designated trash receptacles. ()

08. Surface Markings. Users shall not use any material to mark on any surface of the Idaho State Capitol including chalk, paint, pens, ink, or dye. ()

09. Capacity. The number of users in the Interior is limited to the capacity designated by health and safety officials including, but not limited to, the state fire marshal, the division of building safety, and the department of health and welfare. ()

10. Moving Furniture and Items. The public shall not move furnishings owned by the state of Idaho

or placed by agents or employees of the state of Idaho at the Idaho State Capitol, including chairs, benches, tables, signs, art, memorials, statues, or Exhibits. ()

11. Sound Amplification. Except for amplification provided by the Department under a Permit and use by Law Enforcement or Security Personnel or by state employees and officials under Subsection 315.01 of these rules, sound amplification devices shall not be used in the Interior. ()

312. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel and Law Enforcement may inspect: ()

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by law, including these rules. ()

02. Items. Items brought to the Idaho State Capitol, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Idaho State Capitol of disrupting the primary uses of the Idaho State Capitol in violation of law, including these rules. ()

313. PROHIBITED ITEMS.

The following, as defined in title 18, chapter 33, Idaho Code, are not permitted at the Idaho State Capitol: 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 Idaho State Capitol immediately remove from the Idaho State Capitol any club, bat, or other item that can be used in violation of law, including these rules, to injure, damage, or harm persons or property or to disrupt the primary uses of the Interior. ()

314. UTILITY SERVICE.

The public may not use the utility services of the Idaho State Capitol other than restrooms and drinking fountains; 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 Idaho State Capitol or the equipment or apparatus using utility service fails to comply with applicable rules or codes. ()

315. LAW ENFORCEMENT AND FACILITY EXIGENCY – REMOVAL FOR NON-COMPLIANCE.

01. Emergency or Threat. 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 or out of the Idaho State Capitol and delay or postpone any activity until the emergency or threat is abated. ()

02. Removal. The Director, the Presiding Officer, or their designees are authorized to request that Law Enforcement remove or exclude any person from the Interior who engages in any of the following: ()

a. Violation of law, including these rules, where such violation: ()

i. Interferes with the primary uses of the Idaho State Capitol, injures persons or property, or is likely to injure persons or property, or, ()

ii. Law Enforcement, Security Personnel, the Presiding Officer, or the Director or his designee has requested compliance with the applicable law, including provisions of these rules, and the person has refused to comply. ()

b. Engaging in a riot, unlawful gathering or a gathering designed to impede the business of the state of Idaho in violation of Sections 18-6401 or 18-6404, Idaho Code. ()

316. COMPLIANCE WITH LAW.

All use of the Idaho State Capitol shall comply with applicable law including, but not limited to, fire, health, and safety codes. ()

317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.

01. Clean Condition After Use. Users shall leave the Idaho State Capitol in reasonably clean condition after use, including depositing all trash in designated receptacles. ()

02. Return of Items 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 use. ()

03. Public Health. Persons may not excrete human waste at the Idaho State Capitol 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. ()

04. Fireworks. Persons may not possess or use fireworks at the Idaho State Capitol. ()

05. Attire. Persons in the Interior shall be fully clothed. Fully clothed means wearing shoes and one (1) or more garments extending from the wearer's shoulders to the wearer's legs. ()

318. REMOVAL OF ITEMS.

All items brought to the Idaho State Capitol by the public shall be removed at the conclusion of the person's use of the Idaho State Capitol. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the Idaho State Capitol. ()

319. -- 399. (RESERVED)

400. PERMITS.

01. Use Without a Permit. A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants desiring to obtain a Permit for use of the Exterior or the Public Space outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the Exterior or the Public Space, subject to the provisions of these rules, on a first-come, first used basis. Permits will be issued to groups of two (2) or more people. ()

02. Permit Areas, Hours and Duration, and Number of Participants. ()

a. The Director will consider and grant Permits only for: ()

i. Public Use of the Jefferson Street Steps; and ()

ii. Public Use of the Public Space on the second floor rotunda. ()

b. The Director will issue Permits for the following periods: ()

i. Reserving use of the Jefferson Street Steps only for the period between the hours of 7 a.m. and 6 p.m.; and ()

ii. Reserving the Public Space on the second floor rotunda during the hours of use in Section 302 of these rules. ()

c. The duration of a Permit for the Jefferson Street Steps will not exceed four (4) consecutive hours. The duration of a Permit for the Public Space will not exceed eight (8) consecutive hours. ()

d. The Director will issue a Permit only for Public Use involving two (2) or more persons. ()

03. Application Period. Permit applications must be received and complete at least two (2) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications

submitted more than six (6) months prior to the requested date of the Permit. ()

04. Validity. Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. ()

05. Distribution. Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps or the Public Space during any period of time. ()

06. Application Requirements. Applications for a Permit shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's [website](#). The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. ()

07. Conditions. The Director may impose reasonable conditions on the use of the Idaho State Capitol in the Permit for the purpose of protecting persons and property. ()

08. Transferability. Permits are non-transferable. ()

401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.

01. Period for Approval or Denial. The Department will approve or deny a complete application within two (2) State Business Days of the submission of the application. ()

02. Basis for Denial. Permits may be denied for one (1) or more of the following: ()

a. A Permit has been granted for all or part of the requested location during all or part of the requested time period. ()

b. A public entity or official will be using all or part of the requested location during all or part of the requested time period. ()

c. The requested use would violate any provision of these rules or applicable law. ()

d. These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. ()

e. The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. ()

f. The Permit applicant has not certified that the applicant will comply with these rules or applicable law. ()

g. The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. ()

h. The individual, organization or entity submitting the application: ()

i. Failed to pay costs or damages arising from an earlier use of any state facility; ()

ii. Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; ()

iii. Violated the terms of prior Permits issued to the individual, organization or entity; or ()

iv. Violated any applicable law in the course of previous Public Use of state of Idaho facilities. ()

- ()
- i. The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the Idaho State Capitol due to advocacy of: ()
- i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; ()
- ii. The willful damage or destruction, or seizure and subversion of public property; ()
- iii. The forcible disruption or impairment of or interference with the regularly scheduled functions of the state of Idaho; ()
- iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or ()
- v. Other disorders of a violent nature. ()

402. REVOCATION OF A PERMIT.

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. ()

403. APPEALS.

01. Time for Appeal. The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods: ()

- a. Seven (7) State Business Days following the written denial of an application for a Permit; ()
- b. Seven (7) State Business Days following the revocation of a Permit; and ()
- c. Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Section 401 of these rules. ()

02. Requesting an Appeal. The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the street address set forth on the Department's [website](#) containing the following: ()

- a. The name, address, and contact information of the appellant; ()
- b. A concise statement of the reason the appeal should be granted; ()
- c. Whether the appellant requests informal disposition to expedite the contested case; and ()
- d. A description of the Permit sought. ()

03. Informal Disposition. If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. ()

04. Contested Cases. If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in chapter 52, title 67, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

05. Judicial Review. Judicial review of orders issued in an appeal is provided as set forth in chapter 52,

title 67, Idaho Code. ()

404. -- 499. (RESERVED)

500. LIABILITY.

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, chapter 9, title 6, Idaho Code. ()

02. No Endorsement. The grant of a Permit and any action or inaction of the Department does not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the Idaho State Capitol. ()

501. -- 999. (RESERVED)

IDAPA 38 – DEPARTMENT OF ADMINISTRATION

38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX

DOCKET NO. 38-0409-2201 (ZBR CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Administration is performing a critical and comprehensive review of the statutes and existing rules chapter. As a result of the review, the Department has made the determination to repeal this chapter under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero-Based Regulation](#). Necessary provisions have been retained and included in companion docket no. 38-0406-2201 published in this bulletin.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the repeal of this chapter will result in the reduction of regulatory burden.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Bailey, (208) 332-1825.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this August 5, 2022.

Steve Bailey, Deputy Director
Department of Administration
650 W. State Street
Room 100
Boise, Idaho 83720
steven.bailey@adm.idaho.gov
(208) 332-1825

IDAPA 38.04.09 IS BEING REPEALED IN ITS ENTIRETY