



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

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**ORDER OF THE
DEPARTMENT OF ADMINISTRATION
ADOPTING EMERGENCY RULES**

The statement of scope for this rule, SS 131-13, was approved by the Governor on October 8, 2013, and published in Register No. 694 on October 31, 2013, and approved by Department of Administration Secretary Mike Huebsch on November 13, 2013. This emergency rule was approved by the Governor on November 21, 2013.

The department of administration hereby adopts an order to repeal s. Adm 2.14 (2) (vr) c.; to renumber and amend s. Adm 2.14 (2) (v)9. a. and b.; to amend ss. Adm 2.02 (1) (a), 2.04 (1), 2.04 (2), (3), (5), and (7), 2.07 (2), 2.08 (1) and (1) (d), 2.11, 2.14(2), (2) (v), (2) (vm) and (2) (vm) 5.; and to create ss. Adm 2.03 (3m), (3r) and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (vm) and (2) (vm) 5.

Finding of Emergency

Since 1979 the legislature has vested the department of administration with the responsibility and authority to manage various state buildings and grounds, including those of the Wisconsin state capitol. S. 16.84 (1), Stats. Since 1979, the department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. s. 16.845, Stats., and s. Adm 2.04.

Each year, the Wisconsin state capitol police issue nearly 500 permits for the use of various state facilities. Permits are used for a variety of purposes, whether political, non-political, charitable, or commercial. Permits are issued regardless of political party, affiliation, or content. Permits are given to any person free of charge.

Occupation of the capitol rotunda and other areas has caused disruptions to the properly permitted events and normal government activities, including but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee

meetings and sessions. The state does not refuse permits for the lawful and safe use of state facilities by any person or persons, and the state cannot allow any person or persons to occupy the capitol in disregard of the rights of permit holders, public employees, or visitors. It is imperative that the department gain compliance in order to protect the public safety and welfare.

On October 24, 2013, a lawsuit was dismissed based upon a stipulation of and settlement agreement between the parties. The department is obligated under the settlement agreement to advance certain changes in procedure. The department seeks to fulfill its obligations in a timely manner, which is not possible without engaging in the emergency rule process.

Rule Analysis

1. Statute interpreted: s. 16.846, Stats.

2. Statutory authority: ss. 16.004 (1), 16.846 (1) (a) and 227.11, Stats.

3. Explanation of agency authority:

The department is the managing authority of numerous state properties and is required to “Have charge of, operate and maintain . . . the state capitol building . . . and such other state properties as are designated by law.” s. 16.84 (1), Stats. “The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department.” S. 16.846 (1), Stats. Additionally, “the managing authority of any facility owned by the state . . . may permit its use for free discussion of public questions, or for civic, social or recreational activities.” s. 16.845 (1), Stats. Further, “Whoever does or attempts an act for which a permit is required under this section without first obtaining a permit may be fined . . . or imprisoned . . . or both.” S. 16.845 (1), Stats.

4. Related statute or rule: s. 16.84, Stats., and ch. Adm 2

5. Plain language analysis:

The objective of the rule is to obtain compliance regarding use of State facilities, including the capitol building. This objective will be achieved by codifying historical department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

Section 1 codifies the historical practice of the state capitol police in enforcing the law in legislative areas upon invitation by the Legislature. See 1971 Act 183.

Section 2 codifies historical categories of permits granted by the Wisconsin state capitol police, defines the categories, and defines “spontaneous event,” which is a mechanism allowing for expressive activity in response to unforeseen and newsworthy events.

Section 3 makes clear that although the Wisconsin state capitol police may enforce the law in any area of the building, at the invitation of the Legislature, the legislature retains management authority over areas reserved for its use in the capitol building. Additionally, section 3 codifies the historical practice of the Wisconsin state capitol police of granting permits to any person, and not

only to any “governmental body or official, or any nonprofit, fraternal, religious, or veterans’ organization.”

Section 4 codifies historical practices with respect to the grant and denial of permits, and extends those same protections to the new category of events held under advance notices, as providing such protections naturally arises out of the recent settlement agreement. Further, section 4 creates as categories of use ‘spontaneous events’ and ‘advance notices’ for the reasons set forth above. Moreover, section 4 allows for use of the capitol building’s rotunda by 12 or fewer persons without notice and without constituting a “spontaneous event” within the meaning of this chapter. Finally, section 4 codifies the department’s policy on severance clauses and appeal procedure.

Section 5 codifies the historical practice of the Wisconsin state capitol police of resolving conflicts of use on a first-come first-served basis. This section provides that the department may publish content-neutral guidance limiting or explaining any potential imposition of charges arising out of the use of State facilities. The section codifies the historical practice of the Wisconsin state capitol police of not discriminating on the basis of sexual orientation in the use management of State facilities.

Section 6 provides that permitting requirements for exhibits shall not be applied to persons who simply wear clothing bearing an expressive message, or who simply hold signs bearing an expressive message, provided that the sign is of a certain size.

Section 7 clarifies that a person who creates a hazardous condition is subject to citation under the existing code. Section 7 further clarifies that hazardous conditions can be created by the deployment of not only holiday trees and holiday decorations, but by similar exhibit items that are not related to a holiday.

Section 8 clarifies that there is no conflict between s. Adm 2.08 (1) and s. Adm 2.11, in accordance with standard rules of legal interpretation, and places a reasonable limitation on the retention of items by the Wisconsin state capitol police.

Section 9 clarifies existing prohibitions against conducting or participating in events occurring without permits. Prohibition against participating in events is redefined in accordance with recent settlement. Clarity to the sub-section is sought by separating the violations for conducting such events from violations for participating in such events into separate sub-sections. The potential offense of occupying space is clarified by removing excess language from the paragraph. Additionally, introductory statements, which do not constitute elements leading to a citation, are moved to the appropriate introductory clause for the section.

Section 10 continues the attempt to clarify existing prohibitions against unauthorized events by simplifying the arrangement and using newly defined terms. Section 10 also improves protections for the public by eliminating an alternative rationale for prosecution.

Section 11 also continues the attempt to clarify existing prohibitions by eliminating language that, substantively, is now located in other portions of this sub-section. The result is a sub-section that is less complicated to read and interpret.

6. Summary of and comparison with, existing or proposed federal regulations.

Existing federal regulations vary by agency, state, and facility, and are too numerous to permit meaningful comparative analysis. However, the department notes that no protests or the like are permitted within the United States capitol building, and that persons attempting to do so have been successfully prosecuted under the federal criminal code.

7. Comparison with rules in adjacent states:

All adjacent states have similar administrative code provisions. Illinois requires permits for demonstrations or other events to be submitted at least 48 hours in advance of the use, unless the requestor can prove by a preponderance of the evidence that the cause of the event was unknown or resulted from changed circumstances. Michigan does not permit demonstrations or other activities without written authorization. Michigan also requires written authorization for displays, and requires that such requests “normally” be submitted 30 days in advance. Likewise, Minnesota requires a written permit, with the State and the applicant reaching agreement on topics including, “security, police protection, liability for damages, and cleanup of areas” prior to issuance of a permit. Iowa also requires a written application and approval by written letter or a memorandum of understanding signed by the event director.

8. Summary of factual data and analytical methodologies:

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

10. Fiscal Estimate: The proposed rule changes will have no additional fiscal impact.

11. Effect on small business: The proposed rule changes will have no impact upon small businesses.

12. Agency contact person:

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SECTION 1: Adm 2.02 (1) (a) is amended to read:

Adm ADM 2.02 Designation of state office buildings and facilities.

(1) The following buildings and facilities are hereby designated as state office buildings and facilities for the purpose of use management under this chapter:

- (a) State capitol building, ~~except those rooms reserved by the legislature.~~

SECTION 2: Adm 2.03 (3m), (3r) and (6m) are created to read:

Adm 2.03 Definitions. In this chapter:

(3m) "Event" means any performance, ceremony, presentation, meeting, rally, organized tours not led by department or legislative staff or officials, festival, reception or the like held in public areas of state facilities or buildings. The term "event" does not include activities such as: informal tourist activities or constituents or members of the public visiting elected officials or otherwise conducting routine business with any state agency or state entity.

(3r) "Exhibit" means any display of art work, including but not limited to paintings, sculptures, arts and crafts, photographs or other artistic materials; public service and educational presentations; signs or banners that are not held by an individual or are larger than 28 inches in length or width; and historical displays and other similar items.

(6m) "Spontaneous event" means an event in response to an unforeseen triggering event that has occurred within the previous three (3) calendar days, or is currently occurring. Regularly scheduled events, or events advertised by any means (including, but not limited to, electronic social media) 3 or more calendar days prior to the starting date are presumptively not "spontaneous events" within the meaning of this chapter.

SECTION 3: Adm 2.04 (1) is amended to read:

Adm 2.04 Public meetings and events.

(1) With the exception of areas in the state capitol building reserved for use by the legislature, the use of which shall be as determined by the legislature, the The department, as managing authority of the state office buildings and facilities, may ~~permit~~ allow buildings and facilities to be used by any person governmental body or official, or any nonprofit, fraternal, religious, or veterans' organization for the purpose of governmental business, public meetings for the free discussion of public questions, or for activities of a broad public purpose for an event or to display an exhibit if the use:

- (a) Does not interfere with the prime use of the building or facility.
- (b) Does not unduly burden the managing authority.
- (c) Is not a hazard to the safety of the public or state employees nor detrimental to the building or facility.
- (d) Does not expose the state to the likelihood of expenses or damages which cannot be recovered.
- (e) Is appropriate to the physical context of the building or facility.

SECTION 4: Adm 2.04 (1m), (2m), (2r), (2z), (9) and (10) are created to read:

(1m) Permits shall be granted for any event or exhibit, and use by a person giving advance notice shall be granted for any event, subject to the discretion of the department. The department's exercise of discretion shall be limited by the contents of this chapter, and the following:

(a) Permits or advance notices may not be denied based upon the content of the event or exhibit.

(b) Permits or advance notices may not be denied on the basis of age, race, creed, color, handicap, marital status, sex, sexual orientation, national origin, ancestry, arrest or conviction record, religion, or political affiliation of the person applying for the permit or giving notice.

(c) Permits or advance notices may be denied or limited if the requested use conflicts with a previously granted permit.

(d) Permits or advance notices may be denied if the person, group, or organization requesting the permit or providing the notice has failed to pay any uncontested invoice for expenses or damages arising out past events or exhibits.

(e) Permits may be denied or limited if the permit application form is not fully completed or signed by a person who is legally competent to contract and to sue or be sued.

(f) Permits or advance notices may be denied if the permit or notice request contains a material falsehood or misrepresentation.

(g) Permits or advance notices may be denied or limited if the requested use conflicts with planned programs organized and conducted by the department, any state agency, or any state official or body of state officials, including, but not limited to, tour groups led by department staff.

(h) Permits or advance notices may be denied if the person, group, or organization requesting the permit or providing the notice has, in the course of receiving a permit in the past, made material misrepresentations regarding the nature or scope of an event or exhibit.

(j) Permits or advance notices may be denied or limited if the proposed use involves activity prohibited by law.

(k) Advance notices may be denied, limited, or the use relocated if a permit is subsequently granted for use of the space requested in the advance notice.

(2m) The department may grant use of a portion of the interior of the state capitol building to a person providing advance notice to the department of an event at least 48 hours in advance of the anticipated utilization of the building or facility.

(2r) The department may grant use of a portion of the interior of the State capitol building to a person providing contemporaneous notice of a spontaneous event.

(2z) The department may grant use of the ground floor or first floor of the rotunda of the state capitol building to 12 or fewer persons for an event without any person applying for a permit, providing advance notice, and without the event being a spontaneous event under this section.

(9) If any word, phrase, section, or other portion of this chapter, or any written guidance issued under this chapter's authority, is held unconstitutional or otherwise invalid by a court of competent jurisdiction, then such holding shall not affect the validity of the remainder of this section or any other section in this chapter, which shall remain in force and not be affected by such holding.

(10) If a person or organization is aggrieved by a decision of the state capitol police staff with respect to the grant or denial of any permit application or notice of event, an appeal may be taken to the chief of state capitol police within 3 business days of that decision. The appeal shall be in writing, stating the basis of the appeal and the relief sought, and attaching any relevant information or documents. The chief of state capitol police may deny an appeal, grant an appeal, or grant an appeal subject to conditions consistent with this chapter. Appeal decisions by the chief of state capitol police shall be in writing and shall be made within 3 business days. Appeals not granted by the chief of state capitol police are deemed denied. Decisions of the chief of state capitol police under this sub-section shall be deemed final agency decisions.

SECTION 5: Adm 2.04 (2), (3), (5), and (7) are amended to read:

(2) An applicant for a permit to the use of buildings and facilities shall complete a written application to the department at least 72 hours in advance of the anticipated utilization of the building or facility. ~~In the event of a conflict of requests by 2 or more organizations, the department shall have full discretion when permitting use of state office buildings and facilities.~~ In the event of a potential conflict between 2 or more permit requests each request will be considered in the order that it was received.

(3) An applicant for the use of buildings and facilities shall be liable to the state for injury to the state's property, for any expense arising out of the use, and for such sums as the department may charge for the use as provided in s. 16.845 (1), Stats. The department may publish content-neutral guidance further limiting or explaining potential imposition of charges.

(5) The department and the applicant may not discriminate against any individual on the basis of age, race, creed, color, handicap, marital status, sex, sexual orientation, national origin, ancestry, arrest record or conviction record in the utilization of state office buildings and facilities for government business, public meetings for free discussion of public questions, or for civic activities.

(7) The granting of permission to use a state office building or facility does not obligate the department to furnish the applicant any service or utilities, or render any support with personnel, equipment, or supplies. The department may furnish assistance and may charge for any expense arising out of the use of a building or facility. The department may inspect any equipment or apparatus brought in for ~~any public meeting, event or activity~~ exhibit, and may limit or prohibit the use of any items which might affect safety or the normal operation of the building.

SECTION 6: Adm 2.07 (2) is amended to read:

Adm 2.07 Exterior and interior displays and decorations.

(2) Displays and decorations. ~~No displays, signs, banners, placards, decorations or graphic or artistic material exhibit~~ may be erected, attached, mounted or displayed within or on the building or the grounds of any state office building or facility without the express written authority of the department. Any ~~graphic or artistic material exhibit~~ advertising, promoting, or identifying a commercial enterprise or a political activity is prohibited except as indicated in sub. (4). Any unauthorized ~~material exhibit~~ shall be removed and disposed of by the department. This provision shall not be applied to any individual who holds a sign that is not larger than 28 inches in length or width, or to any item of clothing worn by an individual. ~~The department may set reasonable time limits on permitted activities.~~

SECTION 7: Adm 2.08 (1) and (1) (d) are amended to read:

Adm 2.08 Introduction of equipment and hazards.

(1) To provide a place of employment that is safe for employees and frequenters thereof, pursuant to s. 101.11, Stats., the department shall have the right to confiscate and dispose of any hazard to the life, health, safety or welfare of state employees or the public. The department shall have the right to correct or eliminate any hazardous situation arising out of any action by a tenant agency or individual and to charge the tenant agency or individual for costs incurred to correct or eliminate any hazardous situation or practice by a tenant agency. Any person who refuses to remove or correct any hazardous situation at the request of any department employee shall be subject to citation pursuant to s. Adm 2.14 (2) (zd). These hazards include, but are not limited to, the following:

(d) Holiday trees or holiday decorations or other displays, decorations, signs, banners or the like introduced in buildings and facilities managed or leased by the department without the approval of the department or contrary to the manner instructed by the department.

SECTION 8: Adm 2.11 is amended to read:

Adm 2.11 Confiscation of materials. Property confiscated by the department for violation of this chapter shall be stored by the managing authority until the owner provides proof of ownership, unless confiscated pursuant to s. Adm 2.08 (1). Property confiscated pursuant to this chapter may be disposed of 30 days after confiscation if unclaimed.

Section 9: Adm 2.14 (2), (2) (v), are amended to read, and (2) (vm), and (2) (vm) 5. are created to read :

Adm 2.14 Rules of conduct.

(2) In order to preserve the order that is necessary for the enjoyment of freedom by occupants of and visitors to the buildings and facilities, and in order to prevent activities that physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public

service, or administrative functions, ~~P~~and pursuant to s. 16.846, Stats., whoever does any of the following shall be subject to a forfeiture of not more than \$500:

(v) Without approval of the department, conducts ~~an event picket, rally, parade or demonstration~~ in those buildings and facilities managed or leased by the department or on properties surrounding those buildings.

~~(vm) In order to preserve the order which is necessary for the enjoyment of freedom by occupants of the buildings and facilities, and in order to prevent activities which physically obstruct access to department lands and buildings or prevent the state from carrying on its instructional, research, public service, or administrative functions, a~~ Any participant or spectator within a group constituting an unlawful event, who intentionally fails or refuses to withdraw from the event after it has been declared unlawful, shall be subject to the penalties identified in subsection. Any picketing, rally, parade, demonstration, other assembly, or congregation of spectators to the activity event may be declared unlawful if its participants:

5. Enter or occupy any building or facility managed or leased by the department, except as authorized by s. ~~Adm 2.04~~ from the person in immediate charge of any room in the building, ~~or by a person designated to approve requests for the use of rooms for meetings.~~

SECTION 10: Adm 2.14 (2) (v) 9. a. and b. are renumbered to Adm (2) (vr) 1., and 2., and, as renumbered, amended to read:

1. a. ~~In this section paragraph (vm)~~ "intentionally" means that the participant or spectator knew, ~~or reasonably should have known,~~ that the participant's or spectator's conduct by itself or in conjunction with the conduct of others had or would have the prohibited effect.

2. b. ~~The department may designate a state official or officials who shall have primary authority to implement this paragraph, paragraph (v), and paragraph (vm).~~ The official shall prescribe limitations for any ~~picketing, rally, parade, demonstration or other assembly~~ event in order to meet the requirements of this ~~paragraph~~ chapter. When informed of any ~~event picketing, rally, parade, demonstration, or other assembly,~~ the department official or designee may proceed immediately to the site to determine if there is compliance with ~~this these paragraphs.~~ If the official prescribes limitations or has previously prescribed limitations, and those limitations are not observed by the event participants assembly, the official may then declare the assembly event unlawful. Any declaration of illegality or prescription of limitations shall be effective immediately and binding upon the ~~participants in the assembly~~ event participants, unless and until modified or reversed.

SECTION 11: Adm 2.14 (2) (vr) c. is repealed.

~~c. Any participant or spectator within the group constituting an unlawful assembly, who intentionally fails or refuses to withdraw from the assembly after it has been declared unlawful, shall be subject to the penalties identified in sub. (2) (intro.).~~

SECTION 12: EFFECTIVE DATE. The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

By: _____
Mike Huebsch, Secretary
Wisconsin Department of Administration

Date: 11/21/13