

CR 14-001

ORDER OF THE DEPARTMENT OF ADMINISTRATION ADOPTING PERMANENT 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 the Department of Administration Secretary, Mike Huebsch, effective November 11, 2013. The department received the Governor's written approval of the Final Proposed Rules on April 3, 2014.

The Wisconsin Department of Administration proposes an order to repeal Adm 2.14 (2) (v) 9.c.; to renumber Adm 2.14 (2) (v) 1. to 4. and 6. To 9. (intro.); to renumber and amend Adm 2.14 (2) (v) 5. and 9. a. and b.; to amend Adm 2.02 (1) (a), 2.04 (1) (intro), (2), (3), (5), and (7), 2.07 (2), 2.08 (1) (intro.) and (d), 2.11, and 2.14 (2) (intro.), (e), and (v) (intro.); and to create Adm 2.03 (3m), (3r), and (6m), 2.04 (1m), (2m), (2r), (2z), (9), and (10), and 2.14 (2) (fm) and (vm) (intro.), relating to the use of state buildings and facilities.

Analysis Prepared by the Department of Administration

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. Summary of Proposed Rule:

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, e.g. “events” and “exhibits”, defines the categories, and defines “spontaneous event,” a mechanism allowing for expressive activity in response to unforeseen and newsworthy events.

Section 3 makes clear that 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 and policies 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 arising 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 meeting the threshold of 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 reasonable 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 Adm 2.08 (1) and 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 moves introductory language from a particular paragraph to the subsection, and codifies existing prohibitions against utilizing musical instruments without permits.

Section 10 creates a specific noise standard for the state capitol building.

Section 11 and subsequent sections clarify existing prohibitions against conducting or participating unlawful events by reorganizing the paragraph into two separate and distinct paragraphs. Section 11 contains the prohibition against conducting an event without the approval of the department.

Section 12 renumbers several of the grounds for declaring an event to be unlawful.

Section 13 renumbers and amends one of the grounds for declaring an event unlawful, unauthorized entry or occupation, and amends to reflect that approval to use may be obtained by any of the manners set forth in Adm 2.04, namely by obtaining a permit, giving advance notice of an event, or by giving notice of a spontaneous event.

Section 14 continues the renumbering of other grounds for declaring an event unlawful.

Section 15 continues the clarification of the existing Adm 2.14 (2) (v) by renumbering definitions for the prohibited conduct, and conforming the definitions by using terms defined under section 2, above.

Section 16 repeals the current Adm 2.14 (2) (v) 9. c., the effective language of which is now found in the new Adm 2.14 (2) (vm) (intro.).

Section 17 concludes the clarification process by recreating the prohibition against spectators and participants failing to withdraw from an unlawful event currently found in Adm 2.14 (2) (v) (intro.) and (c) 9 in one paragraph.

Section 18 sets out the effective date of the rule.

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. Minnesota imposes a sound limit of 80 decibels. 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:

The proposed decibel limit of 90 decibels is based upon an acoustical study commissioned by the Wisconsin Department of Justice in the course of the *Kissick* litigation. In brief, the study finds that the State Capitol building resonates sound more than most buildings, such that sound levels above 85 decibels in the Capitol Rotunda would create background noise levels which are too high for normal use of many rooms in the Capitol building.

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

10. Agency contact person:

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11. Place Where Comments are to be Submitted:

Comments may be submitted to the agency contact person that is listed above until the date given in the upcoming notice of public hearing, as otherwise indicated in the hearing notice, or to donna.sorenson@wisconsin.gov. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov> after the public hearing is scheduled.

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” includes any performance, ceremony, festival, reception, presentation, meeting, picket, rally, parade, demonstration, organized tours not led by department or legislative staff or officials, 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” includes 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; signs or banners which are held by an individual but which are larger than 28 inches in length or width; historical displays; and the like.

(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) (intro.) 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) Subject to the discretion of the department, permits shall be allowed for any event or exhibit, and use by a person giving advance notice shall be allowed for any event. The department's exercise of discretion shall be limited and based upon the following considerations:

(a) Events or exhibits, whether based upon permit or advance notice shall not be restricted, denied or disallowed based upon the content of the event or exhibit.

(b) Events or exhibits, whether based upon permit or advance notice shall not be restricted, denied or disallowed 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) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the requested use conflicts with a previously granted permit.

(d) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed 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 disallowed 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) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the permit or notice request contains a material falsehood or misrepresentation.

(g) Events or exhibits, whether based upon permit or advance notice may be restricted, denied or disallowed 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 such as tour groups led by department staff.

(h) Events or exhibits, whether based upon permit or advance notice may be restricted, denied or disallowed 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) Events or exhibits, whether based upon permit or advance notice shall be restricted, denied or disallowed if the proposed use involves activity prohibited by law.

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

(L) Conformance with any provision of this chapter, including, but not limited to, s. 2.04 (1).

(2m) The department may allow 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 two business days in advance of the anticipated utilization of the building or facility.

(2r) The department may allow 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 allow 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, without 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 denial, disallowance or limitation of any permit or advance notice, 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 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 two or more permit requests each request shall be considered in the order 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~~ 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) (intro.) 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) (intro.) and (e) are amended to read:

Adm 2.14 Rules of conduct.

(2) (intro.) 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:

(e) Without the express written approval of the department, uses a public address system or sound amplification system, or any device capable of amplifying sound,

including but not limited to musical instruments, in those buildings and facilities managed or leased by the department.

Section 10: Adm 2.14 (2) (fm) is created to read:

(fm) Participates in an event at the Wisconsin State Capitol that engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances where the conduct tends to cause or provoke a disturbance that produces sound in excess of 90 decibels as measured on an “A” weighted decibel scale within 25 feet of the event, and the event hinders or impedes a prime use of the building, including hearings of the Supreme Court of Wisconsin, hearings of any legislative body or committee thereof, meetings between constituents and their constitutional officers, the work of constitutional officers and their respective staffs, educational tours of the building and the like. An officer in determining if the noise exceeds 90 decibels shall use reasonably appropriate testing methods. The department shall first notify the group that their event is not compliant with this subsection and no citation shall be given for a violation of this subsection unless the issuing officer first affords the person an opportunity to stop and disperse. This subsection does not preclude the application of Adm. 2.14(2)(k) in any circumstances.

Section 11: Adm 2.14 (2) (v) (intro.) is amended to read:

(v) Without approval of the department as may be provided for by this chapter, 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. ~~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, any picketing, rally, parade, demonstration, other assembly, or congregation of spectators to the activity may be declared unlawful if its participants:~~

Section 12: Adm 2.14 (2) (v) 1. to 4. are renumbered Adm 2.14 (vm) 1. to 4.

Section 13: Adm 2.14 (2) (v) 5. is renumbered Adm 2.14 (vm) 5. and amended to read:

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 14: Adm 2.14 (2) (v) 6. to 9. (intro.) are renumbered Adm 2.14 (vm) 6. to 9 (intro.).

SECTION 15: Adm 2.14 (2) (v) 9. a. and b. are renumbered to Adm (2) (vr) 1., and 2., and, as renumbered, amended to read:

(vr) 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 16: Adm 2.14 (2) (v) 9. c. is repealed.

SECTION 17: Adm 2.14 (2) (vm) (intro.) is created to read:

(vm) Any participant within or spectator of 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 this subsection. Any event may be declared unlawful if its participants:

SECTION 18: EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

By: _____ Date: June 25, 2014
Mike Huebsch, Secretary
Wisconsin Department of Administration

