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# Idaho State Capitol Commission

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## Official Minutes

January 8, 2021

A meeting of the Idaho State Capitol Commission was held on this date in Room WW17 of the Idaho Capitol Building, Boise, and via teleconference. Chairman Erstad called the meeting to order at 4:00 p.m.

## Attendees

### Members Present:

Andy Erstad, Chairman

Keith Reynolds, Director, Dept. of Administration (DOA), Ex-Officio Member, Commission Secretary

Eric Milstead, Director, Legislative Services Office (LSO) and Ex-Officio Member

Marilyn Whitney, Deputy State Superintendent of Public Instruction

Janet Gallimore, Executive Director, State Historical Society (ISHS), and Ex-Officio Member

Nancy Sue Wallace (via teleconference)

Representative Jason Monks (via teleconference)

Mary Symms-Pollot (via teleconference)

### Absent and Excused

Senator Chuck Winder

### Others/Staff Present:

Barry Miller, Deputy Administrator, Division of Public Works (DPW)

Pat Donaldson, Administrator, DPW

Teri Kondeff, Deputy Director, LSO

Julie Weaver, Deputy Attorney General

Joe Mueller, Administrator, Division of Security Operations, DoA

Michelle O'Brien, Special Projects Coordinator, LSO

Nicole Inghilterra, Capitol Curator, ISHS

Lincoln Smyser, Deputy Treasurer, Office of the State Treasurer

Steve Bailey, Deputy Director/CFO, DOA (via teleconference)

Lindsay Erb, Project Manager, DPW (via teleconference)

Lauren Bramwell, Policy Strategist, ACLU of Idaho (via teleconference)

Diane Blume, Program Specialist, DOA

## Approval of Minutes

**MOTION: Commissioner Milstead moved and it was seconded by Commissioner Wallace that the minutes of the November 5, 2020 Idaho State Capitol Commission meeting be approved as written. The motion passed unanimously.**

## Rules Governing Use of the Idaho State Capitol

The Commission was originally scheduled to meet yesterday to address proposed temporary *Rules Governing Use of the Idaho State Capitol*, Commissioner Reynolds reported. However, interested parties proposed changes to the draft rules immediately before the meeting. In order to allow adequate time to review the proposed changes, the meeting was postponed 24 hours.

There are currently administrative rules in place to govern the exterior of the Capitol building but not the interior. Exterior rules were put into place after the Occupy Boise event when it was discovered that city ordinances and other underlying laws were not enforceable on state property. Important lessons were learned at that time about protecting the Capitol while honoring public access and the right to safely gather. Balancing these two efforts is the overarching purpose of these rules, he said.

He reviewed with the Commission some of the changes made to existing exterior rules to include governing the interior of the Capitol. The first substantive change is adding to the Department of Administration's existing legal authority the requirement that rules are to be promulgated in consultation with the Governor, presiding officers of the Senate and House of Representatives, and Capitol Commission.

Another important addition, he said, is the section, "Application to Space Controlled by the Idaho Legislature". These rules, he said, govern only public spaces of the building. They do not govern the private spaces controlled by the Legislature and elected officials, for example.

### 010. Definitions

Various policies previously adopted by the Commission are included in the rules and defined such as displays, exhibits, and events. A full legal description of the block on which the Capitol is located is noted.

Further, "Law Enforcement" is clarified as any other enforcement officer authorized by law or working in cooperation with the Idaho State Police.

### 200. Use of Idaho State Capitol

Authorized public uses of the building provides access to private spaces for conducting business with occupants of the space; legislative galleries; hearing rooms; and when installing or viewing

temporary and permanent placement of exhibits. Prohibited uses are clarified to include certain commercial activities.

Priority of use is designated to business conducted by the public entity or official occupying private space over public use of the building. The rules also state that should there be maintenance performed, areas of the Capitol can be closed.

#### 301. Uses Interfering with Access or Use of the Facility

The document states that events, exhibits and public use is not to interfere with the primary use of the building. Further, it references that interior hours are in no means to be changed that would preclude the public from participating in any type of public event, except for cases of emergencies.

#### 306. Animals

Animals, wild or domestic, he pointed-out, are not allowed in the building.

#### 308. Food and Beverages

Each authority granted control over a portion of the interior may prohibit the consumption of foods and beverages, including water, in that portion of the interior by posting a notice at entrances.

#### 309. Smoking and Vaping

The rules clarify that smoking and vaping are not allowed anywhere in the interior.

#### 311. Posters, Placards, Banners, Signs, Equipment, Tables, Materials, and Displays

As implemented in guidelines previously in place for the Capitol and now included in these rules, there is a prohibition against items propped against interior surfaces, moving furniture, as well as defined room capacity, etc. Another main change to these rules, he said, is clarifying that sound amplification other than that provided by the Department of Administration or other officials is not allowed.

#### 313. Prohibited Items

Added to the specific list of prohibited items that security personnel or law enforcement may have immediately removed from the building is the phrase, "items that would disrupt the primary uses of the building".

#### 315. Law Enforcement and Facility Exigency; Removal for Non-Compliance

This section title was modified by the addition of the words, "Removal for Non-Compliance". Also added is language stating the director, 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:

- Violation of the law, including these rules, where such violation:
  - Interferes with the primary uses of the Idaho State Capitol, injures persons or property, or is likely to injure persons or property, or,
  - 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.
- Engaging in a riot, unlawful gathering or a gathering designated to impede the business of the state of Idaho in violation of Sections 18-6401 or 18-6404, Idaho Code.

### 317. Health, Safety, and Maintenance of State Facilities

An inclusive dress code was established in the rules requiring individuals to be fully clothed, he said.

### 400. Permits

Changes to this section applies to the second-floor rotunda, he explained, and spells-out the on-line permit process which has been in place for several years. It allows for priority use of areas and the use of amplification.

These temporary rules will expire at the end of the legislative session. The intention, he said, is to continue to work on them in the meantime with stakeholders and identify areas that may need to be modified, clarified, or improved. They will be back in front of the Commission when ready to be promulgated as permanent rules, he said.

Representative Monks inquired whether the certification of service animals will be required in order to enter the building. Commissioner Reynolds responded that this item will be added to the list of issues to be consider when preparing the permanent version of the rules later this year.

Commissioner Wallace asked about requirements for masks in the Capitol. An attorney general's opinion on this issue was requested in August in preparation for the special session, Commissioner Reynolds responded. There is a Boise City Ordinance requiring masks when social distancing is not possible. This ordinance does not apply to the Capitol, he explained. There is also a Public Health District directive for wearing masks when social distancing is not possible, which does apply to the public spaces of the Capitol, but it does not have an enforcement provision. Consequently, signs have been placed on all entrances encouraging the use of masks.

Chairman Erstad noted that the ACLU has submitted two pieces of correspondence to the Commission dated January 7<sup>th</sup> and January 8<sup>th</sup> expressing concerns with certain sections of the rules. Commissioners Reynolds and Milstead have been working with the ACLU to find language that is acceptable by both parties as much as possible for the permanent version of the rules.

Commissioner Whitney inquired how the temporary rules will be communicated to the public. Commission Reynolds pointed-out they will be communicated in a number of ways though ISP,

as well as posted on the Facilities Services, Capitol Commission and Legislative Services Office websites.

Commissioner Whitney cautioned that the rules do not impede the public from utilizing the Capitol interior for various reasons such as taking family portraits, for example. Commissioner Reynolds responded that interaction with the public using the interior is guided by common sense and the intent of the rules is not to eliminate traditional uses of the interior by the public.

**MOTION: Commissioner Milstead moved and it was seconded by Commissioner Gallimore that the Commission recommend promulgation of temporary rules governing the Capitol grounds and interior as presented and with the changes noted, and authorize the Director, in consultation with legislative leadership, to make non-substantive changes if needed. The motion passed unanimously upon roll count vote. Senator Winder was absent from voting.**

## Other Business

### Next Meeting Date

Chairman Erstad noted the next meeting of the Capitol Commission is scheduled for Wednesday, February 17th at 3:30 pm.

## Adjournment

**MOTION: Commissioner Milstead moved and it was seconded by Commissioner Whitney that the January 8, 2021 meeting of the Idaho Capitol Commission be adjourned at 4:45 p.m. The motion passed unanimously.**



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Diane K. Blume, Program Specialist  
Department of Administration