

STATEMENT OF EMERGENCY
200 KAR 3:020E

This emergency administrative regulation is being promulgated in order to provide clear guidance regarding public use of state-owned facilities and grounds. The administrative regulation aims to protect the health, safety, and welfare of visiting members of the public, as well as staff at state-owned facilities and grounds. An emergency administrative regulation is necessary, pending replacement by an ordinary administrative regulation, to provide clear and comprehensive guidelines in regard to items and activities that pose a threat to public health, safety, and welfare at state-owned facilities and grounds. Over the years, public interest in, and attendance of, the regular business of the Kentucky Legislature has steadily increased to the extent that concerns have arisen regarding the health, safety, and welfare of visiting members of the public and staff. With a regulation session of the Kentucky Legislature imminent, the provision of this administrative regulation should be given immediate effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
WILLIAM M. LANDRUM III, Secretary
ROBERT M. BURNSIDE, Commissioner

FINANCE AND ADMINISTRATION CABINET
Department for Facilities and Support Services
(New Emergency Administrative Regulation)

200 KAR 3:020E. Use of state-owned facilities and grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019, 42.425, 56.010, 56.463

EFFECTIVE: January 4, 2019

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the Commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and grounds, to preserve historic properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019 directs that the Division of Historic Properties shall be responsible for management and preservation of state-owned historic properties. KRS 42.425 entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 states that the Finance and Administration Cabinet is empowered to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control.

KRS 56.463 authorizes the Finance and Administration Cabinet to adopt rules and promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the real property.

Section 1. Definitions.

(1) "Agency" means a "Budget unit," defined by KRS 48.010(9).

(2) "Agency Application" means a form created and maintained by a state agency that allows individuals, organizations, and entities to request the ability to conduct an event at a facility or on grounds assigned to that agency.

(3) "Applicant" means a visitor who has submitted an Application to Use Commonwealth Facilities and all visitors present at a state facility or on state grounds pursuant to an approved application.

(4) "Application" means an Application to Use Commonwealth Facilities form created and maintained by the Division of Historic Properties that allows individuals, organizations, and entities to request the ability to conduct an event at historic properties.

(5) "Cabinet" means the Finance and Administration Cabinet.

(6) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(7) "Department" means the Department for Facilities and Support Services.

(8) "Division" means the Division of Historic Properties, established pursuant to KRS 45.425(1)(d)(4).

(9) "Event" means any performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

(10) "Guest" means an individual who has booked or paid for overnight accommodations at a state facility or on state grounds, or an individual who has been provided with living accommodations by the state in connection to his or her employment with the Commonwealth.

(11) "Historic Properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(12) "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(13) "Public Meeting" means a "Meeting," as defined by KRS 61.805(1).

(14) "Normal Business Hours" means the hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the Commonwealth.

(15) "Rally" means a gathering of four (4) or more visitors for the purpose of actively promoting a cause.

(16) "Solicit" and "Solicitation" are defined by KRS 367.650(4).

(17) "Spontaneous Event" means an event where four (4) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring.

(18) "State Facilities" or "Facilities" means any building owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(19) "State Grounds" or "Grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(20) "Tenant" means an individual or organization, excepting Commonwealth agencies, occupying land or property rented from the Commonwealth; limited to the specific state facility or state grounds where the land or property is located.

(21) "Visitor" means any person, organization, or entity present at a state facility or on state

grounds that is not employed or contracted to perform work there on behalf of the Commonwealth. A person or organization employed or contracted to perform work on behalf of the Commonwealth is a visitor if at a state facility or on state grounds for reasons other than performing work on behalf of the Commonwealth. The term "Visitor" includes those persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds.

(1) Within all areas assigned to it, a state agency may specify an Agency Application and approval process for public use of its facilities, so long as:

(a) The specified process does not conflict with the requirements of this administrative regulation, or with other state or federal law; and

(b) The agency prominently posts the Agency Application and approval process on its website.

(2) Each visitor seeking to hold an event at a state historic property shall submit a completed "Application to Use Commonwealth Facilities" to the division at least ten (10) calendar days prior to the anticipated date of the event.

(a) Applications may not be submitted, and an event may not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant, or related visitors, organizations, or entities may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority.

(d) The division may impose fees for the use of specific state facilities or grounds by visitors, as well as fees for the use of equipment at state facilities or on state grounds.

(e) The division may deny an application if:

1. The application is incomplete;

2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;

3. The proposed event poses a safety or security risk;

4. Applicant, or related visitors, organizations, or entities has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or

5. Applicant, or related visitors, organizations, or entities has failed to pay costs or damages due for a prior event.

(f) If an application is approved, the division shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;

2. The date and time period for which approval is granted;

3. Any fee or costs to be paid for use of state property or equipment;

4. The amount of any advance deposit required; and

5. Whether proof of liability insurance shall be required for the requested use.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use may not be changed without the written consent of the division.

(h) The division may revoke prior approval to hold an event at a state historic property if the property is requested for a state sponsored activity. If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or

2. Provide alternate dates that the facility is available for use.

(3) Except for spontaneous events, visitors who make use of a state facility or state grounds

without a permit:

- (a) May be charged a fee equal to the amount normally charged for approved uses, and
- (b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

Section 3. Conditions Governing Use of State Facilities and Grounds.

(1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual or organization. In regards to state historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(b) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(c) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

(d) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 44.

(e) Visitors are prohibited from digging, excavating, or using metal detectors.

(f) Visitors are prohibited from posting or affixing signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(g) Visitors must promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individuals or organizations with the costs of disposal, inclusive of use of staff time, which the individuals or organizations agree to be responsible for as a condition of their use of state facilities.

(h) Smoking is not permitted in state facilities or on state grounds.

(i) Visitors may not wear masks or hoods which conceal the identity of the wearer, with the exception of religious dress of a generally recognized religion or minor children celebrating Halloween.

(j) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including but not limited to, any legislative session, court proceedings, or any other public business.

(k) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, the Kentucky Standards of Safety contained in 815 KAR 10:060, orders of the State Fire Marshall, and local fire codes, inclusive of any applicable occupancy limits.

(l) Visitors shall not be permitted to obstruct passageways in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(m) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(n) The operation of aircraft, other than at designated landing areas, is prohibited.

(o) The mass release of birds, butterflies, or other living creatures is prohibited.

(p) In addition to any use limitations imposed by this administrative regulation, within areas

assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

(q) The following items are prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including but not limited to, drones, and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(r) The following items are not permitted in any state facility or on any state grounds, unless such items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(s) The terms of this administrative regulation shall not apply to:

1. Guests of the state;
2. Tenants of state facilities;
3. Inmates and other incarcerated persons; or
4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access are subject to change due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility are subject to search.

(e) No visitor may enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;
2. Attending a scheduled public meeting; or
3. Escorted by a state employee for the purpose of conducting state business.

(f) For purposes of this administrative regulation, any time period during which a state facility hosts a legislative session, public meeting, or court session shall be considered normal business hours in addition to any regular posted hours of operation.

(g) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(h) When an agency allows individuals to remain in a state facility after normal business

hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(i) Visitors may not camp or remain overnight in state facilities or on state grounds.

(j) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against said law enforcement officers and the Commonwealth unless undue force is used resulting in serious bodily injury.

(3) Commercial activity.

(a) The following commercial activity is prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;
2. Solicitation; and
3. Advertising.

(b) The above restrictions regarding commercial activity shall not apply to:

1. State agencies;
2. State-affiliated or approved charitable fund-raising campaigns;
3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;
4. Nominal employee activity, provided that it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and
5. Notice boards specifically set-aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and are subject to immediate removal from state grounds and facilities as follows:

1. When a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. When a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on the area in which an event may be conducted, or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, to maintain public order, and to ensure that normal public business may be conducted.

(c) Nothing in this administrative regulation shall be interpreted as:

1. Prohibiting the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use.

2. Limiting the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties.

(1) The Division of Historic Properties, established by KRS 42.425, may impose additional restrictions and use guidelines as are necessary and proper to ensure the responsible management, use, and preservation of state historic properties for the benefit of future generations.

(2) The Department of Parks and Kentucky Horse Park may advise and consult the division

in regard to any restrictions or use guidelines relating to state shrines or museums.

(3) Any additional restrictions or use guidelines imposed by the Division of Historic Properties shall be prominently posted for public viewing on the Web site of the division, as well as being readily available to the public, in hardcopy form, at the main business office of the division.

Section 5. Enforcement.

(1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another state agency or to outside counsel.

(3) Nothing in this administrative regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; disruption of public business; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this administrative regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

Section 6: Documents Incorporated by Reference:

(1) "Application to Use Commonwealth Facilities"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BURNSIDE, Commissioner

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: January 4, 2019

FILED WITH LRC: January 4, 2019 at 4 p.m.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative and Intergovernmental Affairs, Finance and Administration Cabinet, Capitol Annex Building Room 392, Frankfort, Kentucky 40601, phone (502) 564-4240, (502) 564-6785 fax, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform rules for the governance of state facilities and grounds.

(b) The necessity of this administrative regulation: Sets standards to ensure safety and security of state facilities and grounds, as well as staff and visitors. Provides uniform guidelines for visitors to prevent damage to state properties, as well as to ensure for the efficient operation of state business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Finance and Administration Cabinet and its subdivisions are authorized by KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010 to ensure the preservation and efficient operation of

state facilities, as well as to seek redress for damage to state property. This regulation establishes uniform standards for the use of state-owned properties by the public, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice, to agencies and visitors, of any standards and rules which exist in regard to the use of state facilities and grounds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable. Regulation is a new administrative regulation, rather than an amendment.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation offers clarity to state agencies and visitors to state properties regarding standards for use of Commonwealth facilities and grounds.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: State agencies, in cooperation with the Commissioner for Facilities and Support Services, must establish normal business hours. Visitors must comply with normal business hours at state properties, avoid actions which cause damage to state facilities and grounds, and observe reasonable safety and security requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The incorporated "Application to Use Commonwealth Facilities" contains fees for the use of state historic facilities. The application, and its included fees, has been in use by the Division of Historic Properties since 2007.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies and the Department for Facilities and Support Services will be provided clarity regarding standards and rules which allow for the public right of access to state facilities and grounds while preserving the ability to conduct regular public business, ensuring the safety of staff and visitors, and avoiding damage to state properties.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional costs are expected. Current staff and funding will be utilized.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Application to Use Commonwealth Facilities, which is incorporated by reference, establishes fees for use and set-up services regarding state historic properties. Authorizes state agencies to create application process for facilities assigned to their use, which may include fees. Authorizes agencies to assess costs for damages done to state facilities and grounds.

(9) TIERING: Is tiering applied? Tiering is not applied. All state agencies follow identical re-

quirements regarding the setting of normal business hours and their authority to establish an application process for public use of facilities assigned to them. Similarly, visitors to state facilities and grounds are uniformly subject to the conditions set forth in this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts all state facilities and grounds owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463. Agencies occupying these state properties must observe the requirements of the regulation. State or local government agencies not occupying state facilities and grounds owned or managed by the Finance and Administration Cabinet will not be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The regulation does not require any new labor-intensive administrative tasks, which may require additional staff, it merely clarifies standards to be applied regarding public use of state facilities and grounds.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: