

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

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8)

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(1) requires the Division of Historic Properties to oversee the management and preservation of state-owned historic properties. KRS 42.425(1)(c) 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 requires the Finance and Administration Cabinet to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) requires the Finance and Administration Cabinet to promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the commonwealth's real property.

### Section 1. Definitions.

- (1) "Agency" means a "budget unit," as defined by KRS 48.010(9).
- (2) "Applicant" means a visitor who has submitted an Application to Use State Facilities and Grounds.
- (3) "Application" means the Application to Use State Facilities and Grounds 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.
- (4) "Cabinet" means the Finance and Administration Cabinet.
- (5) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.
- (6) "Demonstration activity" means any gathering of twelve (12) or more visitors demonstrating, parading, picketing, speech making, holding vigils, sit-ins, or rallies, or conducting other activities for the purpose of demonstrating approval or disapproval of governmental policies or practices (or the lack thereof), expressing a view on public issues, or bringing into public notice any issue or other matter.
- (7) "Department" means the Department for Facilities and Support Services.
- (8) "Division" means the Division of Historic Properties, established by KRS 42.425(1)(d)4.
- (9) "Event" means any demonstration activity, performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.
- (10) "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.
- (11) "Normal business hours" means:
  - (a) The hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth; and

- (b) Any time period during which a facility hosts a legislative session, public meeting, or court session.
- (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) "Rally" means a gathering of twelve (12) or more visitors for the purpose of actively promoting a cause.
- (15) "Solicit" and "solicitation" are defined by KRS 367.650(4).
- (16) "Spontaneous event" means an event where twelve (12) 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. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."
- (17) "State facilities" or "facilities" means any buildings owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.
- (18) "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.
- (19) "Tenant" means an individual or organization, except for an agency that is:
- (a) Occupying land or property rented from the commonwealth; and
  - (b) Limited to the specific state facility or state grounds where the land or property is located.
- (20) "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.
- (21) "Visitor" means:
- (a) 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;
  - (b) A person or organization employed or contracted to perform work on behalf of the commonwealth if present at a state facility or on state grounds for reasons other than performing work on behalf of the commonwealth; and
  - (c) Persons present at state facilities or state grounds by virtue of an approved application.

## Section 2. Request to Use State Facilities or Grounds.

- (1) Each visitor seeking to hold an event at a state facility or on state grounds shall submit a completed "Application to Use State Facilities and Grounds" to the division at least seven (7) calendar days prior to the anticipated date of the event.
- (a) Applications shall not be submitted, and an event shall not be scheduled, more than 365 calendar days prior to the date of an event.
  - (b) An applicant 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 over applications received by the division on the same date as a request by an agency regarding a state-sponsored event.
  - (d) The division shall 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 has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or
  5. Applicant has failed to pay costs or damages due for a prior event.
- (e) 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.
- (f) If an application is denied, the division shall issue a written denial specifying:
1. The Section 2(1)(d) provision the denial is based upon;
  2. If the application is incomplete, a description of the missing information;
  3. If the applicant has made prior misrepresentations, a description of the misrepresentation; and
  4. If the applicant has failed to pay costs or damages for a prior event, a description of the costs or damages and the amount remaining due.
- (g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use shall not be changed without the written consent of the division.
- (h) Except as provided by paragraph (j) of this subsection, the division may revoke prior approval to hold an event at a 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.
- (i) The division may relocate a previously approved event at a historic property as established in the Rules for Use of State Facilities and Grounds.
- (j) The division shall not reschedule or relocate a previously approved event at a historic property less than three (3) days prior to the scheduled event date except as established in the Rules for Use of State Facilities and Grounds.
- (2) Except for spontaneous events, visitors who make use of a state facility or state grounds without written approval:
- (a) May be charged a fee equal to the amount normally charged for approved uses, if applicable; 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.
- (3) Each visitor seeking to hold an event at a state facility or on state grounds, other than a demonstration activity, shall submit a completed Rental Application and Lease Agreement.
- (4) An agency may adapt the Rental Application and Lease Agreement for its own use as follows:
- (a) Inserting the Rental Application and Lease Agreement onto agency-specific letterhead;
  - (b) Altering the Rental Application and Lease Agreement to reflect contact information for the agency; and
  - (c) Inserting the following information regarding the areas assigned to agency use available to rent:
    1. Identification of available areas;
    2. Capacity of available areas;
    3. Whether food or drink may be consumed in available areas;

4. Equipment available to rent; and
  5. Hours when available areas may be rented.
- (5) An agency that adapts the Rental Application and Lease Agreement for its own use shall enter into a written agreement with the commissioner addressing:
- (a) Which facilities and grounds are covered by the Rental Application and Lease Agreement;
  - (b) The agency responsible for processing Rental Application and Lease Agreement submissions; and
  - (c) Disposition of fees collected.

### 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 comply with the Rules for Use of State Facilities and Grounds.
  - (b) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual, organization, or entity. In regards to historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.
  - (c) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.
  - (d) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.
  - (e) 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 49.
  - (f) Visitors shall not dig, excavate, or use metal detectors.
  - (g) Visitors shall not post or affix signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.
  - (h) Visitors shall 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 individual, organization, or entity with the costs of disposal, inclusive of use of staff time, which the individual, organization, or entity agrees to be responsible for as a condition of using the state facility or grounds.
  - (i) Smoking shall not be permitted in state facilities or on state grounds.
  - (j) Visitors shall not wear masks or hoods that conceal the identity of the wearer, except for religious dress of a generally recognized religion or minor children celebrating Halloween.
  - (k) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including any legislative session, court proceedings, or any other public business.
  - (l) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, 815 KAR 7:120, 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.
  - (m) Visitors shall not 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.
  - (n) 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.

(o) The operation of aircraft, other than at designated landing areas, shall be prohibited.

(p) The mass release of birds, butterflies, or other living creatures shall be prohibited.

(q) 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.

(r) The following items shall be prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including drones and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(s) The following items shall not be permitted in any state facility, unless the 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.

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

1. Tourism, Arts, and Heritage Cabinet administered facilities and properties;
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 may be changed 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 shall be subject to search.

(e) A visitor shall not 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) 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.

(g) If 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.

(h) Visitors shall not camp or remain overnight in state facilities or on state grounds.

(i) 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 the law enforcement officers and the commonwealth unless undue force is used resulting in serious physical injury as defined by KRS 500.080(15).

(3) Commercial activity.

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

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

(b) The restrictions in paragraph (a) of this subsection 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, if 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 shall be subject to immediate removal from state grounds and facilities as follows:

1. If 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. If 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) This administrative regulation shall not:

1. Prohibit 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; or
2. Limit 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) Visitors to historic properties shall comply with the additional restrictions regarding the use of the capitol grounds and state historic properties included in the Rules for Use of State Facilities and Grounds.
- (2) A visitor seeking to hold an event at a historic property shall comply with the requirements in the Areas Available for Governmental and Business-Oriented Events and Rental Use form.
- (3) A visitor seeking to hold an event at the capitol shall also submit the Capitol Event Information Form to the division.
- (4) 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.

#### 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 agency, or to outside counsel.
- (3) Nothing in this 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 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. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Application to Use State Facilities and Grounds", June 2019;
  - (b) "Rental Application and Lease Agreement", June 2019;
  - (c) "Rules for Use of State Facilities and Grounds", June 2019;
  - (d) "Areas Available for Governmental and Business-Oriented Events and Rental Use", June 2019; and
  - (e) "Capitol Event Information Form", June 2019.

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(45 Ky.R. 2528, 3190; 46 Ky.R.28; eff. 8-2-2019.)