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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 20, 2022

Ms. Rebecca McGinn
Assistant General Counsel
Department of Management Services
Division of Facilities Management
4050 Esplanade Way
Suite 160
Tallahassee, Florida 32399-0950

**RE: Department of Management Services, Division of Facilities Management
Proposed Rule Number 60H-6.004**

Dear Ms. McGinn:

I have reviewed the above-referenced proposed rules, which were advertised in the Florida Administrative Register on October 18, 2022. I have the following comments.

60H-6.004 Since all definitions appear to be new since they are underlined, they should be in alphabetical order.

60H-6.005 "Florida Facilities Pool" needs to be defined.

60H-6.005(1) Define "Buildings in the Florida Facilities Pool" or "Florida Facilities Pool." The term is used throughout the rule, but is not distinguished from the statutory definition of Capitol Complex. Is there a difference?"

"Valid emergencies" appears to be vague – who determines something to be an emergency?

The focus of the rule is on buildings, and not the open space between or around them. Is this distinction intentional?

60H-6.008(1) The Committee is in receipt of your response to the initial comments regarding this rule; however, even given the explanation, the rule language still goes too far. The regulated conduct in the proposed rule is far beyond the bounds of what modern day precedent has determined constitutes obscenity. As written, the rule is overbroad and impedes the constitutional freedom of expression enjoyed by adults. Please revise.

60H-6.005(2) "... creating a disturbance that is likely to impeded or disrupt. . ." is rather speculative and appears to lie in the eyes of the beholder. Criteria/standards should be set, otherwise the rule is impermissibly vague and entirely subjective. As written, people may be removed before anything even starts.

The Department of Governmental Entity leasing the space may "cause to be removed. . . those violating this rule or any other law." The Department is defined as the Department of Management Services, while Governmental Entity includes a state agency or an entire political subdivision. It may be helpful to identify the individual representing the Department, agency or political subdivision that is authorized to "cause to be removed" any person or group, as well as the procedures for initiating such a request, and to whom such a request should be directed.

Since we are dealing with removal for "... trespassing . . . [for] violating this rule or any other law," which are potentially criminal offenses, final authorization to remove any person or group should lie with the Capitol Police or local law enforcement rather than unspecified members of the Department or Governmental Entity. As written, the language seems to be at odds with that of rule 60H-6.008(4), which identifies the Capitol Police as responsible for the security of the Capitol Complex, which suggests that the Buildings in the Florida Facilities Pool are a subset of the Capitol Complex as defined in s. 943.60, F.S.

Warning/notice requirements to vacate the premises should be spelled out. The rule focuses on "Buildings in the Florida Facilities Pool." Use of the word "building" suggests that the open space in the courtyard between the old and new capitol buildings is/may be a traditional public forum and is, therefore, exempt from the rule.

60H-6.005(4) The rule again refers to buildings, except certain public spaces. Is the courtyard bordered by the Capitol buildings and the House and Senate chambers included in the term "traditional public forums?"

What is considered "other forms of speech?"

The terms "likely to impede or disrupt the performance of official duties or functions of employees or officers" is rather vague. If one employee is

aggravated and complains is that sufficient to cause the removal of the person or persons?

60H-6.005(6) “Solicitation” should be defined.

Use of the term “Building in the Florida Facilities Pool,” without further defining, suggests that only buildings are affected. Is that the intent?

60H-6.008(4) Has the Capitol police established additional requirements for access and use as permitted by statutes? If so, should these additional requirements be incorporated by reference in the rule?

60H-6.0085 This rule is problematic as it conveys to a mere handful of people the right to determine and display a light combination on the Capitol that supports a preferred religious holiday, personal belief or support of an issue. Please revise.

60H-6.011(2) As written, the rule is problematically vague. What is an “unusual noise?” What rises to the level of an “unreasonable” obstruction or the impediment or disruption of the performance of official duties or functions of a state officer or employee? The rule should contain articulable definitions and standards that the public can understand.

Use of Capitol Complex

Guidelines Page 4, B.ii., states that if an exhibit, poster, sign, or display is expected to become “unsightly,” the Department may limit the duration of an unoccupied event. Who makes this determination? The rule should also state the criteria that will be applied in making that determination.

Page 6, V., maintains that “[a]ctivities that create loud or unusual noise or are disruptive to the performance of official duties or delivery of services may be denied, ceased, or interrupted by the Department or Capitol Police.” This is simply too broad. As written, someone giving a speech at a podium using a microphone could be silenced because it is deemed “a loud noise.”

Page 6, V. What standards will be used to determine whether a display on the front steps of the Historic Capitol and the Capitol Courtyard are obtrusive enough to detract “in any way” from the historical significance of the Historic Capitol? Who will make this decision?

Page 9, X., states, “[t]he Department reserves the right to postpone or relocate an approved reservation if necessary to accommodate additional reservation requests.” As written, this would seem to give the Department carte blanche to give one reservation priority over another based on nothing more than

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idle whim. Please revise and include how reservation priorities will be sorted. This issue should be addressed in the Capitol Complex Space Use Application as well.

Please let me know if you have any questions. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Kenneth J. Plante". The signature is written in a cursive style with a large, stylized initial 'K'.

Kenneth J. Plante
Coordinator