

This rule was filed as GSD 86-503.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 22 REQUIREMENTS FOR CHARITABLE USE OF REAL PROPERTY: MANAGEMENT
OF REAL PROPERTY BY PROPERTY CONTROL DIVISION

1.5.22.1 ISSUING AGENCY: General Services Department, Property Control Division
[Recompiled 11/30/01]

1.5.22.2 SCOPE: This regulation affects all agencies and all non-state government organizations and individuals using land and buildings under the control of the property control division, general services department. Affected agencies include all executive state departments, boards, commissions, councils, agencies and divisions of state government.
[Recompiled 11/30/01]

1.5.22.3 STATUTORY AUTHORITY: This regulation is based on: Section 15-3-2 A (1) and (2) NMSA 1978, which provides for the director of the property control division to assign and regulate the use and the occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy.
[Recompiled 11/30/01]

1.5.22.4 DURATION: [Permanent]
[Recompiled 11/30/01]

1.5.22.5 EFFECTIVE DATE: Effective: Immediately July 1, 1986 [filed July 10, 1986]
[Recompiled 11/30/01]

1.5.22.6 OBJECTIVE:

A. The purpose of this regulation is to establish procedures for the management of land and buildings under the control of the property control division of the general services department, including use of property by non-state government organizations or individuals.

B. The policy of these regulations is to insure that the public has an equitable opportunity to obtain the right to use division premises for charitable purposes while protecting agencies from the disruption of their work by such activities; to protect the public from uninsured sales related to such activities; and to prevent interference with government services to the public by the uncontrolled use of division premises.
[Recompiled 11/30/01]

1.5.22.7 DEFINITIONS:

A. "Agency" means any unit of state government including, but not limited to boards, commissions, bureaus, agencies, councils, divisions and departments.

B. "Agency head" means the person having the highest authority within an agency or his designee.

C. "Charitable Organizations and Solicitations Act" (the Act") means Sections 57-22-1 through 57-22-11 NMSA 1978.

D. "Charitable purpose" means any purpose for which a charitable organization has been established to directly promote the well-being of the public at large or the benefit of an indefinite number of persons and may not result in any profit to the non-profit organization.

E. "Director" means the director of the property control division of the general services department or his designee.

F. "Division" means the property control division of the general services department.

G. "Non-profit organizations" for purposes of this regulation, means all individuals and organizations, whether incorporated or not, that conduct activities for charitable purposes.

H. "Premises" means the real property under the control of the division and all improvements and structures thereon. Premises include all real property leased pursuant to Section 15-3-2 A (5) NMSA 1978.

I. "Professional fundraiser" means any individual, corporation, association, or other entity who for financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, either personally

or through agents or employees specifically employed for that purpose. The following shall not be deemed to be a professional fundraiser by reason of the activities listed:

- (1) an attorney, investment counselor, or banker, who advises any person to make a contribution to a charitable organization, if he does not otherwise perform the functions of a professional fundraiser; or
- (2) a bona fide salaried officer or employee of a charitable organization which maintains a permanent office in the state.

J. "Sales" means the act of selling of any product and/or service where such activity is not conducted by or on behalf of the state of New Mexico or any of its subdivisions. Sales include, but are not limited to, selling by vending machines, temporary and permanent concession stands as well as selling by those walking through or driving onto division premises with products and/or services for sale or lease.

K. "Solicitation" means any request or appeal, either written or oral, or any endeavor to obtain, seek or plead for funds, property, financial assistance or other thing of value, including the promise [*sic*] or grant of any money or property of any kind or value for a charitable purpose.

[Recompiled 11/30/01]

1.5.22.8 PROCEDURES:

A. Scope:

(1) Use of division premises for short term (thirty (30) days or less) charitable purposes, by non-profit organizations, shall not be subject to the provisions provided in GSD Rules on Concession Sales (GSD 86-505) or GSD rules on leasing (GSD 86-504) [now 1.5.16 NMAC] but shall follow the requirements set forth hereafter. Use of premises may include advertising or promotional activities for charitable purposes to the extent specifically authorized by the director.

(2) The provisions of this regulation shall apply to use of premises designated through joint powers agreements entered into by the division, wherein control of such premises is designated with an agency other than the division and to premises under lease pursuant to division regulation GSD 86-504 [now 1.5.16 NMAC].

B. Registration: Any individual or organization wishing to use division premises for charitable purposes must register with the director. Applications for registration shall be on the form attached to this regulation as [sub-section 11.1] Appendix 7.1, which shall set forth, among other things, the location or locations that may be used, the days of the week and times of day for such use, and a termination date of such use. Approved registrations shall expire no later than thirty (30) consecutive calendar [*sic*] days after date of issuance. Applicants must provide their name, address, phone number, signature, and agree to a provision that the director may, by advanced written notice, 1) change the time and place for use by the applicant, and 2) advance the termination date for the use of the building.

(1) Length of use: Approved registrations shall state the length of time the registered entity may use division premises, stating the precise dates, and, if applicable, the hours, each premises may be used. The total number of days for all premises in which use is authorized shall not exceed thirty (30) consecutive calendar days. Applications requesting more than 30-days use shall be restricted to the maximum 30-day period.

(2) Proof of filing: All non-profit organizations registering under this regulation who are subject to the provisions of the Charitable Organizations and Solicitations Act shall provide the director with a showing of filing with the attorney general of New Mexico pursuant to the requirements of the act, as well as proof of current compliance with the provisions of the act.

(3) Professional fundraisers: All professional fundraisers associated with a non-profit organization's activities on division premises shall be listed in the application (appendix 7.1 of this regulation [now 1.5.22.11 NMAC] and provide the proof of compliance required in Section 6.2.2 [now paragraph (2) of Subsection B of 1.5.22.10 NMAC], above, in all instances where the non-profit organization is subject to the act.

C. Compatibility with state functions: All applicants for use of state buildings under this regulation shall agree, in writing, that their activities will not interfere with the work functions of the agencies located in the buildings in which the applicant's activities occur and agree to the provisions of these rules. The director shall notify the agency head for each agency using the area in which an applicant is granted permission to conduct his activities. The agency head shall notify the director, in writing, if he has any objections to any of the provisions regarding scheduling, location, and nature of the applicant's activities. The director shall modify or withdraw the permission granted to the applicant whenever there is a showing of interference, by an agency, with the activities of an agency.

D. Proof of non-profit status: The director shall require any individual or organization registering under this regulation to provide proof of both the non-profit status of the applicant and the charitable purpose of the activities on the division premises including, but not limited to, an accounting of the use of the proceeds obtained from all sales and solicitations on division premises.

E. Sales or solicitation: Charitable purposes activities in division premises may include solicitations or sales. The nature of such sales and/or solicitations shall be specified in the application by the applicant. If sales include selling food products, the director shall require proof of compliance with applicable health standards and may require proof of food purveyors and product liability insurance coverage in an amount acceptable to the director.

[Recompiled 11/30/01]

[**Compiler's note:** Paragraph (1) of Subsection A of 1.5.22.10 contains a reference to GSD 86-505, Concession Sales Regulations that were not filed in accordance with the State Rules Act.]

1.5.22.9 APPENDIX: Application Form: Charitable use of Property Control Division Land and Buildings.
[Recompiled 11/30/01]

1.5.22.10 APPLICATION FORM:
Charitable Use of Property Control Division Land and Buildings

Name of Applicant: _____ (include names of all Professional Fundraisers to be used by applicant***)

Address: _____ Telephone: _____

Town: _____ Zip: _____

Name of Applicant's Agent or Representative: _____

Town: _____ Zip: _____

Telephone: _____

Applicant requests the Property Control Division, GSD, State of New Mexico authorize applicant's use of Division buildings and/or land, as follows:

1. Address of building(s) or land to be used*:
Street address: _____
City: _____
2. Location(s) **within the building to be used***: _____
3. Dates of use (not to exceed 30 consecutive calendar days): _____

4. Time of day for the activities listed below: _____
5. Activities of Applicant (describe activities to be conducted in Division Buildings and/or land in detail)*:

6. Purpose of activities (describe nature of applicant, if funds are raised or solicitations requested, list how funds are to be used, list non-profit incorporations, if any, IRS status, etc.)*: _____

7. If sales of product or service are involved in case of Division and/or Buildings, describe product** including origin and price*:

8. The requirements of the Charitable Organization and Solicitation Act:
____ do not apply to Applicant

____ do apply to Applicant, proof of compliance is attached***

Applicant hereby certifies that the foregoing information is correct, and agrees that the Property Control Division Director or his designee may, by advanced written notice, cancel this permission to conduct the above-listed activities or modify the times and places allowed for such activities.

Applicant further agrees to defend, indemnify and hold the Property Control Division and the State of New Mexico harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of applicant's use of the buildings or land described heretofore, unless caused by the tortuous act or omission of the State of New Mexico, its officials, employees or servants.

Applicant agrees to not interfere with the work functions of any (state) Agency in the buildings or on land in which applicant's activities are conducted, agrees to comply with all provisions of Regulation GSD 86-503 [now 1.5.22 NMAC], and further agrees that any such interference or violation of said regulation may result in immediate termination of the permission granted herein, at the option of the Director of the Property Control Division.

This application shall become the registration required under Regulation GSD 86-503, Section 6.2 [now Subsection B of 1.5.22.10 NMAC], only upon approval of the Property Control Division Director or his designee.

Applicant's Name: _____

By: _____

Name of Authorized Agent

Approved: Property Control Division

By: _____

* Continue on separate sheet if necessary and attach.

** If the product is food, the Director of the Property Control Division shall require proof of compliance with applicable Health Standards and may require proof of food purveyors and product liability insurance coverage in an amount acceptable to the Director.

*** Proof of compliance shall consist of a showing of filing and current compliance with the Act. Proof of compliance is required for each Professional Fundraiser (as defined in GSD 86-503, Section 4.9 [now Subsection I of 1.5.22.7 NMAC]) to be used by Applicant.
[Recompiled 11/30/01]

HISTORY OF 1.5.22 NMAC: [RESERVED]