



THE RULES DIGEST

June 2011

Scheduled for Committee review
Tuesday, June 14, 2011
Room #116

Reference
XXXIII IAB No. 23(05/18/11)
XXXIII IAB No. 24(06/01/11)

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CITY DEVELOPMENT BOARD

9:05

Smart planning principles, IAB Vol. XXXIII, No. 24, ARC 9546B, ADOPTED.

In 2010 the Iowa Smart Planning law, Iowa Code §18B.1 (SF 2389) was enacted; it requires that communities and state agencies consider “Smart Planning Principles” when planning for future development and provides guidance concerning important elements that local plans should include. These principles include:

- Collaboration – Stakeholders are encouraged to be involved during deliberation of planning, zoning and development.
- Efficiency, transparency and consistency – Planning, zoning, development and resource management should be undertaken to provide efficient, transparent and consistent outcomes.
- Clean, renewable and efficient energy – All factors in smart planning should be undertaken to promote clean and renewable energy use and increased energy efficiency.
- Occupational diversity – Stakeholders should promote increased diversity of employment and business opportunities.
- Revitalization – Smart planning should result in revitalization of established town centers and neighborhoods.
- Housing diversity – Planning, zoning and development should encourage diversity in the types of available housing.

- Community character – Efforts should be made to promote activities and development that are consistent with the character and architectural style of the community.
- Natural resources and agricultural protection.
- Sustainable design.
- Transportation diversity.

These rules relate to the procedure for annexation. The rules do not actually require the application of these principles as part of the process.

ECONOMIC DEVELOPMENT DEPARTMENT

9:10

Neighborhood stabilization program, IAB Vol. XXXIII, No. 23, ARC 9504B, EMERGENCY.

This existing program is entirely funded by the federal government; Iowa has received over \$21 million, and with these revisions may receive an additional \$5 million. The program funds the rehabilitation or demolition of foreclosed or abandoned residential properties. Individual grants are limited to \$1 million. The rules are filed on an emergency basis because under the federal rules all grants must be allocated and the funds spent by 2014. The department states that emergency implementation is necessary to ensure that the projects are selected, approved and completed within the three-year time frame. This filing is also published under notice of intended action.

Communities eligible for funding are: Des Moines, Waterloo, Sioux City, Council Bluffs, Davenport, Burlington, Perry, Cedar Rapids, Boone, Guthrie Center and Shenandoah.

NATURAL RESOURCE COMMISSION

9:20

Concessions, IAB Vol. XXXIII, No. 24, ARC 9552B, ADOPTED.

This filing re-writes existing rules establishing the process to select concessions at state parks, recreation areas and other property. The DNR will post a request for proposal on the small business web site of the Department of Economic Developments.

Not every contract will be put up for bid. Existing concessionaires may request renewal during the term of a contract after a minimum of three years of concession operation and a minimum of six months prior to expiration of the existing contract. The provisions of the renewal contract will be negotiated between the department and the concessionaire. The DNR is not required to renew a contract.

The DNR will select a concessionaire it determines to be best suited for a concession operation in a state park or recreation area, based upon seven criteria set out in the rule. Most of the criteria relate to the soundness of the concessionaire as a business and the terms of the contract. The criteria do include consideration of the Iowa Department of Public Health's Comprehensive Nutrition and Physical Activity Plan, and the use of environmentally friendly practices and materials.

The placement of vending machines is not subject to the bidding process. These machines may be placed in state parks and recreation areas only by the publisher or distributor of the newspaper to be sold, the distributor of the soft drink to be sold in the machines, or by private vending machine companies. Companies placing vending machines in state parks and recreation areas must submit a proposal to the department that states the location, number, and type of vending machines to be placed; the price that will be charged to the public; and the proposed fee or commission to be paid to the state.

Friends groups or organizations set up to support state parks are not required to bid. These groups submit a proposal to operate a concession operation at a particular state park or recreation area, that states the services to be provided, hours of operation, and staffing. All net proceeds from the sale of merchandise and other concession services must be spent on state park or recreation area improvement projects.

* * *

Special events and fireworks displays, IAB Vol. XXXIII, No. 24 ARC 9531B, ADOPTED.

A permit is required in order to conduct a special event on any public land under the jurisdiction of the Commission. The Commission adopts a complete rewrite of its rules covering special events--now expanded to include special event permit requirements for ATVs and snowmobiles. Rules for other special events are also being relocated into this chapter. The filing creates a computerized centralized special events application system and establishes fees to operate and maintain the system. Applications may be submitted anytime during the calendar year in which the special event is to begin but no later than 30 days prior to the special event.

There is a nonrefundable \$25 administrative fee for processing each special event application.

PHARMACY BOARD

9:40

Uncertified pharmacy technician, IAB Vol. XXXIII, No. 23, ARC 9502B, ADOPTED.

Iowa law requires that pharmacy technicians attain national certification; 2010 Iowa Acts, House File 2531 extends the deadline for that certification to December 31, 2013 for an uncertified pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum 2,000 hours during the 18-month period prior to registration and who continues to work a minimum 2,000 hours during any 18-month period.

The rules provide that a certified pharmacy technician may perform a variety of “technical functions” as delegated by the supervising pharmacist. Examples of these functions are provided, but they are not exclusive and the pharmacist has discretion to delegate additional functions. The rules also specify the technical functions that can be delegated to an uncertified pharmacy technician those rules are exclusive and no additional functions may be delegated.

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Pharmacy closing, IAB Vol. XXXIII, No. 24, ARC 9526B, ADOPTED.

This filing contains a variety of amendments to the Board’s rules. A new provision establishes a procedure for closing a pharmacy and the transfer of records to the receiving pharmacy. The rules require that the closing pharmacy ensure the transfer of all patient records to a pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian for the closing pharmacy’s records for the retention periods required under law.

These procedures require the closing pharmacy to notify the Board and the federal Drug Enforcement Administration (DEA) at least 14 days prior to the closing and to notify the pharmacist in charge of the closing pharmacy at least 21 days prior to the closing and to notify the patients of the closing at least 14 days prior to the date of closing, including information regarding a patient’s right to transfer the patient’s records to a pharmacy of the patient’s choosing. The new rules also restrict the receiving pharmacy from contacting patients prior to the transfer of patient records and the closure of the closing pharmacy.

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Drugs in emergency medical service programs, IAB Vol. XXXIII, No. 24, ARC 9528B, NOTICE.

The notice of intended action proposes to rescind existing Chapter 11 relating to drugs in emergency medical service programs and to adopt a new chapter on the same subject. A previously initiated rule making for this matter has been terminated. The proposed rules define terms used throughout the chapter and establish responsibilities for parties involved in the provision of drugs to emergency medical service (EMS) programs. The rules require a written agreement between the EMS program and the party or parties responsible for providing drugs to the EMS program and include procedures for termination of those services. The rules address requirements for storage and security of drugs maintained at the EMS program site and require the development of, implementation of, and adherence to policies and procedures for the operation and management of the EMS program. Record-keeping requirements are established, methods for utilization and replenishment of drug stocks are defined, and special handling and record keeping relating to controlled substances are identified.

VETERANS AFFAIRS DEPARTMENT

10:00

Veterans Home: "Gold Star" parents, IAB Vol. XXXIII, No. 20, ARC 9492B, NOTICE, HELD OVER FROM MAY.

In 2010 federal legislation was enacted relating to the admission of "Gold Star" parents into the Iowa Veterans Home. A "Gold Star" parent is a parent who has lost a son or daughter in the armed services. There are a number of limitations:

- The parent's child died while serving in the armed forces.
- The parent is not self-supporting, or is disabled and is in need of one of the multi-levels of care available at the veterans home and is unable to defray the expenses of the necessary care.
- The parent cannot be competitively employed.
- The parent is an Iowa resident.
- A parent who is self-sufficient but who is otherwise eligible may be admitted upon payment of the cost of care.
- A parent who has been diagnosed as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others **shall not** be admitted to or retained.
- Gold Star parents, spouses and surviving spouses shall not exceed more than 25 percent of the total number of members.

PROFESSIONAL LICENSURE DIVISION

10:30

Hearing aid dispensers, IAB Vol. XXXIII, No. 18, ARC 9424B, 70 Day Delay, April.

This rule making was initially reviewed in April; it contains a provision that sets out the contents for hearing aid dispenser advertisements. The language in the rule` actually comes from the Code itself, §154.24(3)“s”. The rulemaking was controversial because it has now highlighted the existence of these statutory advertising requirements, which apparently have not been enforced. The rules require that advertisements for hearing aids contain detailed and specific information including a requirement that the business name itself contain the words “hearing aid.” Discussion suggested that this statutory language dated back many years, and responded to a situation in which the general public confused hearing aid dealers with the more formally trained audiologists. Stakeholders contend that modern practice involves far more options than just hearing aids and that there is no longer any rationale for requiring such specific requirements for hearing aid dealers. Committee members noted that this was a statutory issue, not rule making issue; the rules accurately reflect the statute. Nevertheless, the Committee agreed to impose a 70 day delay on the rules, allowing the stakeholders an opportunity to seek a statutory revision. Legislation to eliminate these requirements is now pending action.

PUBLIC HEALTH DEPARTMENT

11:00

Cremation fees, IAB Vol. XXXIII, No. 24, ARC 9533B, ADOPTED.

The state medical examiner proposes to raise the fees for performing an autopsy and to create a new cremation permit fee of \$75 for each permit investigated and authorized by the state medical examiner. The fee for an autopsy is raised from \$1200 to \$1400 and the fee for expert testimony is raised from \$350 per hour to \$450 per hour.

Iowa Code §691.6 (4) empowers the state medical examiner:

“To collect and retain autopsy fees as established by rule. Autopsy fees collected and retained under this subsection are appropriated for purposes of the state medical examiner’s office. Notwithstanding section 8.33, any fees collected by the state medical examiner that remain unexpended at the end of the fiscal year shall not revert to the general fund of the state or any other fund.....”

PUBLIC SAFETY DEPARTMENT

11:15

Electrician and electrical contractor licensing, IAB Vol. XXXIII, No. 23, ARC 9515B, NOTICE.

The Electrical Examining Board is redrafting existing rules relating to educational requirements for electricians and contractors. The existing rules are skeletal; the

proposal adds detail and substance to the educational requirements. The new rules establish standards for electrical education programs. To be approved a program must require a minimum of 2,000 contact hours of instruction, with a minimum of 1,600 hours covering technical electrical subjects. Between 30% and 40% must be lecture hours, and the balance shall be laboratory or shop hours. Instructors must:

- Hold a current license as a class “A” master electrician or class “A” journeyman electrician; or
- Hold a bachelor of science degree or equivalent or higher degree in electrical engineering and have completed 4,000 hours of experience performing electrical work; or
- Hold an associate of applied science or equivalent or higher degree in electrical construction or maintenance or both and have completed 8,000 hours of experience performing electrical work.

The new rules also establish an 18 contact hour continuing education requirement, over three years for license renewal. All courses must be approved by the board. persons or institutions seeking approval must provide at least three letters from educational institutions or government agencies attesting to the instructor’s knowledge of and qualifications to teach the subject matter of the course.

UTILITIES DIVISION

11:30

Capital infrastructure investment automatic adjustment mechanism for rate regulated natural gas utilities, IAB Vol. XXXIII, No. 24, ARC 9529B, NOTICE.

The proposed rule would establish two alternative procedures for automatic adjustment mechanisms through which rate-regulated natural gas utilities could recover costs for certain eligible capital infrastructure investments. To recover costs for an eligible investment under one of the procedures, the utility would be required to file for Board approval a proposed automatic adjustment mechanism that meets the three criteria established by the rule. Under the other automatic adjustment mechanism, a utility could file a proposed tariff, with the information required by the proposed rule, that would establish a rate for recovery of costs for an eligible investment that is required by governmental mandate or action or is required for safety.

DENTAL BOARD

12:45

Licensure examination, IAB Vol. XXXIII, No. 23 ARC 9510B, ADOPTED.

There are currently two ways to become licensed in Iowa as a dentist or hygienist: licensure by examination, or licensure by credentials (an applicant must be licensed in another state and have practiced for at least three years). This rule change, originally placed under notice in December 2010, identifies the proprietary examination that it will use for license testing for the two professions. The Notice removed several current testing providers from the list. At the Committee's December meeting opponents of this change stated that restricting examinations will cause a hardship on senior level dental students who are already preparing for a particular type of examination and will discourage out-of-state graduates from locating in Iowa.

During the notice period 2011 Iowa Acts, Senate File 438 was enacted. The Act allows licensure for out-of-state applicants who have: (1) held a license in another state and practiced three years, or (2) held a license in another state and taken a clinical examination.

The Board has also changed the notice to allow current dental students to take the examination of their choice. However, the filing still designates the Central Regional Dental Testing Service, Inc. examination as the test that is recognized for a dentist or dental hygienist applying for licensure by examination in Iowa. The Board states that it has a long professional relationship with this testing service. Other tests are allowed for applicants seeking licensure in another state. Under Senate File 438, once an applicant has attained licensure in the other state, that person may apply for licensing in Iowa by credential.

HUMAN SERVICES DEPARTMENT

1:15

Respite services, IAB Vol. XXXIII, No. 18, ARC 9403B, 70 DAY DELAY, APRIL.

A caregiver for certain disabled persons may be eligible for respite services from the department; these services give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. Under the previous rules, these services included attendance at day camp. Day camp is now considered a day care service which is not reimbursable under the home- and community-based services waivers. The intent of the rule change is to eliminate the use of respite care when the caregiver is at work, since respite services are not intended to be

a substitute for day care. Respite provided by a 24-hour camp is an exception to the new rule, since for most of that time parents would not be working.

The current program is supported by parents who feel the day camp program provides socialization opportunities and physical activities for the child and a much needed break for the parents.

At the April meeting the Committee delayed this rule change for 70 days, to allow for legislative consideration of funding options. The Legislature has taken no action on this issue.