

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File: #521

Peggi Opalinski
Office Manager
Building Code Division

June 20, 1979

Joanne E. Hinderaker

In the Matter of the Proposed Rules for Display of the Symbol of Accessibility. BCD-79-005-PE

Our File 521.

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 5-25 Temporary Rule _____

Resubmitted and Received 6-5-79

DUE DATE 6-14-79 - 6-25-79

a. Returned to Agency w/o filing w/Secy of State 5-31-79
b. Approved 6-20-79 Date Sent Back to Agency 6-20-79

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/a
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓ one copy O.K
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N/a
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N/a
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/a
17. Petition by Public, where applicable N/a.

Resubmittal should be for 20 days instead of 10.

RULES AS ADOPTED

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

RULES FOR

DISPLAY OF THE SYMBOL OF ACCESSIBILITY

2 MCAR 1.15530 Title and rules. The rules contained herein, 2 MCAR S. 1.15530 through 1.15538, shall be part of the Minnesota State Building Code.

2 MCAR 1.15531 Authorization and Purpose. 2MCAR1.15530 through 2MCAR1.15538 are authorized by Minn. Stat. Sec. 16.8632 (1978) regarding display of the symbol of accessibility indicating access to buildings, facilities and grounds which are accessible to and usable by handicapped persons.

2 MCAR 1.15532 Scope. These rules apply to all new and existing buildings, facilities and grounds within the State of Minnesota on which the owner(s) or operator(s) desires to display the symbol of accessibility. The rules establishing handicapped accessibility to and within structures shall be contained in the code.

2 MCAR 1.15533 Enforcement. These rules shall be enforced in the same manner as other provisions of the Minnesota State Building Code.

2 MCAR 1.15534 Definitions. All terms in these rules shall have the meaning as defined in this code except for the following which shall be defined as indicated:

A. "Symbol" means the symbol adopted by Rehabilitation Internationals Eleventh World Congress, pursuant to Minn. Stats. Sec. 16.8632, subd. 2.

B. "Existing Buildings" means any building built prior to January 1, 1976.

2 MCAR 1.15535 Display of Symbol. The owner(s) or operator(s) of new or existing buildings, facilities, and/or grounds may display the symbol of accessibility after the following criteria have been met:

A. A certificate of occupancy is issued by the building official pursuant to the State Building Code 2 MCAR 1.10111, UBC Sec. 306.

or,

B. The owner(s) or operator(s) obtain(s) an affidavit of compliance prepared and signed by a Minnesota registered architect or engineer, Minnesota Certified building official or approved inspection agency. The affidavit shall contain the statement that the buildings, facilities and/or grounds are in compliance with the code and the Minnesota Statutes pertaining to handicapped accessibility. The affidavit shall specifically address all accessibility features required by the State Building Code on a standard form furnished for that purpose.

2 MCAR 1.15536 Appeals. All appeals regarding compliance with accessibility standards as required by Sec. 1.15535 shall be brought pursuant to 2 MCAR Sec. 1.10111, UBC Sec. 204.

2 MCAR 1.15537 Issuance. After compliance with the rules of this section, 2 MCAR 1.15530 to 1.15538, and upon request of the owner(s) and operator(s), the building official shall issue the symbol.

A. A municipality which determines to evaluate existing buildings for accessibility under 2 MCAR 1.15535 B shall adopt a reasonable schedule of fees based on its cost of inspection. No charge or fee shall be imposed for the issuance of the symbol.

2 MCAR 1.15538 Placement of Symbol. The symbol when issued shall be affixed on the approved building(s), facility(ies), or grounds in the following manner:

A. Buildings. The symbol shall be affixed to the door of the accessible entrance 36" above the walking surface and within 12" of the latch, pull, or lever handle.

B. Facilities. The symbol shall be affixed to an 8" x 12" sign blank or board mounted on a post 42" above grade (center line of sign) within 60" of said facility.

C. Grounds. The symbol shall be affixed to an 8" x 12" sign blank or board mounted on a post 42" above grade (center line of sign) within 60" of a public way.

APPROVED AS TO FORM AND LEGALITY

JUN 20 1979 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hindeleer

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 20 1979
Joan Anderson Growe
Secretary of State
12:35 PM

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : PEGGI OPALINSKI
Office Manager
Building Code Division

DATE: May 31, 1979

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules For Display of the Symbol of Accessibility, AG File 521

We are returning these rules and the accompanying file to your office, without approval for the following reasons:

1. You have failed to mark one set of rules as the adopted rules. This should be done so as to enable this office to distinguish the adopted rules from the proposed rules.

2. You have not provided this office with the requisite number of copies of the documents in this file. Specifically, we require three (3) copies of the following:

a. Rules as Adopted
b. Rules as Proposed
c. Order for Hearing
d. Notice of Hearing
e. Certificate of Acquisition of Secretary of State's List
f. Affidavit of Mailing
g. Statement of Need
h. Hearing Examiner's Report
i. Agency's Findings of Fact
j. Agency's Order Adopting Rules
k. Chief Hearing Examiner's Report
l. Attorney's Certificate of Compliance with Rulemaking Procedures
m. Copy of Notice of Intent to Solicit Outside Opinion, Where Applicable
n. Petition by Public, Where Applicable

One copy of the Secretary of State's list is sufficient. All such copies should be included with the remainder of the record and the record re-submitted to this office.

3. You have failed to include the Certificate of Compliance with Rulemaking procedures which should be obtained from your attorney, and included with the file.

4. You should also note that in the letter from Don Pates to "All Interested Persons", dated May 25, 1979, regarding submission of this file to our office, Lee Sheehy should not be listed as the person to whom inquiries should be addressed in regard to changes made in the rules. The form letter drafted by our office and attached hereto, indicates that the Agency Staff member, (i.e. a Building Code staff person) should be listed at the close of the letter. It is not our office's policy to provide copies of the rules as adopted to the public, nor can we take the time to handle routine phone calls regarding changes in every set of rules that comes through our office. In the future we request that you designate someone in your office to handle questions regarding changes in the rules. To date we have received one request for a copy of the adopted rules from Mr. Harold Kiewel, Council for the Handicapped, 208 Metro Square Building, 7th and Robert Streets, Saint Paul, Minnesota. We ask that you send him a copy of the adopted rules. Any future questions from the public in regard to this specific set of rules will be referred to your office. Of course, any inquiries relating to the form and the legality of adopted rules should be referred to and will be handled by, our office.

After you have provided this office with the requisite documents and copies thereof, you may re-submit this file to our office. Our twenty (20) day review period will commence thereafter.

If you have any questions in this regard, please contact me.

JEH/bw

Re: In the Matter of the Proposed Action
of Rules of the (Agency)
Relating to _____

To All Interested Persons:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, subdivision 4 and Rule HE 102:

PLEASE TAKE NOTICE that the above-captioned rule(s) have been submitted to the Attorney General's Office on (date) for review as to form and legality. Pursuant to Rule ATTYGEN 305, any person may question the legality of the above-captioned rules within ten (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rules, you should direct your comments to the Attorney General's Office, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General you may contact _____
(insert the name, address and telephone number of
the Agency staff member familiar with the rules)

_____
Authorized Signature

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOANNE E. HINDERAKER
Special Assistant
Attorney General

DATE: June 5, 1979

FROM : STEVE I. KRAUSE
Special Assistant
Attorney General

PHONE: 296-4347

SUBJECT: Rules for the Display of the Symbol of Accessibility, AG File 521.

I am resubmitting these rules and the accompanying file for your approval. Those defects which were noted in your memo to the Building Code Division of May 31, 1979, have been cured. If you have any further questions or comments please don't hesitate to contact me.

SIK/bw

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

May 25, 1979

Ms. Peggi Opalinski
Building Code Division
408 Metro Square Building
St. Paul, Minnesota 55101

Re: In the Matter of the Proposed Rules for Display of the Symbol of Accessibility. BCD-79-005-PE

Dear Ms. Opalinski:

Enclosed please find the entire record which you submitted to us for review on the issue of substantial change together with the Report of the Chief Hearing Examiner, pursuant to Minn. Stat. § 15.052, Subd. 4.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Encs.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

IN THE MATTER OF THE PROPOSED)
RULES FOR DISPLAY OF THE SYMBOL)
OF ACCESSIBILITY.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on March 15, 1979, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiner, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Building Code Division on March 30, 1979; and

WHEREAS, the Building Code Division has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Building Code Division has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Building Code Division has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Building Code Division has the responsibility of submitting the complete hearing record and the rules as adopted by the Division to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 25th day
of May, 1979.

DUANE R. HARVES
Chief Hearing Examiner

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

IN THE MATTER OF THE PROPOSED
RULES FOR DISPLAY OF THE
SYMBOL OF ACCESSIBILITY

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Conference Room, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota on March 15, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing and applicable proposed rules be published in the State Register.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

William G. Strusinski

William G. Strusinski
Acting Commissioner

DATE: 1/24/79

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED
RULES FOR DISPLAY OF THE
SYMBOL OF ACCESSIBILITY

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Conference Room, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota on March 15, 1979, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Harry Seymour Crump, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 5 working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. Written material submitted within the above time limits will be recorded in the hearing record.

The proposed rules will apply to all new and existing structures within the State of Minnesota on which the owner(s) or operator(s) desires to display the symbol of accessibility. The display of the symbol will indicate access to buildings, facilities, and grounds which are accessible to and usable by handicapped persons. The rules describe when the symbol can be displayed, where it shall be placed, and the possibility of a waiver of strict compliance "for existing buildings".

The proposed rules are subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Copies of the proposed rules will be available at the door on the date of the hearing and one free copy can now be obtained by writing to the Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. 16.8632 (1978).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Please be advised that pursuant to Minn. Stat. 10A.01, Subd. 11 (1978) any individual: (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity by the individual. The statute provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

William G. Strusinski

William G. Strusinski
Acting Commissioner

DATE: 1/24/79

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed
Rules for Display of the
Symbol of Accessibility.

STATEMENT OF NEED
AND REASONABLENESS

The need for the proposed rules was established in Minn. Stats. Section 16.8632 (1978) which directed the Commissioner of Administration to promulgate rules for display of the symbol of accessibility.

Don Pates, Director and Richard Brooks, Assistant Director of the Building Code Division, Richard Ramberg, Executive Director, and Harold Kiewel, Accessibility Specialist, of the Minnesota State Council for the Handicapped will appear in behalf of the proposed rules at the hearing. They will testify regarding the need for and reasonableness of the proposed rules. The substance of the testimony is set forth herein.

The proposed rules have been prepared in consultation with the Minnesota State Council for the Handicapped as required in Minn. Stats. Section 16.8632, Subd. 3.

The proposed rules will apply to all new and existing structures within the State of Minnesota on which the owner(s) or operator(s) desires to display the symbol of accessibility. The display of the symbol will indicate access to buildings, facilities, and grounds which are accessible to and usable by handicapped persons. The rules describe when the symbol can be displayed, where it shall be placed, and the possibility of a waiver of strict compliance "for existing buildings".

The reason for the proposed rules is to indicate by display of the symbol of accessibility buildings, facilities, and grounds which are accessible and functional for use by physically impaired citizens of the State of Minnesota.

The following is the evidence and argument which supports the need for and reasonableness of the proposed rules:

2 MCAR 1.15530. Title and rules. This section is necessary to identify specific sections of the code pertaining to display of the symbol of accessibility and states that these rules shall be a part of the Minnesota State Building Code.

2 MCAR 1.15531. Authorization and Purpose. This section is necessary to provide for references to Minnesota Statutes requiring promulgation of the proposed rules and to explain the purpose of the proposed rules.

2 MCAR 1.15532 Scope. This section is necessary to explain what facilities the symbol of accessibility applies to when the owner(s) or operator(s) desires to display the symbol and require the facility to conform to building code requirements for accessibility prior to display of the symbol of accessibility.

2 MCAR 1.15533 Enforcement. This section is necessary to restate the enforcement procedures of the Minnesota State Building Code, so that if the proposed rules are used as a seperate document from the Code the method of enforcement is clear and the individual using the proposed rules will not need to refer to other rules or statutes.

2 MCAR 1.15534 Definitions. This section is necessary to define terms used in the proposed rules which are not included or differ from definitions contained in the Minnesota State Building Code.

2 MCAR 1.15535 Display of Symbol. This section is necessary to define the criteria to be met by owner(s) or operator(s) of new and existing buildings, facilities, and/or grounds desiring to display the symbol of accessibility.

2 MCAR 1.15536 Waivers. This section is essential to assure a fair evaluation of existing buildings so that an undue burden is not placed on owner(s) or operator(s) of buildings, facilities, and/or grounds in which accessibility features were not considered. This section does not pertain to new structures which are required to comply with accessibility requirements contained in the Minnesota State Building Code.

2 MCAR 1.15537 Issuance. This section is necessary to provide for local issuance of the display symbol of accessibility and require each municipality to adopt its own schedule of fees for such issuance. The allowance of a fee would offset the costs of administering the issuance of the display symbol of accessibility, which is not provided for in the Minnesota State Building Code.

2 MCAR 1.15538 Placement of Symbol. This section is necessary to establish a uniform method of placement of the symbol of accessibility wherever it is displayed in the State of Minnesota.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

William G. Strusinski
Acting Commissioner

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of the Proposed
Rules for Display of the
Symbol of Accessibility

CERTIFICATE OF DELIVERY
OF THE SECRETARY OF
STATE LIST

I hereby certify that the attached 587 labels and 10 sheets constitute the complete list of persons, associations, and other interested groups who as of 3 o'clock P.M., this 7th day of February, 1979, have requested pursuant to Minn. Stats. 1978, Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

Joan Anderson Growe

BY: Kathy Hjelm

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

In the Matter of the Proposed
Rules for Display of the
Symbol of Accessibility

AFFIDAVIT OF RECEIPT

Margaret Opalinski, being duly sworn on oath, deposes and says:

1. That she is an employee of the Building Code Division, Department of Administration, State of Minnesota.

2. That on the 7th day of February, 1979, she went to the Secretary of State's Office of the State of Minnesota and requested a current list of all representatives and associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearing relating to the promulgation of rules pursuant to Minn. Stat. 15.0412;

3. That on the 7th day of February, 1979, in response to the above request, the Secretary of State provided her with such a list.

Further affiant sayeth not.

Margaret Opalinski
Margaret Opalinski
Building Code Division

Subscribed and sworn to before
me this 7th day of February,
1979.

Cynthia L. Claason
Notary Public

CYNTHIA L. CLAASON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 23, 1982

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

RECEIVED
MAY 4 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed
Rules for Display of the
Symbol of Accessibility

AFFIDAVIT OF MAILING

Margaret Opalinski, being first duly sworn, deposes and says:

That on the 12th day of February, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Margaret Opalinski
Margaret Opalinski
Building Code Division

Subscribed and sworn to before
me this 12th day of February, 1979.

Cynthia L. Claason
Notary Public

CYNTHIA L. CLAASON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Feb. 23, 1982

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Steve I. Krause, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Steve I. Krause
Special Assistant Attorney General

Dated: June 5, 1979

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

PROPOSED RULES FOR

DISPLAY OF THE SYMBOL OF ACCESSIBILITY

2 MCAR 1.15530 Title and rules. The rules contained herein, 2 MCAR Sec. 1.15530 through 1.15538, shall be part of the Minnesota State Building Code.

2 MCAR 1.15531 Authorization and Purpose. 2 MCAR Sec. 1.15530 through 1.15538 are authorized by Minn. Stat. Sec. 16.8632 (1978) regarding display of the state symbol of accessibility indicating buildings, facilities and grounds which are accessible to and usable by handicapped persons.

2 MCAR 1.15532 Scope. These rules apply to all new and existing buildings, facilities and grounds within the State of Minnesota on which the owner(s) or operator(s) desires to display the symbol of accessibility. The rules establishing handicapped accessibility to and within structures shall be as contained in the code.

2 MCAR 1.15533 Enforcement. These rules shall be enforced in the same manner as other provisions of the Minnesota State Building Code.

2 MCAR 1.15534 Definitions. All terms in these rules shall have the meaning as defined in this code except for the following which shall be defined as indicated:

1. "Symbol" means the symbol adopted by Rehabilitation Internationals Eleventh World Congress, pursuant to Minn. Stats. Sec. 16.8632, subd. 2.

2. "Existing Buildings" means any building built prior to January 1, 1976.

2 MCAR 1.15535 Display of Symbol. The owner(s) or operator(s) of new or existing buildings, facilities, and/or grounds may display the symbol of accessibility after the following criteria have been met:

A. A certificate of occupancy is issued by the building official pursuant to the State Building Code 2 MCAR Sec. 1.10111, UBC Sec. 306. A certificate of occupancy shall contain a statement that the buildings, facilities, and/or grounds comply with the code and the Minnesota Statutes pertaining to handicapped accessibility.

or,

B. The owner(s) or operator(s) obtains an affidavit of compliance prepared and signed by an architect, engineer, building official or approved inspection agency. The affidavit shall contain the statement that the buildings, facilities and/or grounds are in compliance with the code and the Minnesota Statutes pertaining to handicapped accessibility.

2 MCAR 1.15536 Waivers. A waiver for existing buildings of strict compliance with the terms of 2 MCAR Sec. 1.15535 may be granted by the municipal board of appeals pursuant to procedures established by 2 MCAR Sec. 1.10111, UBC Sec. 204. A waiver shall be granted only if the specific waiver does not substantially impair the independent use of the buildings, facilities and/or grounds by handicapped persons, and:

A. Strict compliance is an undue burden due to the topography, soil conditions, configuration, wetlands, waterways, or proximity of other structure to the site in question; or

B. Strict compliance is an undue burden due to external and internal configurations of the structure in question; or

C. Strict compliance is an undue burden due to the structures classification as a historical building.

For purposes of this subdivision reasonable cost(s) of compliance shall not be deemed an undue burden.

2 MCAR 1.15537 Issuance. After compliance with the rules of this section, 2 MCAR 1.15530 to 1.15538, and upon request of the owner(s) and operator(s), the building official shall issue the symbol.

A. Each municipality shall adopt its own schedule of fees for the issuance of the display symbol.

2 MCAR 1.15538 Placement of Symbol. The symbol shall be displayed on the approved buildings, facilities, and/or grounds in the following manner:

A. Buildings. The symbol shall be affixed to the door of the accessible entrance 36" above the walking surface and within 12" of the latch, pull, or lever handle.

B. Facilities. The symbol shall be affixed to an 8" x 12" sign mounted on a post 48" above grade (center line of sign) within 60" of said facility.

C. Grounds. The symbol shall be affixed to an 8" x 12" sign mounted on a post 48" above grade (center line of sign) within 60" of a public way.

RECEIVED
MAY 4 1979
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

In the Matter of Proposed Rules for Display of the Symbol of Accessibility.

ORDER ADOPTING RULES AND FINDINGS OF FACT, CONCLUSIONS, AND DECISION

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner on the 15th day of March, 1979, after proper notice required by Minn. Stat. Section 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all the evidence adduced and upon the records, files and proceedings herein, the Hearing Examiner has made his findings attached hereto. Upon review of the evidence and statements submitted by interested parties, I find the following:

1. The report of the Hearing Examiner is hereby adopted as the findings of fact, conclusions and decision of the Department of Administration, Building Code Division, except as noted below:

2. 2MCAR 1.15538. The Commissioner of Administration has deemed that it is not appropriate at this time to clarify language of "exit-entrance". The regulation in the State Building Code for accessibility are currently being rewritten for a future hearing for adoption. The "exit-entrance" language will be clarified in accessibility regulations, current Chapter 55 of the State Building Code.

NOW, THEREFORE IT IS ORDERED, that these rules identified as Rules for the Display of the Symbol of Accessibility are adopted this 30th day of April 1979 pursuant to authority vested in me by Minn. Stat. 16.8632, Subd. 3.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

James J. Hiniker, Jr.
Commissioner

RECEIVED
MAY 4 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

In the Matter of the Proposed Rules for Display of the Symbol of Accessibility.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Thursday, March 15, 1979 in Room 408, Metro Square Building, St. Paul, Minnesota.

Sheila Fishman, Special Assistant Attorney General, appeared as counsel on behalf of the Building Code Division (BCD). Donald Pates, BCD Director, and Richard Brooks, Assistant Director, testified in support of the proposed rules on behalf of the Division. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

Thereafter, the BCD shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the BCD on the issues of substantial changes in the rule and compliance with Minn. Stat. sec. 15.0412 within ten calendar days. The BCD will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On January 22, 1979, the BCD filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules.
   (b) The Order for Hearing proposed to be issued.
   (c) The Notice of Hearing proposed to be issued.
   (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On February 12, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1560.

3. On February 12, 1979, the BCD mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On February 16, 1979, the BCD filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The names of BCD personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through March 22, 1979, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. sec. 16.8632, subd. 3. This subdivision does provide, however, that the rules be promulgated so that they "are effective no later than March 1, 1979." This requirement must be viewed as directory in nature and not mandatory so as to affect the validity of the proposed rules. See, First National Bank of Shakopee v. Department of Commerce, 245 N.W.2d 861 (1976).

7. The BCD did consult with the State Council for the Handicapped before the rules were proposed for adoption pursuant to Minn. Stat. sec. 16.8632, subd. 3 (BCD Ex. 9).

8. The proposed rules will apply to all new and existing structures within the State of Minnesota on which the owner(s) or operator(s) desire to display the symbol of accessibility. The display of the symbol will indicate access to buildings, facilities and grounds which are accessible to and usable by handicapped persons. The rules describe when the symbol can be displayed, where it shall be placed, and the possibility of a waiver of strict compliance for "existing buildings."

9. Proposed 2 MCAR sec. 1.15530 identifies sections of the code pertaining to display of the symbol of accessibility and incorporates the rules into the State Building Code.

10. Proposed 2 MCAR sec. 1.15531 references the statutory authority for the proposed rules and sets out the purpose of the rules.

11. Proposed 2 MCAR sec. 1.15532 sets out the scope of applicability of the proposed rules. Although all new buildings must comply with Chapter 55 accessibility requirements, existing buildings may also display the symbol if the owner-operator chooses to bring the building into compliance with the Code.

12. Proposed 2 MCAR sec. 1.15533 states that the proposed rules shall be enforced in the same manner as other provisions of the Code.

13. Proposed 2 MCAR sec. 1.15534 specifically defines the terms "symbol" and "existing buildings" for use in the proposed rules.

14. Proposed 2 MCAR sec. 1.15535 sets forth the criteria which must be met if a building owner/operator wishes to display the symbol of accessibility.

a. After considering public input at hearing, the BCD has amended sec. 1.15535 as follows:

A. A certificate of occupancy is issued by the building official pursuant to the State Building Code 2 MCAR 1.10111, UBC Sec. 306. ~~A certificate of occupancy shall contain a statement that the buildings, facilities, and/or grounds comply with the code and the Minnesota Statutes pertaining to handicapped accessibility.~~

or,

B. The owner(s) or operator(s) obtain(s) an affidavit of compliance prepared and signed by a Minnesota registered architect or engineer, Minnesota Certified building official or approved inspection agency. The affidavit shall contain the statement that the buildings, facilities and/or grounds are in compliance with the code and the Minnesota Statutes pertaining to handicapped accessibility. The affidavit shall specifically address all accessibility features required by the State Building Code on a standard form furnished for that purpose.

The BCD contends that the second sentence in paragraph A. is unnecessary; the terms "Minnesota registered" and "Minnesota Certified" more clearly define acceptable affiants; and the addition to paragraph B. prescribes that a standardized form be used which is needed for uniformity.

The Examiner finds that, as amended, proposed sec. 1.15535 is both needed and reasonable.

15. Proposed 2 MCAR sec. 1.15536 provides for a "waiver" for existing buildings which were built before the effective date of the Chapter 55 accessibility requirements. The section references the appeal procedure contained in UBC sec. 204 and goes on to specify other criteria which must be met for a waiver to be granted.

a. At hearing, Harold Kiewel, on behalf of the Minnesota State Council for the Handicapped; Mary O'Hara, Executive Director of the Handicap Housing Service, and Jan Gasterland, representing the North Star Chapter of Building Officials, testified in opposition to the waiver provision. Each stated that the section is unnecessary because an appeal provision is already contained in the code; and that if a facility cannot comply with the Chapter 55 accessibility requirements, it should not display the accessibility symbol.

b. The BCD subsequently amended sec. 1.15536 to read as follows:

~~Waivers. A waiver for existing buildings of strict compliance with the terms of 2 MCAR 1.15535 may be granted by the municipal board of appeals pursuant to procedures established by 2 MCAR 1.10111, UBC Sec. 204. A waiver shall be granted only if the specific waiver does not substantially impair the independent use of the buildings, facilities and/or grounds by handicapped persons, and:~~

Appeals. An appeal from strict compliance for existing buildings with the terms of 2 MCAR 1.15535 B shall be granted pursuant to 2 MCAR 1.10111, UBC Section 204 if:

A. The provisions of 2 MCAR 1.10103 G have been met, and

B. The specific exception does not impair independent use of the buildings, facilities, and/or grounds by handicapped persons, and

C. Strict compliance is an undue burden due to the topography, soil conditions, configuration, wetlands, waterways, or proximity of other structure to the site in question; or

D. Strict compliance is an undue burden due to external and internal configurations of the structure in question; or

E. Strict compliance is an undue burden due to the structure's classification as a historical building.

For purposes of this ~~subdivision~~ rule reasonable cost(s) of compliance shall not be deemed an undue burden.

The BCD contends that the amended language is more consistent with existing Code terminology and procedure; however, the meaning and intent remain the same.

c. UBC sec. 204, incorporated by reference into the state code in 2 MCAR sec. 1.10111, provides that appeals may be made "to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of . . . this Code." 2 MCAR sec. 1.10103 G. states that in order for alternate materials and methods of construction to be approved, "the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code, in quality, strength, effectiveness. . . ."

Proposed sec. 1.15536, as amended, states that appeals may be brought pursuant to UBC sec. 204 as long as the requirements of sec. 1.10103 G. have been met and the exception does not impair use of facilities by handicapped persons. These provisions do not, however, add anything to what the Code already requires in any sec. 204 appeal. The amended rule then goes on to list some "undue burden", "strict compliance" exceptions which can only be read as further restrictions to the "equivalent" standard. The final "reasonable cost(s) of compliance" sentence does not make any sense when read in light of the previously mentioned criteria.

The Examiner does not understand what the intent or the effect is of mixing these different criteria together in sec. 1.15536. The intent cannot be that old buildings should receive non-complying exemptions because the "equivalent" standard must be met. The intent must be more than just "equivalency" because "undue burden" factors are spelled out. This Examiner cannot even guess why "cost(s) of compliance" is a factor at all. Both the proposed sec. 1.15536 and the amended version are unneeded and unreasonable. An adequate appeal mechanism is already established in the Code. As proposed and amended, sec. 1.15536 is very unclear as to the criteria which must be considered before an appeal may be granted.

The easiest way to remedy this problem would be to redraft sec. 1.15536 to read:

Appeals. All appeals regarding compliance with accessibility standards as required by sec. 1.15535 shall be brought pursuant to 2 MCAR sec. 1.10111, UBC Section 204.

16. Proposed 2 MCAR sec. 1.15537 provides for local issuance of the symbol of accessibility and requires each municipality to adopt its own schedule of fees for such issuance.

a. Several persons commented at hearing that a fee schedule "ceiling" should be set so that municipalities could not assess unreasonable costs.

b. The BCD subsequently amended sec. 1.15537 to read as follows:

> Issuance. After compliance with the rules of this section, 2 MCAR 1.15530 through 1.15538, and upon request of the owner(s) and operator(s), the building official shall issue the symbol.
>
> A. ~~Each municipality shall adopt its own schedule of fees for the issuance of the display symbol~~. A municipality which determines to evaluate existing buildings for accessibility under 2 MCAR 1.15535 B shall adopt a reasonable schedule of fees based on its cost of inspection. No charge or fee shall be imposed for the issuance of the symbol.

The BCD contends that this amendment would set a basis for reasonable fees and insure that no fee will be charged for the issuance of the symbol when no costs are actually incurred by the municipality.

The Examiner finds that, as amended, proposed sec. 1.15537 is both needed and reasonable.

17. Proposed 2 MCAR sec. 1.15538 establishes a uniform method of placement of the symbol wherever it is displayed in the State.

a. Harold Kiewel testified that displaying the symbol on posts in parks may be unnecessary and unaesthetic. Other informational devices would equally suffice for notice to the handicapped.

b. A question was also raised regarding the term "accessible entrance" as the Code speaks to exits rather than entrances.

c. The Examiner finds that proposed sec. 1.15538 is both needed and reasonable; however, clarification of the "exit-entrance" language may be appropriate.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

C O N C L U S I O N S

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Building Code Division, Department of Administration. All other relevant, procedural and substantive requirements of law or rule have been met.

2. Pursuant to Minn. Stat. sec. 15.052, subd. 3 (1978), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner notes that Minn. Stat. sec. 16.8632, subd. 3, states that the Commissioner "shall promulgate rules to govern display of the state symbol of accessibility." Technically speaking, the proposed rules do much more than just govern the display of the symbol. However, the Examiner concludes that the word "display" encompasses the various components

of the proposed rules. Consequently, the BCD has documented its statutory authority to promulgate the proposed rules.

4. The Examiner concludes that the BCD has demonstrated the need for and reasonableness of the proposed rules, as amended, with the exception noted in Finding 15.c., with an affirmative presentation of facts.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

R E C O M M E N D A T I O N

That the BCD adopt the proposed rules, as amended, with the exception of sec. 1.15536 as noted in Finding 15.c.

Dated this 30 day of March, 1979.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner