



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
REGULATIONS**

Section(s): 3000 and 3213

Number:

15-03

Publication Date:

May 22, 2015

Effective Date:

To be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Section(s) 3000 and 3213 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning inmate religious personal items and sanctuaries.

IMPLEMENTATION

To be announced.

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to the California Department of Corrections and Rehabilitation, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, by fax to (916) 324-6075, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received by the close of the public comment period July 15, 2015, at 5:00 p.m.

PUBLIC HEARING INFORMATION

A public hearing regarding these proposed regulations will be held on July 15, 2015, from 10:00 a.m. to 11:00 a.m. in the Kern/Colorado room, located at 1515 S Street, North Building, Sacramento, CA 95811. The purpose of the hearing is to receive oral comments about this action. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period are given the same significance and weight as oral comments presented at the hearing. This hearing site is accessible to the mobility impaired.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 09/14), Certification of Posting, shall be returned to the RPMB electronically, by fax, or by mail. See Department Operations Manual Sections 12010.12.1 and 12010.12.2 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to Timothy M. Lockwood, Chief, RPMB, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone (916) 445-2269 or e-mail RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations may be directed to David Skaggs, Community Resources Manager, Division of Adult Institutions, at (916) 324-1441.

Original signed by:

SCOTT KERNAN
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000 and 3213 of the California Code of Regulations (CCR), Title 15, Division 3, concerning inmate religious personal items and sanctuaries.

PUBLIC HEARING:

Date and Time: **July 15, 2015 - 10:00 a.m. to 11:00 a.m.**

Place: Department of Corrections and Rehabilitation
Kern/Colorado Room
1515 S Street – North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close **July 15, 2015 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

S. Pollock
Regulation and Policy Management Branch
Telephone (916) 445-2308

Questions regarding the substance of the proposed regulatory action should be directed to:

David Skaggs
Division of Adult Institutions
(916) 324-1441

AUTHORITY AND REFERENCE:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Current regulations provide for accommodation of inmates' religious beliefs, including possession of specified religious personal property items, but do not allow for possessing religious items, or wearing or carrying of certain items, such as religious headgear (other than during their regular religious or sweat events, or facility-approved special events), without prior written approval of the institution head or their designee.

The proposed regulations will make Section 3213 consistent with the Religious Personal Property Matrix (RPPM) by allowing inmates to possess specified religious items without prior written approval, and bring the Department into compliance with the Settlement Agreement in *Zomalt v. Beard*, by allowing inmates to wear approved religious headgear as defined in the RPPM, at all times throughout the institution, subject to search. In addition, inmates will be allowed to wear or carry at any time, other specified religious items, as authorized in the RPPM.

The broad objective of the regulation is to provide consistency amongst institutions, and direction to staff, as to what personal religious property items can be worn or carried throughout the institution. The proposed regulations will help to reduce further litigation against the Department and provide religious freedom to inmates.

This action provides the following:

- Amends Section 3000, Definitions, to add the definitions for “Outdoor Religious/Spiritual Grounds” and “Statewide Religious Review Committee (SRRC).”
- Reorganizes Section 3213 title heading to more appropriately identify the issues in the order that they are identified within the Section.
- Reorganizes and renumbers the entire Section for a better understanding and flow of the overall Section.
- Adopts new Section 3213(b) which allows for an inmate to “possess any religious item authorized in the Religious Personal Property Matrix (RPPM),” and “as defined in the RPPM, and subject to search by staff, for an inmate to wear or carry at any time, a beaded headband, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag and a tallit katan/tsitsit.”
- Adopts new Section 3213(e) regarding removal or restriction of an approved religious item for up to 30 calendar days, and requires approval from the Associate Director of the SRRC for removal or restriction longer than 30 calendar days. Additionally, establishes provisions for direction after a removal or restriction period.
- Adopts new language which provides an example of “chapels” as sanctuaries, amends the wording “sweat lodge” to “Native American Sweat Lodge Grounds,” and adds “Outdoor Religious/Spiritual Grounds” which is to be included as an area designated for religious/spiritual use that shall be subject to searches by staff.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulatory action will benefit CDCR staff by ensuring statewide consistency, and will act as a directive concerning religious headgear and other items that inmates may wear or carry. In addition, inmates will benefit by having the religious freedom to wear or carry religious headgear, a beaded head band, beaded wrist band, beaded choker, religious medallion and chain, medicine bag, and a tallit katan/tsitsit.

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING LAWS/REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion by reviewing existing CCR, Title 15, Division 3, related to religious items, and determining that these regulations are a supplement to existing regulations pertaining to religious items.

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT:

- **Cost to any local agency or school district that is required to be reimbursed:** *none*
- **Cost or savings to any state agency:** *none*
- **Other nondiscretionary cost or savings imposed on local agencies:** *none*
- **Cost or savings in federal funding to the State:** *none*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulations will have no affect on worker safety, or the state’s environment, because the proposed regulations relate strictly to the internal management of CDCR institutions. The proposed regulations will benefit the health and welfare of California residents by ensuring CDCR staff have clearer directions on handling these types of matters, and allowing inmates to wear/carry certain religious items.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text, and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the Department’s website <http://www.cdcr.ca.gov>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new or additional text and ~~striketrough~~ indicates deleted text.

Title 15, Crime Prevention and Corrections

Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

Section 3000. Definitions.

Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations.

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Outdoor Religious/Spiritual Grounds are an outside area where all interested inmates, with the exception of inmates who use Native American Sweat Lodge Grounds, can perform their approved religious/spiritual practices.

Statewide Religious Review Committee (SRRC) means a committee established to ensure that a framework for religious/spiritual program policy exists, and that program continuity from institution to institution is maintained. The SRRC also provides an avenue for addressing statewide inmate religious/spiritual issues and offers recommendations to the Director of the Division of Adult Institutions (DAI) for consideration of policy development and/or enactment. The SRRC is comprised of the following: Associate Director, DAI (General Population-Males); one Warden from each mission within DAI; Headquarters Community Resources Manager (HCRM), Religious Programs; one CRM from each mission within DAI; a Captain; a designee from the Office of Legal Affairs; the departmental Food Administrator, and other stakeholders as required.

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Note: Authority cited: Sections 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH).

Subchapter 3. INMATE ACTIVITIES

Article 1. Religious Program

Section 3213 Title heading is amended to read:

3213. Stipulations Regarding ~~Religious Items~~ Sacramental Wine, Sanctuaries Religious Items, and Sacramental Wine Sanctuaries.

Subsection 3213(a) is amended to read:

(a) Prior written approval of the institution head or their designee shall be required for ~~the following:~~ any person to bring sacramental wine or any religious item into a facility.

Existing subsection 3213(a)(1) is deleted.

~~(1) For any person to bring sacramental wine or any religious item into a facility.~~

Existing subsection 3213(a)(2) is deleted.

~~(2) For an inmate to be provided any religious item.~~

Existing subsection 3213(a)(3) is deleted.

~~(3) For an inmate to wear or carry an approved religious item at any time other than during their regular religious or sweat events, or facility approved special events.~~

Existing subsection 3213(b) is renumbered and relocated to 3213(c).

New subsection 3213(b) is adopted to read:

(b) An inmate may possess any religious item authorized in the Religious Personal Property Matrix (RPPM) (Rev. 6/27/13). As defined in the RPPM, and subject to search by staff, an inmate may wear or carry at any time, the following: beaded headband, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, and tallit katan/tsitsit.

Existing subsection 3213(b) is renumbered 3213(c), and amended to read:

~~(bc)~~ Medicine bags shall be constructed of soft leather or other natural material without a lining and shall not exceed 2 x 3 inches in diameter. The bag shall, be constructed to in the presence of staff, ~~either be closed with a drawstring or sewn shut~~ in such a manner as to permit subsequent searches of the bag's contents by in the presence of staff.

Existing subsection 3213(c) is renumbered 3213(d).

~~(ed)~~ All religious items shall be subject to searches by staff.

Existing subsection 3213(d) is renumbered and relocated to 3213(f).

New subsections 3213(e) through 3213(e)(2) are adopted to read:

(e) The institution head or designee retains the authority pursuant to section 3006(d), to remove or restrict use of an approved religious item, based on security/operational need and/or inmate misconduct, for a period of up to 30 calendar days. The removal or restriction shall be documented on a CDC Form 128-A (Rev. 4/74), Custodial Counseling Chrono, pursuant to section 3312. Removal or restriction of an approved religious item for longer than 30 calendar days shall require approval by the Associate Director of the Statewide Religious Review Committee (SRRC), as defined in section 3000. At the end of the removal or restriction period, either of the following will occur:

(1) The restriction shall be lifted and the item(s) shall be returned to the inmate and documented on the CDC Form 128-A.

(2) The restriction will continue, and the issue sent for review to the SRRC to determine the appropriate response or restriction.

Existing subsection 3213(d) is renumbered 3213(f), and amended to read:

(d) Sanctuaries (e.g., chapels), Native American Sweat Lodges Grounds, Outdoor Religious/Spiritual Grounds, and other areas designated for religious/ or spiritual use shall be subject to searches by staff.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5009 and 5054, Penal Code; and Section 1996, Title 42, United States Code.

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3213 and 3000 of the California Code of Regulations (CCR), Title 15, Division 3. Changes to Section 3213 provide for additional provisions regarding religious headgear, and other personal religious items. Changes to Section 3000 provide for new definitions for “Outdoor Religious/Spiritual Grounds,” and the “Statewide Religious Review Committee.”

Adopted language in CCR Section 3213 requires prior written approval from the institution head or designee for an inmate to wear or carry an approved religious item at any time other than during religious or sweat events, or facility approved special events. These proposed regulations will allow inmates to wear religious headgear as well as a beaded head band, beaded wrist band, beaded choker, religious medallion and chain, medicine bag, or tallit katan/tsitsit, throughout an institution at all times, subject to search, as defined in the Religious Personal Property Matrix (RPPM) (Revised 6/27/13).

In December, 2013, a lawsuit was filed in the courts in the case of *Zamaad Gary Zomalt v. Jeffrey A. Beard, et al.*, Case No. ED CD 13-02239 VAP (DTBx), alleging that inmate Zomalt’s rights were being violated by the California Department of Corrections and Rehabilitation (CDCR) by not allowing him to wear a kufi at all times, which his religious beliefs required him to do. A Settlement Agreement between the parties was reached, in which CDCR agreed to amend CCR Section 3213 to expressly allow inmates to wear religious headgear as defined in the RPPM, at all times throughout the institutions, subject to reasonable search, and the plaintiff agreed to dismiss the action upon this amendment to the CCR. These proposed regulations will bring the Department into compliance with the Settlement Agreement, and dismiss any further action in the matter.

This regulatory action ensures religious freedom for all inmates, as provided for under California Penal Code 5009, the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and the First Amendment of the United States Constitution.

Consideration of Alternatives:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department’s initial determination.

ECONOMIC IMPACT ASSESSMENT:

The Department believes there will be no significant economic impact with these proposed regulations.

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation or Elimination of Existing Jobs within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within the State of California because they are not affected by the internal management of prisons.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within the State of California because they are not affected by the internal management of prisons.

Expansion of Businesses Currently Doing Business within the State of California

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of prisons.

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed regulations will not have an adverse economic impact on business within the State of California because they are not affected by the internal management of prisons.

Benefits of the Regulations

The proposed regulatory action will benefit CDCR staff by ensuring statewide consistency, and will act as a directive concerning religious headgear and other items that inmates may wear or carry. In addition, inmates will benefit by having the religious freedom to wear or carry religious headgear, a beaded head band, beaded wrist band, beaded choker, religious medallion and chain, medicine bag, and a tallit katan/tsitsit.

The proposed regulation will have no effect on the health of California residents, worker safety, or the State's environment.

Materials Relied Upon:

The Department, in proposing amendments to these regulations, has relied upon the Settlement Agreement for *Zamaad Gary Zomalt v. Jeffrey A. Beard, et al.*, Case No. ED CD 13-02239 VAP (DTBx).

A copy of this document is available for review as part of the rulemaking file.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1):

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions

Section 3000 is amended to add and alphabetically merge definitions associated with Religious Program.

Outdoor Religious/Spiritual Grounds is defined to provide a standardized description of the term for staff and inmates.

Statewide Religious Review Committee is defined to provide a standardized description of the term for staff and inmates.

Subchapter 3. INMATE ACTIVITIES

Article 1. Religious Program

Section 3213 title heading is rearranged to better coincide with the consecutive order of the section.

3213. Stipulations Regarding Sacramental Wine, Religious Items, and Sanctuaries.

Subsection 3213(a) is amended to remove the words “the following:” and combine the language from existing subsection 3213(a)(1), “any person to bring sacramental wine or any religious item into a facility.” Reformatting of Section 3213 provides for a better flow and comprehension to the overall section.

Existing subsection 3213(a)(1) is deleted due to the combining of this subsection with 3213(a) for a better flow and comprehension to the overall section.

Existing subsection 3213(a)(2) is deleted as the language is no longer applicable due to the adoption of the Religious Personal Property Matrix (RPPM).

Existing subsection 3213(a)(3) is deleted due to the adoption of new subsection 3213(b).

New subsection 3213(b) is adopted to add new language that specifies “An inmate may possess any religious item authorized in the RPPM (RPPM) (Rev. 6/27/13).” Additionally, language specifies “As defined in the RPPM, and subject to search by staff, an inmate may wear or carry at any time, the following: beaded head band, beaded wrist band, beaded choker, religious medallion and chain, religious headgear, medicine bag, and tallit katan/tsitsit.” This language provides clarity to inmates and staff regarding inmates’ ability to wear or carry religious headgear and other religious items throughout the institution.

Existing subsection 3213(b) is renumbered 3213(c) and amended to specify that the medicine bag shall be “constructed to” be closed with a drawstring in such a manner as to permit subsequent searches of the bag’s contents “in the presence of” staff. The wording “sewn shut” was removed as it is no longer applicable. Other language was re-worded and/or relocated to provide better clarity to inmates and staff.

Existing subsection 3213(c) is renumbered 3213(d) and the language remains unchanged.

New subsections 3213(e) through 3213(e)(2) are adopted regarding removal or restriction of a religious item. This language ensures the safety, security, and operational needs of the institution are retained, and provides instruction to inmates and staff regarding removal or restriction of a religious item. Note: reference to the CDC Form 128-A is carried over from existing regulations, it is already established in

CCR subsections 3084.7(b)(1), 3312(a)(2), 3314(f), and 3326(c) and is not being revised in this rulemaking action, therefore, a copy of the 128-A is not included in the Notice or made available for public review.

Subsection 3213(d) is renumbered 3213(f) and amended to add additional language which gives an example of “chapels” as a sanctuary, for clarity purposes; amends the term “sweat lodges” to “Native American Sweat Lodge Grounds,” for consistency and accuracy; and adds “Outdoor Religious/Spiritual Grounds” to make clear the areas that are subject to searches by staff. Additionally, the word “or” was deleted and a “/” was added to change the wording to “religious/spiritual” in the sentence “...and other areas designated for religious/spiritual use shall be subject to searches by staff.” This language is necessary to update this section and provide clarity and consistency.