

Oregon Parks and Recreation Commission

February 5, 2014

Agenda Item:	7a	Action
Topic:	Request to adopt OAR 736-010, Smoking Restrictions	
Presented by:	Richard Walkoski	

Background:

On August 2, 2012 Governor John Kitzhaber signed Executive Order 12-13 Tobacco Free Properties to improve the health, wellness and productivity of employees, clients, volunteers and visitors. The executive order encourages the Oregon State Parks and Recreation Commission to “adopt policies by December 31, 2014 that limits or restrict the use of tobacco products at state parks and recreation areas to address wellness issues, and to reduce the risk of forest fires.” At the September 2013 commission meeting approval was granted to begin rulemaking on those restrictions.

OPRD convened an external advisory committee with representation from DAS Labor Relations, the Oregon Health Authority, Surfrider Foundation, the Oregon Department of Forestry and a Park Host. The group made recommendations on how to communicate information about the proposed rules and suggested ways to implement the rules if adopted. In December proposed rules were made available to the public and the public comment period was opened. Public hearings were scheduled in Grants Pass, Champoe Park, Bend and at Newport.

The issue received good media coverage which helped get the word out to the public. The press release was picked up by many newspapers across Oregon and a number of radio and TV stations contacted the department for interviews. The comment period remained open until the close of business on January 17th, and we received a total of 116 e-mail comments, ten letters and nine comments at the public hearings. The comments were divided with 80 in support and 55 opposed. Of those supporting the rules, 30 urged the department to look at expanding the restrictions to include the ocean shore. Many of the comments in opposition pointed out that an OAR governing state park operations was not the proper vehicle to mandate healthy behavior and such a rule was a violation of their rights. A number of those in opposition stated that they themselves were not smokers, but still opposed the rule for that reason. A summary of the comments and public hearings is included in Attachment C.

Prior Action by Commission: Approval to begin rulemaking at the September 2013 meeting.

Action Requested:

Staff requests the commission approve the modified revisions to OAR 736-010 included in Attachment A (markup) and Attachment B (clean). The initial proposal has been reviewed by Assistant Attorney General Steve Shipsey and the modified option, stemming from the public comments received, has been sent to Mr. Shipsey for his review.

Attachments: Attachment A– original and modified revisions (marked copy), Attachment B – original and modified revisions (clean copy), Attachment C – public comment summary

Prepared by: Richard Walkoski

DIVISION 10

GENERAL STATE PARK RULES

736-010-0040

Visitor Conduct

(1) A person shall cause, build, maintain, or accelerate a fire at a park property only in:

(a) Park camp stoves or fireplaces provided for such purpose;

(b) Portions of beach areas designated as permissible for campfires; or

(c) Portable stoves used at established campsites, picnic areas, or beach areas where fires are designated as permissible.

(2) A person who has caused, built, or maintained an allowed fire shall:

(a) Burn only paper products and untreated natural wood free of attached metal, nails, glass or plastic objects;

(b) Burn wood no longer than 24 inches in length;

(c) Attend the fire at all times, breaking it apart and extinguishing it completely with water before leaving the immediate area;

(d) Use no gasoline, diesel or any other petroleum-based products to start or maintain a fire; and

(e) Ensure that any fire that they set does not cause personal injury or damage to private property or park resources.

(3) The park manager may temporarily restrict or prohibit fires in otherwise allowed situations due to high fire hazard conditions, and all persons shall observe such restrictions.

(4) A person may not injure, mutilate, deface, damage, harass, or remove any park resource, property, structure or facility of any kind at a park property, except as provided in OAR 736-010-0055.

(5) A person shall in no manner cause any rubbish, garbage, refuse, organic or inorganic waste, diseased or dead animals, or other offensive matter or any abandoned property or material to be placed or left at a park property, except for:

(a) Recreational vehicle sewage and gray water holding tank contents that are disposed of in designated dump stations;

(b) Garbage, trash, and recyclables generated while using a park property and disposed of in the designated containers provided.

(6) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(7) A person may not leave personal property or possessions overnight in a day use area without written permission from the park manager or designated park staff.

(8) While many activities are allowed on park property, the following activities are specifically prohibited at park properties, and a person may not engage in:

Item 7a - Attachment A - Tobacco Use in Parks - draft rule language with options (markup copy)

- (a) Using or operating any noise producing machine, vehicle, device or instrument in a manner that disturbs or may disturb other park visitors except as allowed in section 10 below;
- (b) Using a public address system or similar device without written permission of the park manager;
- (c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other similar materials or substances without the written permission of the park manager or designated park employee;
- (d) Using a metal detector or similar device without written permission of the park manager or designated employee at any park property or portion of a park property not listed on the "Detecting Allowed" list, published on the state park website;
- (e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;
- (f) Entering or occupying any building, facility or portion of a park property that has been closed to public access; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (h) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well-being of any person at the park property;

ORIGINAL OPTION (public comment version)

(j) Smoking tobacco products except ~~in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking~~

(A) in personal vehicles and camping units;

(B) in designated campsites in developed overnight camping areas, unless temporarily suspended by the park manager due to high fire hazard conditions; and

(C) where permitted by the park manager for personal use by a member of a federally recognized Oregon tribe as part of their traditional religious, medicinal, or other customary cultural heritage practices;

MODIFIED OPTION (incorporates changes resulting from public comments)

(j) Smoking tobacco products except ~~in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking~~

(A) in personal vehicles and camping units in accordance with all applicable laws governing smoking in vehicles;

(B) in designated campsites in developed overnight camping areas, unless temporarily suspended by the park manager due to high fire hazard conditions;

(C) in day use areas managed as Safety Rest Areas through agreements with the Oregon Department of Transportation; and

(D) where permitted by the park manager for personal use by a member of a federally recognized Oregon tribe as part of their traditional religious, medicinal, or other customary cultural heritage practices;

(k) Activities or conduct which constitutes a public nuisance or hazard;

(l) Public indecency as defined in ORS 163.465;

(m) Base-jumping, hang gliding, paragliding or similar activities without written permission from the park manager except that the use of hang gliders is allowed at Cape Kiwanda State Natural Area;

(n) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging property, except at those park property locations and for those purposes specified in OAR 736-010-0055(7);

(o) Placing a sign, marker or inscription of any kind, except in designated areas within a park property, without written permission from the park manager;

(9) A person may only distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park property after they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(10) A person must obtain a special use permit from the department for any activity or use as described in OAR 736-016-0005(1), including but not limited to an activity or use within a park property that:

(a) Is an organized group activity or event attended by over 50 people;

(b) Uses a portion of a park property to the exclusion of other persons or the department;

(c) Modifies or embellishes the park property, or places structures, such as tents, chairs, arches, and similar structures on the park property in a manner outside of normal recreational use, as determined by the park manager or enforcement officer;

(d) Uses public-address, amplification or lighting systems, other than those designed for personal use;

(e) Charges money for participation or admission;

(f) Involves the sale of products or services;

(g) Could disturb the natural, cultural, scenic and recreational resources in the park property or adjacent areas;

(h) Could pose a safety or access concern for other park users or for those involved in the event or activity.

(11) A person who obtains a special use permit under OAR chapter 736, division 16 must comply with all the provisions of division 16, special use permit conditions, and with instructions from the department.

(12) All money or goods, having a value of \$100 or more and found by the public at park properties, must be turned over to the park manager or a park employee. All found money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

Item 7a - Attachment A - Tobacco Use in Parks - draft rule language with options (markup copy)

(13) The director or designee may close rock formations and cliffs within a park property to descending, scaling or technical rock climbing. A person that engages in such activities at such locations commits a Class C misdemeanor as provided in section (8)(f).

(14) The director or designee may close park access to lakes, streams or waterfalls for kayaking, boating, diving, swimming, or other water recreation activities when the park manager has determined the activity to be a danger to participants. Persons accessing through closed areas to engage in such activities commit a Class C misdemeanor as provided in section (8)(f).

(15) A person using a park property shall pay rates and comply with procedures and restrictions as established in OAR chapter 736, division 15 for use of designated facilities or the purchase of services or products.

Stat. Auth.: OAR 390.124

Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006

DIVISION 10

GENERAL STATE PARK RULES

736-010-0040

Visitor Conduct

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(c) Attend the fire at all times, breaking it apart and extinguishing it completely with water before leaving the immediate area;

(d) Use no gasoline, diesel or any other petroleum-based products to start or maintain a fire; and

(e) Ensure that any fire that they set does not cause personal injury or damage to private property or park resources.

(3) The park manager may temporarily restrict or prohibit fires in otherwise allowed situations due to high fire hazard conditions, and all persons shall observe such restrictions.

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(6) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(7) A person may not leave personal property or possessions overnight in a day use area without written permission from the park manager or designated park staff.

(8) While many activities are allowed on park property, the following activities are specifically prohibited at park properties, and a person may not engage in:

Item 7a - Attachment B - Tobacco Use in Parks - draft rule language with options (clean copy)

- (a) Using or operating any noise producing machine, vehicle, device or instrument in a manner that disturbs or may disturb other park visitors except as allowed in section 10 below;
- (b) Using a public address system or similar device without written permission of the park manager;
- (c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other similar materials or substances without the written permission of the park manager or designated park employee;
- (d) Using a metal detector or similar device without written permission of the park manager or designated employee at any park property or portion of a park property not listed on the "Detecting Allowed" list, published on the state park website;
- (e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;
- (f) Entering or occupying any building, facility or portion of a park property that has been closed to public access; punishable as a Class C misdemeanor pursuant to ORS 164.245;
- (g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area; punishable as a Class C misdemeanor pursuant to ORS 164.245;
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- (i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well-being of any person at the park property;

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(D) where permitted by the park manager for personal use by a member of a federally recognized Oregon tribe as part of their traditional religious, medicinal, or other customary cultural heritage practices;

(k) Activities or conduct which constitutes a public nuisance or hazard;

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Stat. Auth.: OAR 390.124

Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006



Nature
HISTORY
Discovery

Public Comment Summary - Division 10, Smoking Restrictions

Prepared by: Richard Walkoski

Date: January 17, 2014

Background

At the September 2013 OPRD Commission meeting approval was given for rulemaking in division 10 to implement Governor John Kitzhaber's Executive Order 12-13 "Tobacco Free Properties". OPRD convened an external advisory committee which made recommendations on how communicate information about the proposed rules and suggested ways to implement the rules if adopted. In December proposed rules were made available to the public and the public comment period was opened. Public hearings were scheduled in Grants Pass, Bend, Newport and at Champoeg park.

Advisory Committee

The advisory committee consisted of the following representatives: Kevin Compton, Host and Law Enforcement at Silver Falls; Glenn West, DAS Labor Relations; Rebecca Pawlak, Oregon Health Authority; Gus Gates, Surfrider Foundation; and Randy Peterson, Oregon Department of Forestry. The advisory committee felt that the proposed rules would satisfy the intent of the Executive Order and would still give visitors some options, especially those staying overnight in campgrounds. The committee encouraged OPRD to take time to educate visitors about the new rules, if adopted, to provide for a smooth implementation. The committee also advised OPRD to look at extending the restrictions to the ocean shore.

Comment Period

Press releases were issued announcing the public comment period, which opened December 1st and extended through January 17, 2014. Four public hearings were scheduled during January at locations around the state. Numerous media outlets ran the story. There was good coverage in both print media and radio/television. A summary of the hearings and comments received follows.

Hearing Summaries

Hearings were scheduled at the following locations:

Date	Time	Where
1/7/2014	7:00 pm	Josephine Community Library, 200 NW C Street, Grants Pass
1/9/2014	7:00 pm	Champoeg State Heritage Area, Visitor Center, 8239 Champoeg Road NE, St. Paul
1/14/2014	7:00 pm	Bend Park and Recreation Office, Riverbend Room, 799 SW Columbia Street, Bend
1/16/2014	7:00 pm	Newport Recreation Center, 225 Avery St SE, Newport

The hearings were announced through a posting in the Secretary of State's Bulletin, press releases and on the OPRD website.

- Grants Pass Hearing
Hearing Officer: Chris Havel
Attendance: public-3, OPRD field staff-3, media-1 (KOBI-Medford)
Comments Made: none

- Champoeg Hearing
Hearing Officer: Richard Walkoski
Attendance: public-1, OPRD field staff-1, media-1 (Statesman Journal-Salem)
Comments Made: One (opposed)
- Bend Hearing
Hearing Officer: Richard Walkoski
Attendance: public-3, OPRD field staff-3, media-1 (KOBIBend)
Comments Made: Two (support)
- Newport Hearing
Hearing Officer: Claudia Ciobanu
Attendance: public-6, OPRD field staff-0, media- 0
Comments Made: Five (support) - One (opposed)

Comment Summary

All written comments and audio from the public hearings can be found at the following locations:

- (written comments) <http://tinyurl.com/ka3o649>
- (audio from hearings) <http://tinyurl.com/k2482w8>

Comments came in the form of 10 letters, 116 e-mails and 9 comments at public hearings. A summary of the comments is listed in the table below. In addition to stating a position supporting the rule revisions, some comments in favor of the rules went on to say restrictions should be applied to the ocean shore as well. Comments in opposition often listed the reason for opposing as the rule would take away individual freedoms and OPRD should not be making such rules. Both of these additional comments were tracked and appear on the summary below.

Public Comment Summary: OAR 736-010, Smoking Restrictions	e-mail comments	letters	public hearings
Support	66	7	7
Oppose	50	3	2
* Expand to the ocean shore	22	3	5
* Restricts freedoms/not appropriate OPRD rule	21		2

With opinions divided, 80 in support compared to 55 opposed to the rule revisions, staff feels that there is justification to move forward with these rules. Of the those in opposition, almost half stated that they opposed the rule mainly on the grounds that OPRD is restricting personal freedoms and that government has no place in making rules that dictate personal choices. Many of those opposed even stated that they themselves did not smoke and that smoking was less of the issue than the appropriateness of the type of rule OPRD is proposing.

A significant number of comments encouraged the department to look at similar rules on the ocean shore. That was also a suggestion made by the external advisory committee. One of the key issues addressed by the rules is the environmental damage caused by cigarette butts in the parks and that is a valid issue on the ocean shore as well. OPRD should move forward with rulemaking for division 21, ocean shore rules.

There were two other issues that surfaced during the comment period that could be addressed in the rules. It was pointed out that one of the exceptions allows smoking in vehicles, but as of the first of the year there are new laws governing smoking in vehicles when children are present. To address that point the rule language could reference that smoking in vehicles would be allowed subject to any laws governing that behavior.

It was also pointed out that OPRD operates some of its day use areas or portions of them as highway safety rest areas through an agreement with ODOT. Since ODOT rest areas are exempted through the Governor's Order it would make sense to be consistent with that at those OPRD properties operated as safety rest areas. OPRD maintains a list of those properties so it could be added as an additional exception.

Oregon Parks and Recreation Commission

February 5, 2014

Agenda Item:	7b	Action
Topic:	Request to go to Rulemaking – OAR 736-021, smoking restrictions on the ocean shore	
Presented by:	Richard Walkoski	

Background:

On August 2, 2012 Governor John Kitzhaber signed Executive Order 12-13 Tobacco Free Properties to improve the health, wellness and productivity of employees, clients, volunteers and visitors. The executive order resulted in OPRD proposing rules that restricted smoking in park properties which are on the commission agenda for adoption at the February 2014 meeting. The Executive Order specifically exempted the ocean shore which is under OPRD management and no rules were initially proposed under division 21, ocean shore rules.

An external advisory committee was formed as the department began rulemaking for smoking restrictions in state parks. That external advisory committee suggested that it made sense to look at the ocean shore at the same time that rules for the parks were being considered. That opinion was reflected in the public comments received for the division 10 rules, with approximately 25% of the comments received urging the department to look at smoking restrictions on the ocean shore.

Considering smoking restrictions on the ocean shore will require opening division 21 of the Oregon Administrative Rules. Last year the department revised those rules and included some major changes in language. In a few cases the language in those revisions was not as clear as it could have been so staff would like to take the opportunity to address the following issues while the rules are open:

- Clarifying the level of fines for specific infractions on the ocean shore
- Clarifying rules under the ATV section to align with new ATV classifications
- Clarifying rules under the Commercial and Non-Traditional Activities section to align with Special Use Permit rules in division 16
- Clarifying rules in the Motor Vehicle Section prohibiting ATVs licensed in states outside of Oregon from driving on the beach

Prior Action by Commission: None - smoking restrictions for the ocean shore were not included in the previous rulemaking on smoking.

Action Requested:

Staff requests approval to begin the rulemaking process for OPRD rules, chapter 736, division 21, relating to the use of tobacco on the ocean shore. Staff further requests that during the rulemaking language in the sections referenced above be clarified.

Attachments: None

Prepared by: Richard Walkoski