

Oregon Parks and Recreation Commission
September 20, 2023

Agenda Item: 8c

Action

Public Comment Allowed: Yes

Topic: Request to open rulemaking of OAR 736-010-0020 General Park Area Rules to update the rules for exclusion

Presented by: Helena Kesch

Background:

Oregon State Parks strives to provide safe and welcoming recreational spaces for all visitors with a commitment in managing, enhancing and protecting Oregon's natural, scenic and culturally-significant landscapes. If a visitor demonstrates behaviors, issues or problems that threaten park staff, visitors and/or the natural landscape, the agency may turn to Division 10, General Park Area Rules, General Regulations or Division 21, General Ocean Shore State Recreation Area Rules to support excluding the visitor for a specific period of time.

The proposed rulemaking will update the exclusion and appeal process. A recent court challenge pointed out the existing rules were vague and too open to interpretation by OPRD staff. The suit was resolved with a commitment to improve the rule's fairness and clarity. The updates will clarify excluding individuals from Oregon State Parks who commit state park rule violations that endanger the safety of visitors, staff or park resources; provide clear information on how excluded individuals may request an appeal; and how the appeals will be processed.

OPRD has convened a Rules Advisory Committee (RAC) to help inform the discussion around updating the exclusion rule within state parks. The RAC includes representatives from the mental health community, attorneys, agency safety staff and park hosts. The RAC has met twice (June 28th and August 11th) and developed a set of recommendations to update OPRD's current exclusion process described under Oregon Administrative Rules 736-010-0020 and 736-021-0400. The RAC will have its final meeting on September 8th to finalize the draft rules.

Staff request permission to open rulemaking governing the exclusion process. Proposed rulemaking will review rules to consider updating the exclusion process, including reason for the exclusion, the duration of exclusion, how to request an appeal and the appeal process to make them clearer, easier to enforce and provide flexibility when possible.

Prior Action by Commission:

Action Requested: Staff requests approval to open rulemaking to amend OAR 736-010-0015, 736-010-0020, 736-021-0030, 736-021-0040 to update the exclusion rule and appeal process in the park area and ocean shore state recreation rules.

Prepared by: Helena Kesch

Attachments: Attachment A marked copy

8c – Attachment A - Updated

Chapter 736

Division 10

GENERAL PARK AREA RULES

736-010-0020

General Regulations

(1) The director may establish seasons, overnight lengths of stay, camper checkout times and procedures to adjust daily park property opening and closing times, and portions of a park property that are permanently closed or limited to specific uses or activities by the public. These may differ from park property to park property and from time to time, but shall be indicated on the state park website, published maps, brochures, the current state parks guide booklet, or on posted signs at the park property.

(2) Unless otherwise specifically established by the director the following apply:

(a) The maximum length of stay for campers is 14 consecutive nights in a 17-night span. After three nights out of the park, campers may return to start a new stay.

(b) The maximum length of stay for hiker/biker sites is three consecutive nights in a seven-night period per park.

(c) Unless otherwise posted or specifically open for an event or activity, the hours of operation for a day use area are dawn to dusk.

(3) The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park property with a county, city, or political subdivision thereof for the purposes of enforcing state park rules, and applicable state, county or city laws.

(4) A person shall observe and abide by all instructions, warnings, restrictions, and prohibitions on posted signs and notices and from park employees.

(5) A park manager or park employee may seek compliance from the public with any state park rule.

(6) A park manager or department enforcement officer may order any person that violates any state park rule to leave a park property.

(7) A park manager or a department enforcement officer may exclude a person that violates any state park rule from the park property or multiple park properties ~~for a specified period of time.~~

(a) The duration of an exclusion is based on severity of the state park rule violation. In determining the duration of the exclusion, the park manager or a department enforcement officer will consider whether the violation:

(A) affected:

(i) Visitor or staff safety;

(ii) Park resources, as defined in OAR 736-010-0015(17); and

(iii) Park operations; or

(B) involved:

(i) Repeat violation of any state park rule, or

(ii) Bias crime as provided in section (11) and ORS 390.997

(b) The enforcement officer shall issue a written exclusion notice. An enforcement officer that is not a peace officer may request the assistance of a peace officer and mental health practitioner or other agency (define in definitions section) in delivery of an exclusion.

(c) Exclusion notices shall contain, at a minimum:

(A) The date of the issuance;

(B) Effective dates of exclusion;

(C) Citation to each state park rule violation involved in the exclusion;

(D) Notice of consequences of possible criminal trespass should the person fail to comply with the exclusion as provided in section (13)(b);

(E) State park property, as defined in OAR 736-010-0015(14), that the person is expelled from throughout the duration of the exclusion; and

(F) The procedure for filing an appeal of the exclusion.

(c) The duration of exclusion determined under subsection (a) shall be based on the rule violation. Enforcement officers must consult with a district manager prior to issuing an exclusion for more than ninety days.

(d) A person subject to an exclusion pursuant to this section may appeal the exclusion to the agency on the agency website, by mail, phone or email.

(e) To be valid, an appeal submitted under subsection (d) must include:

(A) a statement for the basis of appeal; and

(B) the exclusion notice number; and

(C) Contact information of person requesting the appeal, including email, phone number, or mailing address.

(f) If any information in paragraphs (e)(A)-(C) is missing, the department will not begin the appeal process ~~will not begin until this information to the agency is complete with sections A-C.~~

(g) An agency review panel shall review valid appeal requests submitted under subsection (d). The agency review panel shall determine whether the exclusion is substantiated based on rule **and the evidence provided** or unsubstantiated. The agency shall formally respond within 30 calendar days of the appeal request.

(A) An appeal request for an exclusion for less than 180 days shall be reviewed by an agency review panel within the local area.

(B) An appeal request for an exclusion for more than 180 days shall be convened by an agency unit outside of park operations.

(C) The individual may request an in-person or online review during the appeal process.

(h) During the duration of an appeal, an ~~The~~ exclusion:

(A) Shall remain in effect for:

(i) Voluntary conduct or acts that are detrimental to visitor or staff safety; or action of serious or significant damage to ~~park~~ resources; ~~park operations~~; or any combination thereof; and

(ii) Unless the exclusion period expires during the appeal process;

(B) Shall be suspended for:

(i) Conduct that is expressive or communicative, including activity such as picketing, demonstrating, leafletting, or delivering a speech, and

(ii) Conduct that is involuntary or unavoidable.

(C) May be stayed for violations under subsection (a)(B)(i) upon a ~~written~~ request from the excluded individual ~~remain in effect during the duration of an appeal~~:

(A) Unless the exclusion period expires during the appeal process; or

(B) Individuals may request a stay for violations under section (7)(B)(i).

(8) A peace officer may seek compliance from the public with any state park rule ~~and~~, may order a person who violates one or more state park rules to leave a park property, and may assist in delivery of an exclusion notice under section (7).

(9) A peace officer may ~~exclude or recommend that the park manager exclude a person~~ order a park visitor to leave for up to 72 hours who violates any state park rule; federal, state, county, or city law; or court order from a park property or multiple park properties ~~for a specified period of time.~~

(10) A park manager or designated park employee may protect the safety or health of the public or protect park resources. This authority includes actions that may temporarily:

- (a) Permit or limit specific activities or uses in designated portions of a park property;
- (b) Designate a location within a park for a single use to avoid conflicts between users;
- (c) Restrict access to or close an entire park property;
- (d) Restrict access to or close a portion of a park property; or
- (e) Exclude a person from a park property: as provided in section (7).

(11) When notified by the court of a person subject to an exclusion from park property pursuant to ORS 390.997 the director will issue an exclusion in writing via certified mail to the individual.

- (a) Individuals convicted of ORS 166.155 will be excluded for up to one year after conviction.
- (b) Individuals convicted of ORS 166.165 or repeat offenders will be excluded for up to five years after conviction.
- (c) Exclusions issued under this section do not apply to the grounds of the State Capitol State Park.
- (d) The director or designee may waive an exclusion while a person is performing community service at a park property.
- (e) The director may revoke a person's exclusion after their successful completion of court-approved community service.

~~(12) A person excluded from a park property may contest the exclusion notice by filing a written appeal within seven days of the exclusion date. The person excluded must submit the appeal to the District Manager responsible for the park where the notice of exclusion was issued.~~

(13) The following situations are criminal trespass in the second degree, a Class C misdemeanor, per ORS 164.245:

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- (a) A person ordered to leave a park property that remains present as a visitor;
 - (b) A person excluded from a park property that enters or remains present as a visitor;
 - (c) A person enters a closed or restricted portion of a park property; and
 - (d) A person engages in an activity that has been specifically prohibited or restricted at a park property or a portion of a park property.

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