

Oregon Parks and Recreation Commission

February 27, 2024

Agenda Item: 9a

Action

Public Comment Allowed: **No**

Topic: Request to adopt OAR 736-010-0020 and 736-021-0040 Amending General Park Area Rules and General Ocean Shore State Recreation Area Rules to update exclusion process

Presented by: Helena Kesch, Policy Analyst, ADA & Tribal Relations Coordinator

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 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 rules update the exclusion and appeal process. A recent court challenge alleged that the existing rules were vague and too open to interpretation by OPRD staff. The parties resolved the suit with a department commitment to improve the rule's fairness and clarity. The updates 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.

The proposed rules opened for public comment October 2, 2023, and reflected changes recommended by the Rule Advisory Committee. Public comment closed November 3, 2023. A second public comment period was opened from December 1, 2023, through January 4, 2024, as the agency decided additional rule language was necessary to clarify exclusion decision-making process, including exclusion conditions and timelines. Comments received were posted on a weekly basis on the agency rulemaking website. A virtual public meeting was held October 30, 2023. Analysis and a summary of the comments of the comment period is available in attachment C. A recording of the hearing and full copy of comments received are available on the [agency rulemaking website](#).

Prior Action by Commission: The Commission approved opening rulemaking of OAR 736-010-0040 General Park Area Rules and 736-021-0040 General Ocean Shore State Recreation Area Rules to update the exclusion rules and appeal process in September 2023.

Action Requested: Staff request adoption of amendments to OAR 736-010-0040 and 736-021-0040 to update exclusion rules and appeal process.

Prepared by: Helena Kesch

Attachments: Attachment A marked copy. Attachment B clean copy. Attachment C Summary of Comments

Division 10
GENERAL PARK AREA RULES

736-010-0015

Definitions

As used in this division, unless the context requires otherwise:

- (1) "Day Use Area" is a park property or portion of a park property that the department has designated for day use only.
- (2) "District Manager" means the immediate supervisor of park managers within a specified geographic region of the state.
- (3) "Closed Area" means a park or portion of a park that the public is prohibited from entering. Closures will be identified by signs in the park and notices placed on the state park website.
- (4) "Commission" means the Oregon State Parks and Recreation Commission.
- (5) "Dawn" means 30 minutes prior to sunrise as calculated by the U.S. Naval Observatory.
- (6) "Department" means the Oregon State Parks and Recreation Department.
- (7) "Director" means the department director.
- (8) "Domestic Animals" are those animals whose food and shelter are provided by a human custodian.
- (9) "Dusk" means 30 minutes after sunset as calculated by the U.S. Naval Observatory.
- (10) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported state park rule violations and to issue oral or written warnings or citations to enforce state park rules.
- (11) "Handler" means any person who either brings a domestic animal into a park property or keeps a domestic animal at a park property.
- (12) "Motorized Vehicle" means any vehicle being powered by an engine or motor which is capable of transporting a person.
- (13) "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the

Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning defined in section (26) below.

(14) "Park Property" means any state park, natural area, wayside, corridor, scenic area, monument, historic structure or area, trail, greenway, or recreation area under the jurisdiction of the department.

(15) "Park Employee" means an employee of the department while on duty.

(16) "Park Manager" means the supervisor or designated employee in charge of a park property.

(17) "Park Resource" means any natural feature, wildlife, vegetation, water, cultural artifact, archaeological remains, or human-made structure or feature of a park area.

(18) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(19) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(20) "Public" includes all persons visiting or intending to visit a park property that are not park employees.

(21) "Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(22) "State Park Rules" mean the rules, regulations, restrictions, prohibitions, or limitations established by this division for the use or protection of park properties.

(23) "State Park Website" means the internet resource with the host name <http://www.oregon.gov/OPRD/Parks/> and its associated links.

(24) "Violate" includes failure to comply.

(25) "Visitor" means any member of the public who arrives at or is present at a park property.

(26) "Wheelchair" means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

(27) "Electric assisted bicycle" means any vehicle as defined under ORS 801.258.

(28) "Other Agency" means local, state, federal or tribal government entity that provides mental health, law enforcement or human services.

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.

(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 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) 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 (12)(b);

(E) State park property or properties, 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 following the agency exclusion schedule described below:

(A) Level 1 exclusions may be issued for violations with minimal visitor impact or park resource damage. Level 1 exclusions are issued for park resource damage that results in a temporary closure of an area, site or facility, repeat violations when other enforcement tools have been used or when the enforcement officer deems other enforcement tools will not generate compliance.

(B) Level 2 exclusions may be issued for increased visitor impact or park resource damage valued at less than \$1,000 including behavior that results in a park area closure or repair taking up to three months or behavior that is intimidating, verbally abusive or hostile.

(C) Level 3 exclusions may be issued for violations with serious visitor impact or park resource damage valued at less than \$3,000 including behavior that results in closure or repair taking up to six months or repeated violations which result in unsafe conditions for staff or park visitors.

(D) Level 4 exclusions may be issued for violations with significant visitor impact or park resource damage valued at over \$3,000 including behavior that may result in closure of entire park for safety. Level 4 exclusions may include fighting, promoting, or encouraging fighting, or harassing park employees in the performance of their duties.

(E) Level 5 exclusions may be issued for violations which result in closure of entire park properties for safety or result in irreplaceable park damage. Committing or attempting to commit acts of violence to park staff or visitors may result in a level 5 exclusion.

(F) Level 6 exclusions may be issued for repeat violations during or after the exclusion of a level 5 exclusion.

(G) Exclusions issued under 736-010-0020(11) for conviction of bias crimes pursuant to ORS 390.997 are outside the scope of this exclusion matrix.

(H) Level 1 exclusions are issued for up to 30 days within a geographic area of a park property, management unit, county, or district requiring Park Manager approval. Park Manager may delegate approval authority to enforcement officer.

(I) Level 2 exclusions are issued for 31-90 days within a geographic area of a park property, management unit, county, or district and requires a Park Manager approval. Park Manager may delegate approval authority to enforcement officer.

(J) Level 3 exclusions are issued for 91-180 days within a geographic area of a management unit, county, district, or region, and requires District Manager approval.

(K) Level 4 exclusions may be issued for 181 days to 1 year within a geographic area of a district, region or statewide and requires both District Manager and Region Director approval.

(L) Level 5 exclusions are issued for 366 days to five years within a geographic area of a region or statewide and requires Deputy Director approval.

(M) Level 6 exclusions are issued for five years and above within a geographic area of a region or statewide and requires Deputy Director approval.

(N) Enforcement officers will determine the level of exclusion based on the totality of the situation. An individual with multiple past exclusions may result in a higher level or longer exclusion time frame.

(O) If additional information is presented after an initial exclusion is written, the enforcement officer may reevaluate the exclusion level. This may result in a reissuance at a different level or a rescind.

(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 until the information is complete.

(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 or unsubstantiated based on rule violation and the evidence provided. The agency shall formally respond within 30 calendar days of the appeal request.

(A) An appeal request for an exclusion up through 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 reviewed by an agency review panel convened by the Directors office.

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

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

(A) Shall remain in effect for:

(i) Voluntary conduct or acts that are detrimental to visitor or staff safety; park visitor experience 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) May be suspended upon request at the time of appeal 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.

(8) A peace officer may seek compliance from the public with any state park rule, 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 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.

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

- (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

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(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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Division 21

GENERAL OCEAN SHORE STATE RECREATION AREA RULES

736-021-0040

General Regulations

- (1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over the ocean shore state recreation area with a county, city, or political subdivision thereof for the purposes of enforcing this division and applicable state, county or city laws. Local government regulations pertaining to the ocean shore state recreation area are provided in division 30.
- (2) A park employee may seek compliance from the public with any ocean shore state recreation area rules. (A person may not obstruct, harass or interfere with a park employee's official duties, including enforcing ocean shore state recreation area rules.
- (3) A park manager or designated park employee may order any person who violates any ocean shore state recreation area rule to leave an ocean shore area.
- (4) A park manager or an enforcement officer may exclude a person who violates any ocean shore state recreation area rule from the ocean shore area for a specified period of time as provided in 736-010-0020(7).
- (5) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any ocean shore state recreation area rule and may order a person who violates one or more rules to leave the ocean shore area.
- (6) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates one or more of the following from an ocean shore state recreation area for a specified period of time:
 - (a) Ocean shore state recreation area rule;
 - (b) Federal, state, county, or city law; or
 - (c) Court order.
- (7) The department may take action to protect ocean shore resources, to protect public health and safety, to provide security, to avoid user conflicts, or for other reasons deemed necessary. These actions include but are not limited to the following:
 - (a) Allowing by permit or limiting specific activities or uses in designated portions of the ocean shore state recreation area;
 - (b) Designating locations within the ocean shore state recreation area for specific uses, to avoid conflicts between users;

(c) Restricting access to or closing all or a portion of the ocean shore state recreation area; or

(d) Temporarily excluding a person from a portion or all ocean shore state recreation area.

(8) A person excluded from the ocean shore state recreation area under sections (4), (6), or (7) may contest the exclusion notice by filing an appeal as provided in OAR 736-010-0020(7)(d).

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Proposed updates to Chapter 736, Division 10 & Division 21

Division 10

GENERAL PARK AREA RULES

736-010-0015

Definitions

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- (5) "Dawn" means 30 minutes prior to sunrise as calculated by the U.S. Naval Observatory.
- (6) "Department" means the Oregon State Parks and Recreation Department.
- (7) "Director" means the department director.
- (8) "Domestic Animals" are those animals whose food and shelter are provided by a human custodian.
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- (13) "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning defined in section (26) below.
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(28) "Other Agency" means local, state, federal or tribal government entity that provides mental health, law enforcement or human services.

Statutory/Other Authority: 390.124

Statutes/Other Implemented: ORS 390.050, 390.111 & 390.124

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.

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(A) The date of the issuance;

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(C) Each state park rule violation involved in the exclusion;

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

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closure of an area, site or facility, repeat violations when other enforcement tools have been used or when the enforcement officer deems other enforcement tools will not generate compliance.

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(J) Level 3 exclusions are issued for 91-180 days within a geographic area of a management unit, county, district, or region, and requires District Manager approval.

(K) Level 4 exclusions may be issued for 181 days to 1 year within a geographic area of a district, region or statewide and requires both District Manager and Region Director approval.

(L) Level 5 exclusions are issued for 366 days to five years within a geographic area of a region or statewide and requires Deputy Director approval.

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(N) Enforcement officers will determine the level of exclusion based on the totality of the situation. An individual with multiple past exclusions may result in a higher level or longer exclusion time frame.

(O) If additional information is presented after an initial exclusion is written, the enforcement officer may reevaluate the exclusion level. This may result in a reissuance at a different level or a rescind.

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

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(B) May be suspended upon request at the time of appeal for:

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(ii) Conduct that is involuntary or unavoidable.

(8) A peace officer may seek compliance from the public with any state park rule, 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 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.

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

- (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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Division 21

GENERAL OCEAN SHORE STATE RECREATION AREA RULES

736-021-0040

General Regulations

- (1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over the ocean shore state recreation area with a county, city, or political subdivision thereof for the purposes of enforcing this division and applicable state, county or city laws. Local government regulations pertaining to the ocean shore state recreation area are provided in division 30.
- (2) A park employee may seek compliance from the public with any ocean shore state recreation area rules. (A person may not obstruct, harass or interfere with a park employee's official duties, including enforcing ocean shore state recreation area rules.
- (3) A park manager or designated park employee may order any person who violates any ocean shore state recreation area rule to leave an ocean shore area.
- (4) A park manager or an enforcement officer may exclude a person who violates any ocean shore state recreation area rule from the ocean shore area for a specified period of time as provided in 736-010-0020(7).
- (5) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any ocean shore state recreation area rule and may order a person who violates one or more rules to leave the ocean shore area.
- (6) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates one or more of the following from an ocean shore state recreation area for a specified period of time:
 - (a) Ocean shore state recreation area rule;
 - (b) Federal, state, county, or city law; or
 - (c) Court order.
- (7) The department may take action to protect ocean shore resources, to protect public health and safety, to provide security, to avoid user conflicts, or for other reasons deemed necessary. These actions include but are not limited to the following:
 - (a) Allowing by permit or limiting specific activities or uses in designated portions of the ocean shore state recreation area;
 - (b) Designating locations within the ocean shore state recreation area for specific uses, to avoid conflicts between users;

(c) Restricting access to or closing all or a portion of the ocean shore state recreation area; or

(d) Temporarily excluding a person from a portion or all ocean shore state recreation area.

(8) A person excluded from the ocean shore state recreation area under sections (4), (6), or (7) may contest the exclusion notice by filing an appeal as provided in OAR 736-010-0020(7)(d).

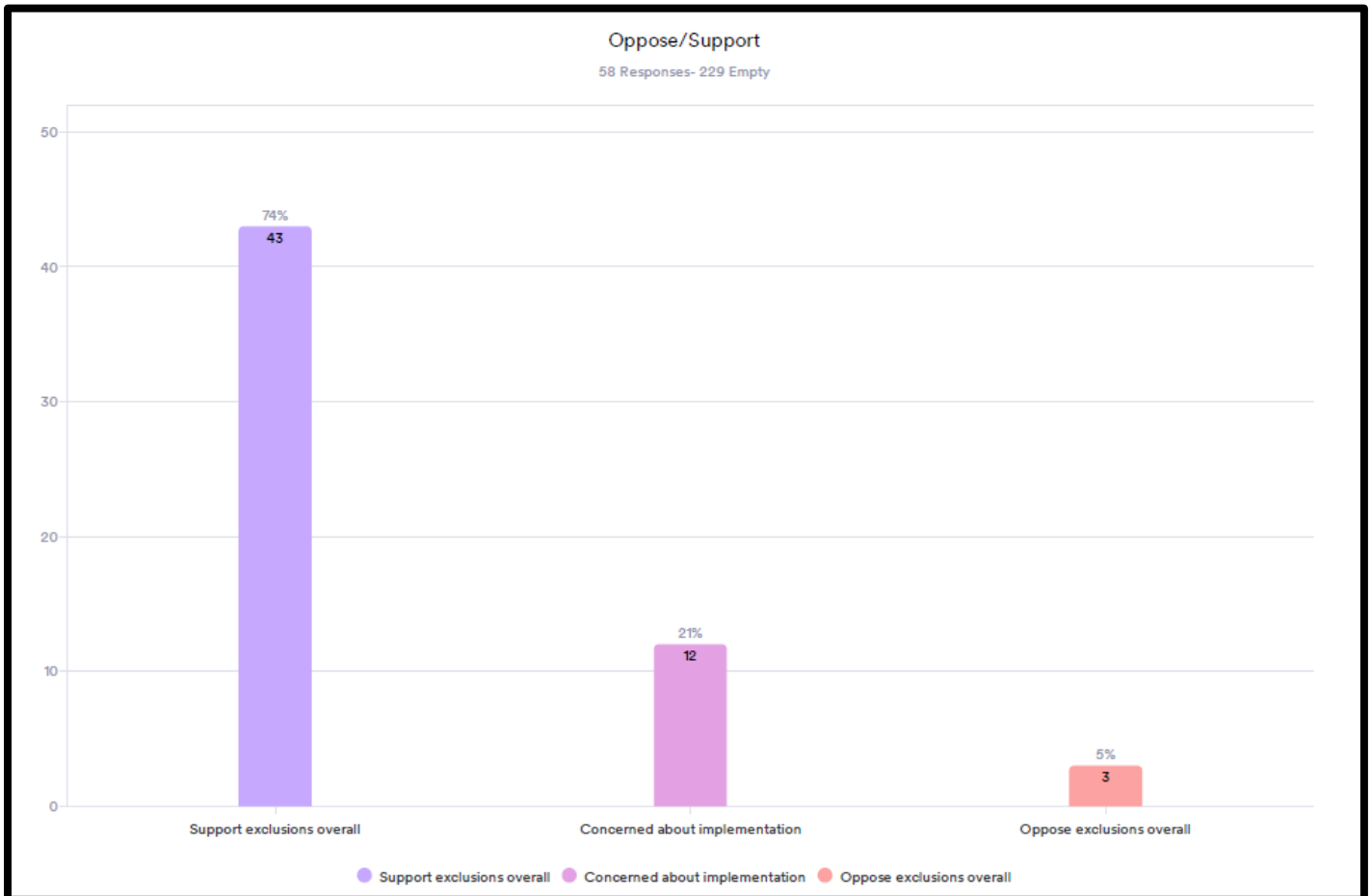
DRAFT



Summary of Public Comments: Exclusion Rules

February 2024

Exclusion rules were open from October 2, 2023 to November 3, 2023 and again from December 1, 2023 to January 4, 2024. The agency received a combined total of 58 comments during these two periods. The full context of comments received is available on the [agency rulemaking website](#). Additionally, a public hearing was held virtually on October 30th. No public comments were submitted during this hearing.

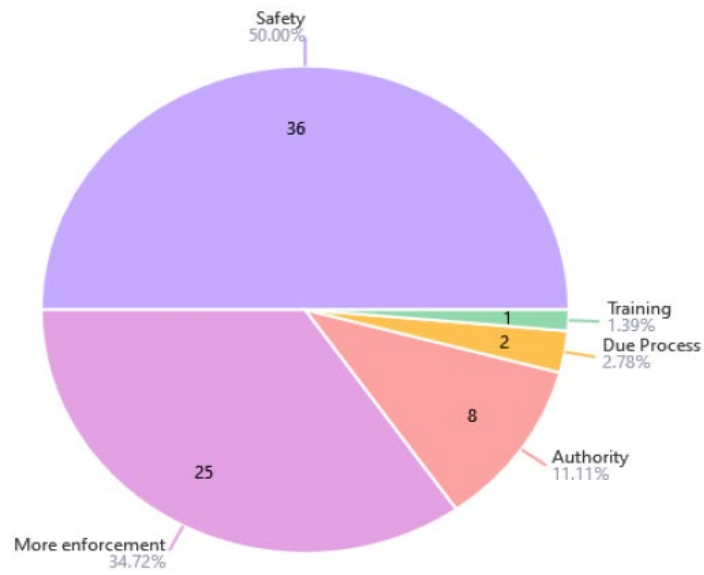


Below are opinions shared within the comments about thoughts on exclusion rules and reasons shared for those positions. The full text of all written comments and a recording of the hearing are available on OPRD's [rulemaking website](#), under the OPRD Exclusion Rules Update tab.

The comments indicate a mix of opinions on the exclusion rules. Many commenters support the need for exclusions overall. The pie graph below indicates concerns expressed by both individuals in favor of the exclusion rules and those opposed.

Individuals in support of the exclusion rules most frequently expressed concerns over safety of staff and visitors and the protection of natural resources. Those opposed were concerned with individuals' rights to state park properties and implementation of the exclusion rules. A couple of comments were concerned with due process; how exclusions are decided, and the length of time exclusions are imposed. After seeing these concerns, the agency added draft language on the exclusion schedule and opened the draft rules to public comment again.

Reason for Supporting Exclusions



Data	Response	%
Safety	36	50.00%
More enforcement	25	34.72%
Authority	8	11.11%
Due Process	2	2.78%
Training	1	1.39%
Other entries	0	0.00%