



Hearings Officer Report

Division 21, Ocean Shore Smoking Restrictions (August 2014)

Prepared by: Richard Walkoski
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Background

On February 5, 2014 the OPRD commission authorized staff to begin a rulemaking process for proposed rules restricting the smoking of tobacco products on the ocean shore recreation area managed by OPRD. A similar rulemaking effort had just been completed for state park properties and 24% of the comments received during that process encouraged the commission to conduct a similar effort on the ocean shore. The rulemaking effort for the state park properties resulted in the commission adopting smoking restrictions with exceptions for campsites, safety rest areas and personal vehicles.

Advisory Committee

An external advisory committee was formed to advise the department on impacts of the proposed smoking restrictions. The committee consisted of the following representatives: Claude Crocker, Oregon State Parks, District Manager; JR Collier, Oregon State Parks, Coastal Operations Support Manager; Rebecca Pawlak, Oregon Health Authority, Center for Prevention and Health Promotion; Charlie Plybon, Surfrider Foundation, Oregon Policy Manager; J.R. Becraft, Coastal Resident; John Sweet, Coos County Commissioner. The committee discussed the pros and cons of putting smoking restrictions in rule and advised the department on preparations for the public hearings scheduled for August.

Issues related to smoking on the ocean shore fall into two main categories: the accumulation of cigarette butt waste generated by smokers; and the health related issues caused by smoking, both to the person smoking and those exposed to the smoke. Of those two issues, the environmental damage caused by cigarette butt waste relates most directly to the mission of OPRD. The committee felt strongly that whether a rule was put in place or not, an education campaign would be needed to reduce waste caused by smoking. The Oregon Health Authority and Surfrider Foundation both expressed interest in assisting with an education campaign.

The advisory committee's opinion was divided on whether enacting a rule to restrict smoking was the best course of action. Some members felt that even though the rule would be difficult to enforce it would set the stage for educational efforts and voluntary compliance would reduce the number of people smoking on the beach. Others felt that enacting a rule that cannot be realistically enforced sends the wrong message to visitors and that there are other methods that should be tried, such as educational campaigns that may have better success at reducing litter. However, addressing the litter issue does not reduce the potential exposure to second hand smoke by other users of the beach since the focus is on preventing litter, not preventing smoking on the beach.

Public Comment Period

The rulemaking notice was published in the August 2014 Secretary of State's Bulletin. Public notification was made through postings on the OPRD website, press releases on July 25th and August 19th and e-mail notification to those on the "interested parties" list maintained by OPRD.

Media coverage was good, both in print media and through radio/television coverage. OPRD received 26 letters, 286 e-mails and 32 comments made at public hearings. A full record of all e-mail, written and audio comments may be found at:

<http://www.oregon.gov/oprd/Pages/commission-beach-smoking.aspx>.

Public hearings were scheduled at three coastal locations and one location in the Willamette Valley. The table below shows the hearing locations:

Date	Time	Location
8/20/2014	7:00 PM	Seaside Public Library, 1131 Broadway, Seaside OR 97138
8/21/2014	7:00 PM	Central Lincoln PUD, 2129 N Coast Highway, Newport OR 97365
8/26/2014	7:00 PM	Coos Bay Public Library, 525 Anderson Ave, Coos Bay OR 97420
8/28/2014	7:00 PM	North Mall Office Building-Park HQ, 725 Summer Street NE, Salem OR 97301

Public Hearing Summary

Public hearings were scheduled at locations on the north, central and south coast, as well as Salem to provide easier access for the population in the Willamette Valley where many coastal visitors live. All hearings were attended by people who wanted to make comments for the record, but there were also people who came to listen and chose not to make official comment. Each hearing had a 20 to 30 minute information session prior to official comments being taken and attendees were allowed to ask questions during the first portion of the meeting. There was media coverage at all but the Newport hearing. Attendance and comments are summarized below by hearing location.

Location	Total Attendance	Comments In Favor	Comments Opposed
Seaside	14	6	4
Newport	7	4	2
Coos Bay	17	2	11
Salem	5	1	2

Summary of Comments Received

Written comments came in the form of 26 letters, 286 e-mails and 32 comments made at public hearings. A summary of the comments is listed in the table below. While all comments either supported or opposed the proposed rule, many of them went on to provide additional information or suggestions. The suggestions and comments that occurred most frequently are also listed in the summary below.

Public Comment Summary: OAR 736-021 Smoking Restrictions on the Ocean Shore	e-mail	letters	hearings	Total
In Support of the rule	144	21	13	178
Opposed to the rule	142	5	19	166
Other Suggestions and Comments Received	e-mail	letters	hearings	Total
OPRD should provide education to help control littering	17	1	14	32
Existing rules against littering should be more strictly enforced	56	2	16	74
The proposed rule is an infringement on people's rights	58	2	5	65
The rule is not enforceable or would cost too much to enforce	43	4	5	52

Public involvement on this rulemaking process was on the high end of the rulemaking spectrum for OPRD. There were 344 comments made during the comment period. To give some perspective OPRD has recently done rulemaking on special use permits (54 comments), general park area rules (6 comments), fee increase (269 comments) and smoking restrictions in park properties (135 comments). One of the reasons this particular rulemaking captured the attention of the public is that the issue is larger than simply managing land under the jurisdiction of OPRD. There are issues related to controlling a legal activity in a public place, the feeling that government is trying to mandate personal behavior, individual rights issues and even the litter issue is much bigger than the ocean shore as the problem exists everywhere people smoke.

A review of the comments received shows the public is evenly divided on their opinion about what OPRD should do, with 52% in favor of making the rule and 48% opposed. Of the other issues brought forward 22% of the people making comments felt that better enforcement of existing littering was something the department should do and 9% thought that education was an important component in the solution. Many people (19%), including a few that were in support of the rule, felt that a rule to prohibit smoking on the beach went beyond the scope of management that OPRD is charged with and that such a rule violated the rights of people who use the beach. Finally, 15% of the people who made comments thought that the rule would be hard to enforce or too costly to enforce.