

Oregon Parks and Recreation Commission

November 19, 2014

Agenda Item:	11a	Action
Topic:	Ocean Shore, Smoking Rules - OAR 736-021	
Presented by:	Richard Walkoski	

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.

An external advisory committee was formed to advise the department on the impact of smoking restriction rules and the best way to provide information to the public. The committee consisted of: 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. Copies of the proposed rule changes are included in Attachment B (markup copy) and Attachment C (clean copy).

Public comments were accepted beginning in late July. 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>. The following table summarizes the comments received:

Public Comment Summary: OAR 736-021 <i>Smoking Restrictions on the Ocean Shore</i>	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

After the public comment period closed the advisory committee was invited to come together again and discuss the comments as well as possibilities for an education campaign that will be needed regardless of whether we pass a rule or not. Surfrider and the Oregon Health Authority both felt that passing a rule was still the best strategy, even though the public comment was divided. They also confirmed their willingness to assist with a public education campaign, but once again felt that any education would be more effective coupled with a rule prohibiting smoking. Notes from the second advisory committee meeting can be found in Attachment A.

The Hawaiian Example:

In January 2014 the City and County of Honolulu, Department of Parks and Recreation began education and enforcement of a law that prohibits smoking in their parks and all public beaches on Oahu. Hawaii like Oregon has public access to their beaches, so the results of their efforts are at least partially relevant to our current efforts. The first step in implementation of their law was an aggressive education campaign. The parks department enlisted partners like Surfrider, the Public Health Department and the Education Department. Media spots, posters and regulatory signs helped inform the public. There were also presentations to school children in hopes that they would help shape the behavior of their parents.

Enforcement of the smoking restriction is done by local law enforcement, not the parks department. With 286 parks and beaches the enforcement presence is limited to the high use beaches. This year no citations were issued, but the warnings were tracked to see if there are any trends. After a year of education and informational contacts by law enforcement, the number of warnings issued has gone down. The parks department has noticed that awareness of the law spikes when some form of media campaign is running then goes down once the campaign is over. Because of this the parks department looks for ways to periodically focus attention on the law.

In Hawaii the law and resulting education campaign has reduced the amount of litter found on high use beaches. At those high use beaches the sand is screened periodically to remove litter like bottle caps and cigarette butts. The parks department has been watching the results of the screening and after a season of the new law and education campaign being in effect the amount of litter being removed from the sand has gone down significantly. The parks department cannot determine the part played by the law, the education campaign or the enforcement contacts in reducing the litter, but the opinion of their director is that education without the law would not have been as effective as the two combined. The high-use beaches in Hawaii are densely-used and heavily patrolled compared with the Oregon coast; areas where smoking bans are in effect receive intense law enforcement attention.

Public Education Options:

OPRD is committed to moving forward with a strategy that addresses the issue of not only the litter caused by smoking but the larger problem of all types of litter found on the ocean shore, as well as marine debris. Funding of \$50k spread over a two year period will be dedicated to providing education and signage. Through the rule making process several partners have stepped forward and expressed willingness to assist with public education. While no formal agreements have been made the following ideas have been discussed:

Surfrider already has campaigns running in Oregon that promote coastal stewardship and try to educate the public on the negative impacts of litter and cigarette butts on the ocean shore. They would be willing to assist OPRD with education efforts such as providing receptacles and signage at access points for proper disposal of cigarette butts. Surfrider partnered with the City

and County of Honolulu Department of Parks and Recreation on a similar campaign when they prohibited smoking on Oahu beaches in January 2014. They do feel that the education effort would be more successful if there was a rule passed restricting smoking rather than simply asking people to comply with existing litter rules.

Oregon Health Authority is a major supporter of rules that restrict smoking and create a smoke-free environment for Oregon. They have already paid for ads that help inform and educate visitors about the smoking restriction rules for state park properties and are willing to commit funds to do the same for the ocean shore if a rule is passed. They could help with education without a rule, but like Surfrider they feel that the effort will be much more successful if the rule is passed.

Private partners also stepped forward during the public comment period and had some innovative ideas regarding education campaign. Here are a few suggestions received:

- Use a combination of in-house designers and field employees, plus contracted designers, to create a series of low-cost displays.
- Select and adapt a display already used by some other city, county, state or federal organization.
- Open the project up to contributions from youth and artists in coastal communities.

While the proposed smoking restrictions on the ocean shore has focused attention on the litter caused by cigarette butts, OPRD has been dealing with two much larger issues that transcend the Oregon coast: 1) Plastic pollution is a growing, persistent problem which includes film and hard plastics, cigarette butts, rigid foam; 2) While some debris on the ocean shore is from outside Oregon, much is from visitors, coastal communities, and human activity in the coastal and Columbia River watersheds so an integrated approach that includes work in surrounding communities is needed. These issues go well beyond the scope of OPRD's mission, but partnering with other public agencies and private groups could result in a campaign that addresses not only the specific problems related to smoking but those larger issues.

Rulemaking Options:

Option 1 - No Action

Maintaining current rules and practices on the ocean shore is a least cost option but does little to address the problems of litter and plastics accumulating on the beach. Without a change in the way we manage the ocean shore it is not reasonable to assume that the behavior of our visitors will change.

Option 2 - Adopt Rule

About half of the public comments support adoption of a rule restricting smoking on the ocean shore. OPRD is prepared to fund an education campaign to educate visitors especially during the first year of implementation. There are willing partners who would help with those efforts such as Surfrider and the Oregon Health Authority. Enforcement of this option is problematic as we do not have a law enforcement presence on the ocean shore, either through our rangers or through contracted law enforcement personnel. The department would rely on voluntary compliance and education efforts to enforce the rule.

Option 3 - Education Campaign with Deferred Rulemaking

Slightly less than half the comments received were not in favor of rulemaking, suggesting that enforcement of existing litter rules and education of visitors should be tried before enacting a new rule. OPRD could defer adoption of a new rule for two years and see if visitor education and

awareness campaigns can change behavior. OPRD would use the same funding dedicated for option 2 and conduct an education campaign over the next two years, after developing some concrete measurement of what success looks like. The partners who expressed interest in supporting education efforts if a rule is adopted would most likely participate in this campaign even without the rule.

After two years, an evaluation of the impact of the education would be used to determine if education alone is enough or if the rule is still needed to give the education effort teeth. This option does change the way we manage the ocean shore, focusing on the behavior we want to suppress: littering. If it does not change behavior and reduce litter, OPRD still has the option of adopting rules restricting smoking after the two year education effort.

Recommended Action:

The lack of enforcement officers and the possibility that behavior can be changed through an aggressive education campaign makes “Option 3: Education Campaign with Deferred Rulemaking” the staff recommendation. This option takes into account public comment both for and against a new rule which pointed out the lack of enforcement resources and the fact that we already have a rule that makes the activity illegal. Spending \$50k over two years and leveraging additional resources from partners to conduct education efforts will allow us to see if behavior changes. If education alone does not reduce littering then we can resume rulemaking in two years.

Prior Action by Commission: Rulemaking authorized at the February 5, 2014 commission meeting.

Action Requested: Table the current rulemaking that restricts smoking on the ocean shore for a two year period, while the department conducts education efforts and enforces existing rules on littering. After the two year period staff will report results to the Commission and make a recommendation on whether or not the department should continue with rulemaking at that time.

Attachments: Attachment A - Advisory committee meeting notes
Attachment B - Proposed Rule Changes (markup)
Attachment C - Proposed Rule Changes (clean)

Prepared by: Richard Walkoski

Advisory Committee - Division 21 Smoking Rules - October 24, 2014

Meeting Notes

- Education options discussion (partners, best practices, expected outcomes)
 - Smoke Free Oregon has campaign running now
 - In HI the campaign started a few years prior to the law.
 - Once the law was enacted in HI there was a campaign centered around awareness using signage and media spots.
 - Need to make sure we have measurable outcomes - are we achieving the goal (reduce cigarette butts and improved environment for visitors)
 - Surfrider has interest in partnering on an awareness campaign. That could involve providing cigarette butt disposal containers at beach access points, but their preference would be to do it in conjunction with a rule being adopted.
 - Catch smokers in the parking lot before they hit the beach (OPRD Day Use sign clusters are a way to get information out).
 - Use pilot projects as a way to measure effectiveness (D River is ideal spot in many ways)
 - OHA has tobacco as a top priority and is a willing partner for campaigns that help create smoke free environments
 - Measurement will be problematic and largely anecdotal unless we invest money to have someone study the amount of litter and observe smoker's behavior on the ocean shore.
 - Asking Surfrider volunteers to actually measure the amount of litter (cigarette butts) for comparison may not be well received if we do not pass the rule in conjunction with the request.
 - Adopting the rule helps set a positive example for children as we are encouraging good stewardship and healthy environments
 - Allowing smoking to continue on the beach when it is prohibited in so many other places puts even more load on the beach as smokers move to the few places where it is still allowed. This will be even more critical if upland owners (cities) pass restrictions.
- Next steps
 - As Commission makes decision they need to see the statistics (most Oregonians are not smokers and most smokers want to quit)
 - There may be some connections to the partners survey OPRD is conducting now (what is the public saying about use of the beach and the tradeoff questions in that survey)
 - Cities could actually use the rule authority granted to coastal cities under OAR 736-030 to enact smoking rules locally if OPRD does not move forward with a rule right now
 - The advisory committee would like to make sure their opinions are heard by the Commission. We will need to check on the rules governing comments made during rulemaking to see if it is appropriate for the advisory committee members to attend and make comments at the Commission meeting. A copy of the advisory committee meeting notes can go into the Commission brief as an attachment.

736-021-0100

Visitor Conduct

(1) A person may not mutilate, deface, damage, or remove any property, structure or facility of any kind in the ocean shore state recreation area, except as provided in OAR 736-021-0090.

(2) A person may not leave any material not found naturally on the ocean shore, including garbage, recyclables, sewage, or waste, on the ocean shore state recreation area.

(3) A person may not engage in the following activities on the ocean shore state recreation area:

(a) Possessing or using alcoholic beverage(s) if the person is under 21 years of age;

(b) Smoking of tobacco products;

~~(b)~~ (c) Fighting or promoting, instigating or encouraging fighting or similar violent conduct that would threaten the physical well-being of any person;

~~(c)~~ (d) Activities or conduct that constitutes a public nuisance or hazard; or

~~(d)~~ (e) Public indecency as defined in ORS 163.465;

(4) A person may only engage in the following activities on the ocean shore state recreation area as authorized in a special use permit that they obtain from the department pursuant to OAR chapter 736, division 16 or written permission from the park manager:

(a) Use or operation of any noise or light-producing machine, vehicle, device or instrument in a manner that may disturb persons or wildlife;

(b) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, or fireworks or other substances;

(c) Using a metal detector or similar device in any property not listed on the "Detecting Allowed" list, published on the department website;

(d) Blocking, obstructing or interfering with pedestrian or vehicular traffic;

(e) Descending, scaling or technical rock climbing on rock formations and cliffs;

(f) Entering or occupying any portion of the ocean shore state recreation area that has been closed to public access, including fenced areas; and

(g) Constructing a structure or sign.

Stat. Auth.: ORS 390.660

Stats. Implemented: ORS 390.635, 390.655 & 390.660

736-021-0100

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