

NOTICE OF PROPOSED RULEMAKING

CHAPTER 736

PARKS AND RECREATION DEPARTMENT

FILING CAPTION: Updating rules for exclusion process from park properties and the ocean shore.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/03/2023 5:00 PM

HEARING(S):

DATE: 10/30/2023

TIME: 2:00 PM

OFFICER: Helena Kesch

REMOTE MEETING DETAILS

MEETING URL: https://us06web.zoom.us/webinar/register/WN_eWNdOpNMSlqyK1hWS2RExg

PHONE NUMBER: 503-881-4637

SPECIAL INSTRUCTIONS:

Must register in order to receive conference link. Register at

https://us06web.zoom.us/webinar/register/WN_eWNdOpNMSlqyK1hWS2RExg

NEED FOR THE RULE(S):

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.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Parks and Recreation Rulemaking webpage: <https://www.oregon.gov/oprd/prp/pages/prp-rulemaking.aspx>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY

IN THIS STATE:

The department estimates that there may be a positive racial equity impact based on the rule amendment, however the agency does not have data regarding the race and ethnicity of those excluded from park properties and the ocean shore. Improvements in clarity and due process will benefit all individuals.

FISCAL AND ECONOMIC IMPACT:

There may be a minimal additional cost and staff time to the agency for a more robust exclusion process.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The state agency impacted would only be OPRD. Members of the public impacted could be those excluded from park properties and the ocean shore.

(2) There is no impact on small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses are not impacted by this rule so they are not included.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

736-010-0020, 736-021-0040

AMEND: 736-010-0020

RULE TITLE: General Regulations

RULE SUMMARY: This rule addresses behavior for park visitors. Amendments add exclusion process.

RULE TEXT:

(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 (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 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 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 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 request from the excluded individual.

(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.

STATUTORY/OTHER AUTHORITY: ORS 390.050, 390.121, 390.124

STATUTES/OTHER IMPLEMENTED: ORS 390.124

AMEND: 736-021-0040

RULE TITLE: General Regulations

RULE SUMMARY: This rule is for park visitor behavior on the ocean shore. This amendment adds exclusion process.

RULE TEXT:

- (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 order a park visitor to leave for up to 72 hours who violates any ocean shore state recreation area rule from the ocean shore area.
- (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 a written appeal within seven business days of the exclusion date.

(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 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 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 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 request from the excluded individual.

STATUTORY/OTHER AUTHORITY: ORS 390.660

STATUTES/OTHER IMPLEMENTED: ORS 390.124, 390.635, 390.660

