



Office of the General Counsel
Maryland-National Capital Park and Planning Commission

Reply To

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Memorandum

TO: The Montgomery County Planning Board
The Prince George's County Planning Board

FROM: Adrian R. Gardner *ARG/ADD*
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RE: Discussion Draft: Revision of the Park Rules and Regulations

This memorandum transmits our draft revisions to the Commission's Rules and Regulations (the "Discussion Draft") that are proposed to govern various aspects of our bi-county park system. (**Exhibit 1**). The Commission's Rules and Regulations that remain in effect now were revised last on March 21, 2001. (**Exhibit 2**).

Our team will appear, joined by appropriate park staff, to review the Discussion Draft during the Montgomery County Planning Board meeting on June 2, 2016, and the Prince George's County Planning Board meeting on June 9, 2016, respectively. Depending on the nature and extent of revisions dictated by these briefings, we plan to present final regulations for Commission adoption during its regular meeting on June 15, 2016, or a special meeting convened by telephone conference later in the month if necessary.

A. Background (Law and Process).

1. **Law.** State law authorizes the Commission to "adopt regulations for the use of any property under its jurisdiction." Md. Code Ann., Land Use Art. § 17-207(a). Recent legislation also expressly mandates that the Commission "adopt regulations to prohibit [smoking tobacco products] on [certain] property under its jurisdiction" by the last day of this fiscal year. Md. Code Ann., Land Use Art. § 17-207(b). In addition, the law

authorizes the Commission to regulate hunting on park property, and empowers the Prince George's County Planning Board to adopt regulations for its "coordinated" park and recreation program. Md. Code Ann., Land Use Art. § 17-209 (hunting regulations); Md. Code Ann., Land Use Art. § 25-804 (regulations for park and recreation program).

2. **Survey.** Last year, the Legal Department initiated a survey targeting the front-line staff working in both counties. The goal of that effort was to capture the institutional memory and collective wisdom of our team about opportunities to improve the park rules. The Commissioners may recall several of the more salient results of the survey, summarized for the current purpose as follows:

- 165 employees completed the survey Commission-wide
 - Participation rate of about 7% and 6% of park/recreation employees in Montgomery County and Prince George's County, respectively.
 - Does not include survey responses that were not completed.
- Most respondents believe they are knowledgeable about the park rules
 - More than two-thirds report they are "familiar" or "extremely familiar"
- Very few respondents considered the rules to be "ineffective"
- Respondents offered about 75 discrete sets of comments or suggestions for improvement

3. **Commissioners' Guidance.** The Department Heads and Commission reviewed the existing rules, staff survey results, and discussed the revision project during the Commission meeting on November 18, 2015. At that time, members of the Commission identified several issues for the team to keep in mind during the revision process. To summarize, the members highlighted various issues including the following:

- A desire to involve appropriate staff with practical experience working on modern aspects of parks.
- A preference for framing the rules more in terms of "what people can do" – versus "what people can't."
- A concern about making sure the park rules are flexible enough to accommodate future innovation with "urban parks" and to "activate" those spaces for unconventional public uses and programs.
- A recommendation to compare the Commission's rules to those of other "peer"-level park and recreation agencies.

- A concern about striking an appropriate balance in regulating gatherings that include the responsible consumption of adult beverages.
- An encouragement to implement the rules with ample bilingual signage and other language tools.

4. **Work Group.** At the General Counsel’s request, each Department Director and Park Police Commander tasked appropriate staff to participate in a Work Group convened to complete the revision project. Principal Counsel Donna Calcote-Heatley took the helm as “Project Manager” for the initiative. Staff members who have a core involvement in the project include:

Core Group

Anju Bennett, Division Chief, Corporate Policy and Management Operations
Brooke Farquhar, Supervisor/Master Planner, Montgomery Parks
John Hench, Division Chief, Park Planning and Stewardship Division, Montgomery Parks
Roslyn Johnson, Deputy Director, Facility Operations, Prince George’s County Department of Parks and Recreation
Stanley Johnson, Chief of Prince George's County Park Police
Matthew Schmidt, Montgomery County Park Police Lieutenant
William Shoemaker, Prince George’s County Park Police Lieutenant

Office of the General Counsel

Adrian R. Gardner, General Counsel
Donna Y. Calcote-Heatley, Principal Counsel
William C. Dickerson, Principal Counsel
Megan S. Chung, Senior Counsel
Elizabeth L. Adams, Associate General Counsel
Nicholas D. Dumais, Assistant General Counsel
Sheronda M. Rose, Legislative/Paralegal Assistant
Delores M. Walston, Administrative Assistant

In addition, the Work Group included input from another group of subject matter experts who were invited to participate and stay abreast as “Stakeholders”:

Stakeholders Group

Haviz Adeojo, Information/Permitting Supervisor, Montgomery Parks
Derick Berlage, Division Chief, Prince George’s County Planning Department
George Coleman, Montgomery County Park Police Captain
Antonio DeVaul, Chief of Montgomery County Park Police

Kyle Lowe, Acting Division Chief, Natural and Historical Resources, Prince George's
County Department of Parks and Recreation
Rick Pelicano, Montgomery County Park Police Lieutenant
David Quintanilla, Park Manager II, Montgomery Parks
Chris Robinson, Acting Division Chief, Northern Area Operations, Prince George's
County Department of Parks and Recreation
Debbie Tyner, Deputy Director Area Operations, Prince George's County Department of
Parks and Recreation
Karen Warnick, Chief of Management Services Division, Montgomery County Planning
Department

5. **Check In.** After conducting a complete review of the existing rules during a series of meetings convened over two months, the Work Group has helped us to identify a number of substantive policy issues that warranted the attention of Directors Ronnie Gathers and Mike Riley. The Work Group consulted unofficial stakeholders and specialized subject matter experts all along the way. In addition, the group was supplied for comparative purposes with park rules and regulations from several other CAPRA-accredited jurisdictions, including New York City; Houston, Texas; Atlanta, Georgia; Austin, Texas; Alexandria, Virginia; New Orleans, Louisiana; and Arlington County, Virginia.

Last week, the legal team met with the Commission's Department Directors (including Messrs. Gathers and Riley) to offer an update on the revision project. As discussed further below, we believe that consensus generally has been achieved at the staff level on most of the significant substantive issues. The balance of this memorandum offers a framework for the Commissioners to resolve the various policy choices that likely will come into play in adopting a new set of park rules next month.

B. Key Concepts and Definitions.

The Discussion Draft is built using a handful of conceptual underpinnings. Even before reviewing the draft, we call your attention to the following nomenclature that is used extensively:

1. **Administrative Directives.** The Commission regulations already allow certain so-called "Administrative Directives" to modify an underlying, more general, rule that otherwise prevails as the default. This flexible approach makes good sense for rules that are needed to cover a myriad of site-specific activities and unique situations.

As presented in the Discussion Draft, the new regulations will amplify the concept of Administrative Directives by providing a structured process for the departments to adopt and implement them, and also by specifying the subject matter for which the Commission has delegated the authority for the departments to make appropriate site-specific implementing decisions that deviate from the general rules. *See Ex. 1 (p. 3) – Disc. Draft Ch. I § 3 (Administrative Directives).* We believe this approach – including

the mechanism envisioned to implement it or a similar one – will strike an important balance between giving the departmental managers much needed flexibility to craft “overlay” rules and, at the same time, providing a transparent process for the Planning Boards and ongoing notice to the public.

2. **Permit.** Under the existing and proposed rules alike, the park permit process is contemplated to serve a number of different functions. First, a permit obviously is issued to grant permission for a use that is both structured and routine; for example, a pavilion rental. Second, a permit may be issued to enable a use that is not structured or routine; for example, holding a festival that is open to the public. Third, a permit is contemplated as a device that grants special use for an activity that is otherwise prohibited; for example, cutting trees or digging.

In recognition of these multiple functions, the proposed rules use the term “Permit” in a very generic sense that covers every form of document that creates written permission to do various things that are specified by the regulations. *See Ex. 1 (p. 8) – Disc. Draft Ch. II § 1(O) (Permit defined).* For example, if a concession agreement allows the operator of a batting cage to drive tractors on Park Property, that agreement is also a Permit under the proposed regulations. (The lease will accomplish the same thing.)

3. **Park Property.** The Discussion Draft uses the term “Park Property” in its very broadest sense. *See Ex. 1 (p. 8) – Disc. Draft Ch. II § 1(N) (Park Property defined).* Thus, the term includes a “Facility” – another broad term used to cover every sort of improvement to Park Property, such as a building or ball field. *Id. (p.7) – Disc. Draft Ch. II § 2 (J) (Facility defined).* We have found that it is not useful to distinguish among various categories of Park Property for most rules – the use of a term other than “Park Property” usually occurs when mentioning a Facility or feature provides a useful illustration.

4. **Commercial Activity.** The staff expressed several strong concerns about regulating certain commercial activities. *See Ex. 1 (p. 6) – Disc. Draft Ch. II § 1 (D) (Commercial Activity defined).* Examples include:

- Unsanctioned personal fitness “consultants” who may confuse patrons at Commission facilities
- Food truck and merchandise peddlers
- Merchants who cause litter with promotional handbills on car windshields
- Vendors who degrade viewsapes with lawn sign advertisements

The Discussion Draft continues the existing prohibition for these sorts of Commercial Activities, but clarifies that exceptions are possible in appropriate circumstances. Thus, the proposed regulations would allow either department to, for example, designate an area a food truck park by Administrative Directive. Similarly, the

rules enable a department to issue a Permit allowing a realtor who rented a Facility to display his or her lawn signs during a reception.

5. **Etc.** Two other definitional issues are sprinkled throughout the proposed regulations:

- “Authorized Person” means a person authorized by a Director to make a specific decision or grant permission for a specific purpose. *See Ex. 1 (p. 6)* – Disc. Draft Ch. II § 1(B) (Authorized Person defined); and,
- “Include” or “Including” always signifies an example or illustration (never an intention to limit or exclude). *See Ex. 1 (p. 9)* – Disc. Draft Ch. II § 2 (A).

C. Outline of Key Policy Issues and Choices.

Based on our Work Group and other internal discussions, we have highlighted several key policy issues to resolve that may involve tensions or competition among laudable goals. A brief outline of each salient issue is offered below, including a discussion of the particular recommendations of staff as they are embodied now in the Discussion Draft.

1. Cell Phone Leagues: Should the regulations address the situation where an organized group uses a vacant athletic field or similar Facility on an *ad hoc* basis without a Permit?

Current Regulations: No rule directly triggers a Permit requirement.

Staff Proposal: Require an organized group of 25 or more to obtain a Permit. **Ex. 1(p. 8)** – Draft Reg. Ch. II § 1.(K) (“Organized Play”); **Ex. 1(p. 12)** - Draft Reg. Ch. III § 4(A)(2) (activities requiring a Permit).

Discussion: On the one hand, Commission staff members are vociferous advocates for athletic activities and open access to parks. On the other hand, the staff in both counties indicates that large groups increasingly organize for soccer and other large team sporting contests using social media, sometimes complete with uniforms, officials and an entire cadre of spectators. They indicate that the *ad hoc* groups that congregate without Permits sometimes create difficulties in maintaining turf, managing trash and handling similar operational challenges. In at least one case, an organized group that actually followed the Permit requirements threatened to refuse future Permits in a deliberate effort to avoid Permit conditions -- which the staff believed were essential.

2. Bicycles and Trails: What limitations, if any, should the regulations impose on the use of bikes in general, or the use of bikes on trails in particular?

Current Regulations: Trails are open from sunrise to sunset under the general rule for parks and exceptions are not directly addressed. **Ex. 2 (p. 6)** – Reg. Ch. III § 2(A).

Bicycles are allowed in areas specifically designated (only) and subject to a number of other rules regarding use. **Ex. 2 (pp. 15-16)** – Reg. Ch. VI § 3 (“Bicycling”).

Staff Proposal: Based on the staff recommendation, the Discussion Draft would authorize a Director to “open” specific trails or trail segments after normal hours by issuing an Administrative Directive as determined on a case-by-case basis. **Ex. 1 (p. 10)** – Disc. Draft Ch. III § 2(A)(1) (enabling “alternate hours deemed appropriate for any trail or trail segments that facilitate bicycle and pedestrian commuting”). The Discussion Draft also includes several other revisions to the Commission’s regulations on bicycling. **Ex. 1 (pp. 25-26)** – Disc. Draft Ch. V § 4 (new location for rules on “Bicycling” in Discussion Draft).

Discussion: The following is a list of substantive changes in the Discussion Draft:

- The Discussion Draft defines the term “bicycle” as “[a] bicycle or tricycle that is self-propelled, and not including any motorized or electronic assisted vehicle.” **Ex. 1 (p. 6)** – Disc. Draft Ch. II § 1(C) (definition). This definition clarifies that bicycles with onboard electronic motors are not considered bicycles for purposes of the Discussion Draft.
- Electronically assisted or motorized bicycles are instead regulated under Chapter V, Section 14, which prohibits the use of unlicensed motorized vehicles on Park Property without a permit or unless used in an area designated for such use by Administrative Directive. **Ex. 1 (p. 28)** – (“Segways and Other Motorized Devices”).
- The Discussion Draft addresses road bicycling and trail bicycling in separate provisions in order to make clear that many of the regulations in the current Rules are applicable only to bicycling on trails. Bicycling on roads is permitted subject only to applicable state and local laws. **Ex. 1 (pp. 25-26)** – Disc. Draft Ch. V § 4.
- Rather than limiting bicycling only to “roads or trails designated for that purpose,” **Ex. 2 (p. 15)** – Reg. Ch. VI §3, the Discussion Draft makes clear that bicycling is allowed on official paved and natural surface trails unless otherwise posted. **Ex. 1 (p. 25)** – Disc. Draft Ch. V §4(C).
- The Discussion Draft provides greater detail than the current rules in describing the obligations of bicyclists to yield to pedestrians and horseback riders at crossings and to otherwise exercise care to avoid collisions. *Id.* The current Rules simply state that “[b]icyclists must yield to pedestrians and equestrians along the trail.” **Ex. 2 (pp. 15-16)**.
- The Discussion Draft clarifies trail speed limits and reduces the maximum speed limit for bicycling on trails without posted speed limits from 25 mph to 20 mph. **Ex. 1 (pp. 25)**. This change reflects concerns from Commission stakeholders, particularly Park Police, that on trails without posted speed limits, 25 mph is often too fast for safe trail

use. As in the current Rules, regardless of any other speed limit on trails, bicyclists must always ride at a reasonable and prudent speed under existing conditions, to which the Discussion Draft adds “or as directed by Park Police or other Authorized Person.” *Id.*

In addition to the above revisions, it is worth noting that the requirement that bicyclists operating on trails must yield to all vehicular traffic at intersecting roadways appears in both the current Rules and the Discussion Draft. However, stakeholders have raised concerns with this section, which is currently under review by Legal and Park Police staff.

3. Smoking and Similar Activities: In addition to implementing the State law requiring a general prohibition on smoking, should the regulations also address electronic cigarettes or chewing tobacco and similar products?

Current Regulations: The regulations currently prohibit smoking (anything) on Park Property in areas where no smoking notice is posted. **Ex. 2 (p. 11)** – Reg. Ch. V § 3 (“Alcohol/Tobacco, Controlled Substances”). The use of electronic cigarettes or other vaping devices and chewing tobacco, snuff and similar oral tobacco products is not addressed.

Staff Proposal: To implement the change required by the State law referenced above, the Discussion Draft will prohibit smoking (anything) anywhere on Park Property (inside and outside), except in those outside areas specially designated for smoking. **Ex. 1 (pp. 8-9)** – Disc. Draft Ch. II § 1(R) (definition); **Ex. 1 (p. 18)** – Disc. Draft Ch. IV § 3(C) (prohibition). In addition, the Discussion Draft reflects the staff recommendations:

- To allow electronic cigarettes and other Vaping devices outside (only) on Park property except in areas where it is prohibited by posting; and
- To allow chewing tobacco and similar products inside or outside of Park Property except in areas where it is prohibited by posting.

Ex. 1 (p. 18) – Disc. Draft Ch. IV § 3(D) and (E); **Ex. 1 (p. 9)** – Disc. Draft Ch. II § 1(S) (definition of “Vaping” device).

Discussion: Putting aside policy changes driven by the State law requirement, the staff’s motivation to regulate oral tobacco products and Vaping is grounded in concerns about the public health and setting a good example for children. At the same time, those worthwhile concerns are tempered by the difficulties in enforcing any rules on these subjects, philosophical worries about imposing paternalistic rules on adults, and recognition that Vaping (in particular) can be a temporary aid to help people quit smoking tobacco.

Ultimately, the Discussion Draft takes a balanced approach that follows the workplace rules that apply for Commission employees. The staff consensus is that achieving this consistency is a significant factor.

4. Encroachments: How should the regulations address the Commission’s interest in preventing unlawful encroachments onto Park Property?

Current Regulations: The current regulations include a bundle of prohibitions couched as matters of “conduct” that likely qualify technically as encroachments. *See generally* **Ex. 2 (pp. 11 et seq.)** -- Reg. Ch. V (“Regulation of General Conduct and Personal Behavior” which includes misuse of property, dumping, interference with plants, etc.).

Staff Proposal: As reflected in the Discussion Draft, the staff proposes to amplify and illustrate examples of encroachment. **Ex. 1 (pp. 34-35)** – Ch. VII, Encroaching on Park Property.

Discussion: The subject of encroachments is among the issues raised in response to the survey referenced above. The staff’s’ desire to offer a more deliberate treatment in the regulations is two-fold:

- To enable less cumbersome enforcement mechanism via civil citations; and,
- To provide the public with a better understanding of the potential consequences of encroachments and the reason for serious enforcement activities.

5. Non-Discrimination Standards: The regulations should be revised to reflect statutory and evolving common law standards of non-discrimination in public accommodations.

Current Regulations: The current regulations provide as follows:

Park property and park and recreation programs are open to use by all members of the public regardless of race, gender, age, national origin, color, creed, disability, sexual orientation or impairment.

Ex. 2 (pp. 5-6) – Reg. Ch. III § 1.

Staff Proposal: As reflected in the Discussion Draft, the staff proposes new language as follows:

The Commission celebrates diversity and welcomes the general public to share Park Property, Facilities, and Park Programs without regard to any person’s race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability. The Commission may implement administrative policies,

practices, and procedures complimentary to its abiding value of providing equal access and equitable opportunities for everyone to enjoy the property and experiences entrusted to the Commission stewardship.

Ex. 1 (p. 10) – Disc. Draft Ch. III § 1 (Preamble).

Discussion: The Commission’s existing regulations do not address the subject of “gender identity.” The Fairness for All Marylanders Act of 2014 generally prohibits discrimination in public accommodations based on gender identity, which is defined as follows:

[The] gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth, which may be demonstrated by (1) consistent and uniform assertion of the person’s gender identity or (2) any other evidence that the gender identity is sincerely held as part of the person’s core identity.

The Discussion Draft amplifies the expectation that Commission policies, practices and procedures will be developed to implement the letter and spirit of these laws. Thus far, the General Counsel and Manager of the DHRM Corporate Policy and Management Operations Division are engaged with leadership of the Commission’s Diversity Council to begin developing appropriate policy recommendation for the operating departments.

6. Miscellanea: The Discussion Draft also covers a number of policy issues worthy of mention that include:

- Tents and shade canopies are prohibited except in designated places. **Ex. 1 (p. 20)** Disc. Draft Ch. IV § 10.
- Adult beverages may be authorized by Permit or in areas regulated by Administrative Directive. **Ex. 1 (p. 17)** Disc. Draft Ch. IV § 3.
- Assemblies and gatherings are regulated under the same “safe-harbor” concept developed in 2009 through discussions with the American Civil Liberties Union. **Ex. 1 (p. 11-12)** Disc. Draft Ch. III § 3 (Certain Assemblies); *see also* **Exhibit 3** (Commission Notice No. 09-03, Indefinite Suspension of Enforcement of Certain Park Rules and Regulations).

D. Next Steps.

As indicated above, our plan is to process revisions to the Discussion Draft in real time based on discussions with the Planning Boards. We have arranged to offer the Discussion Draft for distribution and online publication in Spanish, and we are actively soliciting written comments from the public over the next two weeks. Those comments will be compiled as they are received and made available both for Commission members

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and staff. In the meantime, the Commissioners should not hesitate to contact Adrian Gardner, Donna Calcote or Nick Dumais directly with any questions or concerns.

cc: Department Directors/Deputy Directors
Working Group on Rules and Regulations