

734-058-0010

Purpose

OAR 734-058-0010 through 734-058-0080 establish criteria for issuing permits for pedestrian activities, as defined in Division 58 rules, on state highway right of way.

Stat. Auth.: ORS 184.616, 184.619, and 814.070

Stats. Implemented: ORS 814.070

734-058-0020

Definitions

As used in OAR 734-058-0010 through 734-058-0080, the following definitions apply:

(1) “Applicant” means the individual or individuals, corporation, company, firm, business, partnership, organization or agency named in and signing the Permit and to whom the Permit is issued.

(2) “Department” means the Oregon Department of Transportation (ODOT).

(3) “DM” means the ODOT District Manager or designee. DMs are responsible for highway maintenance, operations and issuing permits for use of Right of Way for all State highways within a specific geographic area or “District.”

(4) “General Provisions” means those provisions attached and made part of an issued Permit, which are generally applicable to all Permits. General Provisions are superior to any Standard or Special Provisions in a Permit if there is a conflict between them.

(5) “MUTCD” means Manual on Uniform Traffic Control Devices for Streets and Highways.

(6) “Oregon Temporary Traffic Control Handbook” means a guide for traffic control operations of three days or less based upon the MUTCD.

(7) “Pedestrian Activity” or “Activity” means any planned activity that brings together a community or group of people for an expressed purpose, including soliciting contributions, business, or interest from motorists using the highway provided the activity does not impede traffic or cause a traffic hazard.

(8) “Permit” means the application as a fully executed form signed, issued and controlled by the DM on behalf of the State of Oregon, Department of Transportation, and allowing Applicant to conduct a Pedestrian Activity and all provisions and exhibits attached to the Permit as deemed necessary by the DM. A Permit does not convey any land right or easement.

(9) “Right of Way” means the entire width of real property delineated by property lines along each side of the highway, including the paved surface, shoulders, ditches and other drainage facilities, and all other highway facilities or lands within the boundaries of the right of way lines used for the operation of the highway.

(10) “Special Provisions” means those specific provisions under the heading “Special Provisions” which when attached to are made part of, and are unique to, the Permit. Special Provisions are subordinate to General Provisions and superior to Standard Provisions, if they are in conflict.

(11) “Standard Provisions” means provisions with standard wording under the heading “Standard Provisions” which are attached to and made part of the Permit. Standard Provisions are subordinate to General Provisions and Special Provisions if they are in conflict.

Stat. Auth.: ORS 184.616, 184.619, and 814.070

Stats. Implemented: ORS 814.070

734-058-0030

Requirements for Permit Application and Issuance

(1) The DM may grant permission for a Pedestrian Activity on a state highway by way of a Permit issued under the authority of Division 58 rules. A Permit is not necessary for pedestrians meeting the requirements for proper positioning and proper proceeding along a highway under ORS 814.070(1).

(2) Application for a Permit must be made at least 30 days but not more than 180 days prior to the planned activity date. Only one Permit will be issued for any particular location and date. If more than one application is received for a particular location and date, the successful Applicant will be selected based on the date of the first complete application received. Permits may be issued for up to three (3) consecutive calendar days.

(3) To obtain a Permit the Applicant shall:

(a) Apply in writing to the DM that has authority over the location where the Pedestrian Activity is proposed to be held. The application shall be made on an Application and Permit for Pedestrian Activities on a State Highway, Form 734-2708;

(b) Obtain and submit with the application written confirmation from the city, when the state highway is within the city limits, that the Pedestrian Activity does not violate city ordinances; and

(c) Provide a description of the Pedestrian Activity stating all information pertinent to an understanding of the activity and as may be requested by the DM, including a drawing showing the roadways on which the activity will be held.

(4) The Pedestrian Activity shall only be conducted during day light hours, when no adverse road conditions such as snow or ice exist, when there is no roadway construction, and the location is where traffic would otherwise stop as a result of an established official traffic control device such as a traffic signal or stop sign.

(5) The DM may use information provided by the Applicant as well as other information, such as traffic data and accident history, available to the DM when determining whether the Applicant has met the following requirements, and will only issue a Permit when it has been determined that:

(a) The location selected by the Applicant to conduct the activity will be reasonable and will avoid adverse impacts to traffic safety and the operation and maintenance of the highway; and

(b) The location selected by the Applicant will provide for a safe and unimpaired use of the highway, taking into consideration sight distance and roadway geometry.

(6) The DM may deny issuing a Permit:

(a) When the Applicant has failed to comply with Permit provisions on previous Permits;

(b) If the Applicant has conducted activities on state highway Right of Way without a Permit;

(c) When it is in the best interest of the public for protection of the highway and the traveling public;

(d) When the Applicant is not in compliance with ORS 814.070 or Division 58 rules; or

(e) When the application is deemed by the DM to be incomplete.

(7) Permit provisions may be written by the Department and included with the Permit. Permit provisions may include General, Standard, and Special Provisions. Once received, should there be any questions about these provisions, Applicant shall, prior to beginning activity, contact the DM in writing and attempt to reach resolution of its questions. After 30-days of issuance of the Permit or upon commencement of the activity, whichever occurs first, the Permit provisions are deemed accepted by Applicant.

(8) An application is not a Permit until a copy of it, approved and signed by the DM, is furnished to the Applicant. No activities are to occur on highway Right of Way until the Applicant has obtained a valid Permit. The approved Permit must be physically present at the

activity site when the activity is being performed. The Permit shall be available to the DM or law enforcement personnel upon request.

Stat. Auth.: ORS 184.616, 184.619, and 814.070
Stats. Implemented: ORS 814.070

734-058-0040

Effective Period and Cancellation of Permit

(1) The Permit will be in effect for the period of time provided in the Permit. Permits are not transferable and may be cancelled by mutual consent of the parties. The Department may revoke a Permit for non-compliance with the terms of the Permit.

(2) The Permit will be voided and all privileges there under forfeited if the Applicant fails to commence the activity covered by the Permit within the period specified in the Permit, unless a written extension of time is obtained from the DM.

(3) The DM may cancel a Permit for cause, including, but not limited to, weather conditions, safety considerations, in emergencies (i.e., fire, accidents), failure of the Applicant to comply with the terms of the Permit, or operation of law. Cancellation may be issued in writing, or be verbal followed by written confirmation of the verbal cancellation.

(4) A revoked Permit within the previous three (3) years or repeated failure to comply with the terms of the Permit may result in the Applicant's forfeiture of privilege to apply for and to receive a Permit for Pedestrian Activity.

Stat. Auth.: ORS 184.616, 184.619, and 814.070
Stats. Implemented: ORS 814.070

734-058-0050

Liability and Control

(1) An Applicant shall be responsible and liable for all damage or injury to any person or property resulting from the Pedestrian Activity for which the Permit is issued. The Applicant shall indemnify and hold harmless the State of Oregon, the Oregon Transportation Commission, the Department, its officers, agents and employees against any and all damages, claims, demands, actions, causes of action, costs and expenses of any nature which they or any of them may sustain by reasons of the acts, conduct, or operation of Applicant, its agents, employees, or other individuals conducting Pedestrian Activities under the Permit.

(2) During any permitted activity, the activity area shall be protected in accordance with the MUTCD, and any safety and operations standards as amended or supplemented by the Oregon Transportation Commission in force at the time the Permit is issued. Traffic control devices in place continuously for three days or less at the same location must comply with the "Oregon Temporary Traffic Control Handbook" in force at the time the Permit is issued.

(3) While performing activities under the Permit, the Applicant shall wear, on the outside of all other garments, a safety vest meeting ANSI/ISEA High Visibility Safety Apparel Guidelines, or equivalent revisions, and labeled as ANSI 107-1999 or later for standard performance for class two risk exposure.

(4) The Applicant shall be bound by all applicable laws and rules of any government entity.

(5) The Applicant shall be responsible and liable for:

(a) Investigating presence or absence of any legally protected or regulated environmental, historical, or archeological resource(s) in the activity area;

(b) Determining and complying with any and all restrictions or requirements related to the proposed activities, including but not limited to those relating to hazardous material(s), water

quality constraints, wetlands, archeological or historic resource(s), state and federal threatened or endangered species, etc.;

(c) Complying with all federal, state, and local laws, and obtaining all required and necessary permits and approvals. If the Applicant impacts a legally protected/regulated resource, the Applicant shall be responsible for all costs associated with such impact, including, but not limited to all costs of mitigation and rehabilitation, and shall indemnify, defend, and hold harmless the State of Oregon, the Oregon Transportation Commission, the Department and its officers, agents, and employees against all damages, claims, demands, or actions of any nature arising out of the activities of the Applicant, its officers, contractors, subcontractors, agents, employees, or other individuals conducting Pedestrian Activities under the Permit.

(6) The Department or its employees shall not be responsible or liable for injury, damage, or loss sustained by the Applicant, its participants or the activity covered by the Permit as a result of Department maintenance and construction operations or resulting from motorist or road user operations, or Department contractor or other permitted operations, except injury or damage caused by the negligence of the Department or its employees.

(7) If highway facilities are damaged by the Applicant, the Applicant shall replace or restore the highway facilities to a condition satisfactory to the DM, whether discovered at the time of the activity or at a later date. The DM may require the Applicant to replace or restore the highway facilities to a condition satisfactory to the DM, or the DM may replace or restore the highway facilities by contractor or state forces and assess the costs incurred to the Applicant.

(8) No Permit will allow, or be interpreted as allowing vehicles to be parked, stopped or left standing, upon the state highway Right of Way in a manner that creates a hazard to motor vehicle traffic or interferes with the regular maintenance or operation of the roadway. Applicant shall move any of its vehicles if directed to do so by the Department or law enforcement personnel.

(9) Unless specifically authorized by a Permit, Applicant shall not place items including flags, banners, or pennants, other than official traffic control devices allowed in Division 58 rules, on or over the highway. Unauthorized items shall be removed at the direction of the Department or law enforcement personnel.

(10) Any review, supervision or control exercised by Department personnel shall in no way relieve the Applicant of any duty or responsibility to the general public nor shall such review, supervision or control relieve the Applicant from any liability for loss, damage or injury to persons or property as provided in the Permit or OAR Chapter 734, Division 58.

Stat. Auth.: ORS 184.616, 184.619, and 814.070

Stats. Implemented: ORS 814.070

734-058-0060

Insurance

The Applicant shall obtain and carry liability and property damage insurance policy or policies providing coverage against claims, demands, suits or actions for property damage, personal injury, or death resulting from any activities of Applicant, its officers, employees, agents or contractors in connection with the activity being conducted as authorized by the Permit. In addition, Applicant shall include as additional insured the State of Oregon, the Commission, the Department, and members thereof, its officers, agents and employees. The Applicant shall provide proof of coverage of a combined single limit of \$1,000,000. The insurance policy or policies shall be with an insurance company duly authorized and licensed to do business in the State of Oregon. There shall be no cancellation, material change, potential exhaustion of aggregate limits, or non-renewal of insurance coverage without thirty (30) days written notice from the Applicant or its insurer to the Department. When the Applicant is a

public body, self- insurance may be provided in lieu of liability and property damage insurance policy or policies. A copy of the certificate of insurance or self-insurance shall be submitted to and approved by the Department of Transportation, Office of Maintenance and Operations, 800 Airport Road, Salem, OR 97301 before any activity is commenced under the Permit.

Stat. Auth.: ORS 184.616, 184.619, and 814.070
Stats. Implemented: ORS 814.070

734-058-0070

Activity Details

(1) The Applicant shall advise the DM's office at least 48 hours in advance of commencing activity for which the Permit has been issued and within 48 hours of completion of the activity.

(2) The Applicant shall minimize the amount of debris, refuse and waste of all kinds on the highway Right of Way produced by activities of the Applicant. The Applicant shall remove any such debris, refuse or waste of any kind immediately upon completion of the activity, and restore the highway Right of Way to its pre-activity condition or better as determined by the DM.

(3) The Applicant shall minimize the amount of dirt or debris spread or tracked onto the highway from the activity area. The highway shall be cleaned of all dirt and debris at the end of each work day, or more frequently if so determined by the DM.

(4) The Applicant shall protect all existing highway features, including but not limited to the highway surface and structure, sidewalks and bicycle paths, bridges, signs, signals, pavement markers, guardrails and barriers, impact attenuators, drainage features, landscaping, and fences, from damage as a result of activity. The Applicant shall restore any damaged feature to the satisfaction of the DM whether discovered at the time of damage or at a later date. When planting is necessary to restore damaged landscape, the planting is subject to a plant establishment period of one year from the date of planting to ensure satisfactory growth of the planted materials. Unrepaired damage or unrestored features may be repaired or restored by the DM at the expense of the Applicant.

(5) Participation by or presence of individuals under 16 years of age at the activity site, other than in the regular pedestrian area of the roadway, is not allowed.

Stat. Auth.: ORS 184.616, 184.619, and 814.070
Stats. Implemented: ORS 814.070

734-058-0080

Coordination with Other Agencies

Nothing in the Permit is intended to grant rights or imply approval of activity in areas not falling within the authority and jurisdiction of the Department. It is the responsibility of the Applicant to determine the need for and to obtain such licenses, permits or other form of approval which may be required by other state agencies, federal agencies, cities or counties of Oregon, railroads, special Districts, or Indian Lands within the State.

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Stats. Implemented: ORS 814.070