

Bismarck Parks and Recreation District

Other Power-Driven Mobility Device Policy

I. INTRODUCTION

On September 15, 2010, the United States Department of Justice amended the regulations governing nondiscrimination on the basis of disability in state and local government services, effective March 15, 2011. 28 CFR § 35.137. This regulation requires public entities to permit use of wheelchairs and other manually-powered mobility aids by individuals with mobility disabilities and to make reasonable modifications to its policies to permit use of other power-driven mobility devices (OPDMD) by individuals with mobility disabilities in areas open to pedestrian use.

II. DEFINITIONS

- A. **Wheelchair** means “a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.” 28 CFR § 35.104.
- B. **Manually Powered Mobility Aids** means walkers, crutches, canes, braces, or similar device designed for use by individuals with mobility impairments.
- C. **Other Power-Driven Mobility Device (OPDMD)** means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway Personal Transporter or an electrical assisted bicycle (EAB), or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair, as defined herein (28 CFR § 35.104).
- D. **Credible Assurance** means a valid Disability Placard or Card presented by the person to whom it was issued and is in compliance with the state of issuance’s requirements for disability placards or cards (28 CFR § 35.137). Also, a verbal statement that does not contradict observation.

III. ELIGIBILITY

A. The operator or passenger of an OPDMD must be an individual with a mobility disability and, upon request of a staff or employee, must provide credible assurance that the OPDMD is required because of the individual’s mobility disability. Credible assurance may be provided by either of the following:

- 1. A valid, state-issued, disability parking placard or card or other state-issued proof of disability; or
- 2. verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability. BPRD staff or employees shall not ask an individual using an OPDMD about the nature and extent of the individual’s disability.

IV. PURPOSE

The purpose of this guideline is to address the use of OPDMDs by individuals with mobility disabilities on pathways or trails located on the following: (1) properties/facilities owned and operated by Bismarck Parks and Recreation District (BPRD) and (2) properties/facilities managed by BPRD under a lease, easement or use agreement. Information provided herein describes the types of OPDMDs that are authorized for use within BPRD facilities, pathways, and trails.

V. REQUIREMENTS

A. Any OPDMD operated in BPRD owned and operated properties/facilities; or properties managed under a lease; easement; or use agreement shall meet the following assessment factors to determine whether a particular OPDMD would be allowed in a specific area as a reasonable accommodation:

1. The type, size, weight, dimensions, and speed of the OPDMD;
2. The area's volume of pedestrian traffic;
3. The area's design and operational characteristics;
4. Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific area; and
5. Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment, natural or cultural resources, or occupants and visitor's safety.

B. Types of Prohibited Devices. The following devices are prohibited on BPRD's pathways, trails, and properties/facilities:

1. Gas or combustible fuel-powered devices because: (1) fuel leaks and/or sparks may result in pollution or fires on the largely grassy BPRD pathways, trails, and properties/facilities; and (2) exhaust and noise emissions from the devices will disturb or damage BPRD pathways, trails and properties/facilities natural or cultural resources or the out-of-doors experience for other park patrons, building occupants and visitors. These devices may be used by BPRD staff or employees only when necessary for operational and maintenance purposes.
2. Other types of Electric-powered devices, such as electric motorcycles and mopeds (except for EPAMDs and EABs), because of: (1) the typical high speeds at which these devices are driven; (2) the likely damage that will result to BPRD pathways, trails and properties/facilities surfaces from their tires (such as tractors, steel threads, or off-road); (3) some devices may only be permitted on roads or private property by State law; and (4) OPDMD with two or less wheels because they tip easily.
3. Size and dimensions of OPDMDs more than 36 inches wide because: (1) the width of many BPRD pathways and trails are less than 10 feet wide; and (2) OPDMDs wider than 36" are potentially dangerous to users coming from the opposite direction or from someone trying to pass the OPDMD from behind.

C. Speed of OPDMDs. For the safety of all individuals using BPRD pathways or trails, OPDMDs must be operated at the following speeds:

1. Typical walking speed-5 mph when operated inside BPRD properties/facilities or outdoor events.

D. Weight of an OPDMD may not support certain pedestrian routes or undeveloped areas due to natural features and could pose serious danger to the OPDMD operator or other persons on BPRD property/facility.

E. An OPDMD must be capable of being turned around within the trail or pathway tread in a safe manner.

F. The OPDMD shall not be operated in an unsafe manner or cause damage to BPRD property. The OPDMD operator assumes all risks of operating the OPDMD on BPRD property. BPRD does not represent that BPRD owned, operated, or managed properties are safe for use by an OPDMD and does not assume any liability for operation of the OPDMD. Certain risks are inherent in the use of OPDMDs on BPRD owned, operated or managed properties.

G. BPRD reserves the right to restrict OPDMD use during special events or during times of heavy traffic on BPRD pathways or trails, if such limitation is required, in the opinion of BPRD, to protect the public health, safety and welfare of BPRD patrons.

H. OPDMD operators are prohibited from the use of any substance that would impair their judgment or mobility, including but not limited to alcohol, prescription medications, or illegal narcotics.

I. BPRD shall not provide battery charging or emergency retrieval of the OPDMD.

J. BPRD shall not transport the OPDMD to and/or from BPRD property.

K. BPRD shall not store any privately-owned OPDMD.

L. Due to varying conditions on BPRD property and to ensure safety and natural resource protection, BPRD recommends that an OPDMD user contact BPRD at 701-222-6455 to confirm that an OPDMD is permitted on a particular trail or pathway.

M. The OPDMD operator or passenger is responsible for ensuring the OPDMD works properly, per manufacturer's instructions. The OPDMD operator is responsible to follow the manufacturer's operating and protective equipment requirements.

N. BPRD Parks-Multi-Use Trails or Pathways – Paved or Unpaved. This type of trail or pathway may be open to hikers, bikers, and/or equestrians.

1. Individuals with a mobility disability may use an OPDMD (as permitted by BPRD's OPDMD guidelines), wheelchairs and other manually-powered mobility aids.

2. Operators of permitted OPDMDs must yield the right-of-way to persons on foot, horseback, or non-motorized devices (e.g., bicycles) and announce their presence before passing another trail or pathway user.
3. An OPDMD must have the capacity to safely navigate trail and pathway features and obstructions such as steps and other vertical displacements, ponded water, loose gravel, and rocks. Characteristics of some types of OPDMDs could affect other pathway or trail users, based on the volume of traffic and operational characteristics of the pathway or trail. These pathways or trails are typically high capacity, two-way traffic areas, where width and speed restrictions must allow for safe passing of OPDMDs, bicycles, equestrians and pedestrians.

4. BPRD OPDMD Specifications:

- **Size**
 - OPDMD cannot be wider than 36” and not longer than 48”.
- **Weight**
 - The overall weight of the device and user shall not exceed 600lbs.
- **Speed**
 - OPDMD shall not be operated at speeds in excess of 5 miles per hour.
- **Noise**
 - OPDMD shall not produce noise levels in excess of 70 decibels.
- **Emissions**
 - OPDMD shall not exceed zero emissions during use.

5. BPRD Golf Courses. Persons with a mobility disability must use an accessible cart, wheelchairs, or other manually-powered mobility aids if the device is to be used for the purpose of golf recreation. Golf course paths are located in recreational settings that are not appropriate for other trail devices, such as bicycles, horses, or OPDMDs other than those suited/used for golfing use.

VI. UPDATES

1. BPRD may modify these guidelines from time to time as it may deem necessary or as required by law. It is the user’s responsibility to ensure that they are in conformance with these guidelines.
2. A copy of the most current OPDMD Guidelines will be available for public review upon request with the BRPD Main Office and shall be made available on the BPRD website www.bisparks.org