

Implementation of 28 CFR § 35.137

1. Introduction

The following addresses modifications to management policies so that individuals with mobility disabilities who utilize "other power-driven mobility devices (OPDMD)" may have access to areas open to pedestrian use where appropriate. The City of Colorado Springs is committed to providing opportunities that enable youth and adults with disabilities to participate in activities on the trails and open space areas maintained by Parks, Recreation & Cultural Services. The following outlines OPDMDs usage to ensure the continued safe use and enjoyment of recreational routes by a broad spectrum of the public. Information provided herein describes the types of OPDMDs that are authorized for use on City of Colorado Springs trail facilities, as well as the trails that are suitable for these devices. The City of Colorado Springs may modify the types of OPDMDs permissible on specific trails as necessary. Future evaluations of these guidelines will consider: technological and new device advancement, changes to public use, and impacts to natural and cultural resources. It is the user’s responsibility to ensure that they are in conformance with park, trail and open space rules and guidelines.

The information contained herein is intended only to provide guidance to assist Parks, Recreation, and Cultural Services (Parks) personnel in evaluating the use of Park property. The information contained herein does not, and is not intended to, constitute, or have the force and effect of, law or regulation, but is non-binding guidance only.

2. Definitions

Mobility Disability

A wide range of disabilities, including circulatory and respiratory disabilities that make walking difficult to impossible. Includes but is not limiting to those disabilities which result in diminished stamina. (Title II Regulations 2010 Guidance and Section-by-Section Analysis)

Wheelchair

A wheelchair is 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 (§ 35.104).

Electrical Assisted Bicycles (EAB)

An EAB device is a vehicle, with operable pedals, an electric chain assist motor not exceeding 750 watts, with a top speed of 20 miles per hour (CRS 42-1-102 (28.5)).

Electric Personal Assistive Mobility Devices (EPAMD)

An EAPMD device is a self balancing vehicle with two wheels not in tandem, that is powered solely by an electric motor not exceeding 750 watts, designed to transport one person (CRS 42-1-102 (28.7)).

Other Power Driven Mobility Devices (OPDMD)

An OPDMD device is 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. This includes, but is not limited to, electric assisted bikes (EABs), motorcycles, golf carts, electronic personal assistance mobility devices (EPAMDs), such as scooters, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. (§ 35.104).

Facility

All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, trails, parking lots or other real or personal property, including the site where the building, property, structure, or equipment is located. (§ 35.104)

3. Parks, Trails and Open Space Facility Assessment and Criteria for Use of OPDMDs

Individuals with mobility disabilities may use OPDMDs on designated City parks, trails and open spaces subject to the following safety requirements and criteria, which have been established pursuant to Federal regulations.

3(a) SAFETY REQUIREMENTS AND CRITERIA FOR USE OF OPDMDs

3(a)1. Persons with a mobility disability may use an EAB, EPAMD, wheelchair or manually-powered mobility aids on designated recreational routes. The class of motorized devices; including but not limited to, ATVs, golf carts or motorcycles are specifically prohibited. Any other class of OPDMD not specifically mentioned shall be evaluated by the City on a case by case basis. (See policy for Gas or Combustible Fuel Powered Mobility Devices and Golf Carts, Club Cars and Utility Vehicles)

3(a)2. In application of assessment factors (i, ii, iv and v): A permissible OPDMD shall be electric powered. The classes of OPDMDs that are gas or combustible fuel powered are not permitted in, on, or through facilities where use and operation of a gas or combustible fuel powered device is in conflict with land use regulations, management policies and/or conservation easement provisions prohibiting motorized vehicles or equipment. Gas or combustible fuel powered devices create substantial risk of harm to the environment or natural or cultural resources due to risk of fire and/or hazardous material spills. Furthermore, fuel powered devices pose legitimate safety concerns over their operation on, in or through parkland facilities due to volume and proximity of pedestrian and equestrian traffic, vehicle size, speed, noise and exhaust generated from such devices.

3(a)3. In application of assessment factor (v): EABs, EPAMDs, or OPDMDs shall stay on designated recreational routes and trails at all times. OPDMDs may not be used in areas subject to natural resource protection where such devices are in conflict with land use regulations, management policies and/or conservation easement provisions prohibiting motorized vehicles or equipment.

3(a)4. In application of assessment factors (i, iii and v): A maximum width for OPDMDs is 36 inches. An EAB, EPAMD or OPDMD should remain on trails and be capable of turning around within the trail tread in a safe manner. Persons with mobility disabilities may use EABs, EPAMDs, or OPDMDs that have a maximum **turning clearance diameter** equal to or less than the trail tread width they are traveling on. Additionally, EABs, EPAMDs, or OPDMDs are permitted only where one or two-way traffic would not effectively cause off trail use and harm natural resources when allowing passage of a mobility device.

3(a)5. In application of assessment factors (i, iii and v): A maximum weight for an EAB, EPAMD or OPDMD is 150 lbs. Devices with weights above 150 lbs pose substantial risk of serious harm to the immediate environment and park facilities.

3(a)6. In application of assessment factors (i, ii and iii): The user of the mobility device shall abide by safe speed regulations and must have operational brakes or stopping mechanism in order to control speeds. When other users are present on a trail, a safe speed for a mobility device is deemed to be the average speed at which other users are traveling on the trail. In general, the maximum speed when other users are present is 5 mph. When other users are not present the maximum speed for a power driven device is 15 mph.

3(a)7. In application of assessment factors (ii, iii, iv and v): On Tier 3, rough-surface or single track trails, an EAB, EPAMD or OPDMD must have the capacity to safely negotiate trail features and obstructions, including but not limited to steps and other vertical displacements, water dams, loose gravel, and rocks without creating substantial risk of serious harm to the immediate environment, other users or the operator of the device. Other power driven mobility devices are permitted on trails with grades (slopes) of 12% or less. Persons operating EAB, EPAMD or OPDMD shall consult with park staff to determine appropriate or designated routes.

3(a)8. In application of assessment factors (iii, iv and v): When appropriate, persons with a mobility disability may use EPAMD devices in indoor facilities in which pedestrians are allowed, unless, the device does not meet the aforementioned safety requirements and criteria and cannot be operated safely without risk of serious harm to cultural resources, other users or the operator of the device.

3(a)9. To prohibit the use of a class of OPDMD, in, on or through a particular facility; including but not limited to trails, buildings, restrooms, parks and open space, an assessment shall be conducted by City staff and documented with the conclusion determining restrictions, safe use and operation of the class of devices based on the assessment factors outlined in 28 CFR § 35.137 and the criteria herein. (See attached Assessment Policy)

3(a)10. By adopting these guidelines the City of Colorado Springs Parks, Recreation and Cultural Services is not representing that facilities, such as parks, trails and open space areas are safe for use by an EAB, EPAMD or OPDMD and it is not assuming any liability. Certain risks are inherent in the use of parkland facilities and all users must exercise reasonable care.

3(b) RECREATIONAL ROUTES

Recreational routes are based on the three-tiered trail system offered for recreational purposes. All other power driven mobility devices are permitted in parks, cultural areas, or open spaces on designated routes only.

3(b)1. Tier 1 and Tier 2 trails

- a. Tier 1 and Tier 2 multi-purpose trails that comply with ADA requirements where possible in trail design as well as in associated facilities.
- b. Tier 1 and 2 trails are designed for multiple-use and can accommodate a variety of EAB, EPAMD, wheelchair and other manually powered mobility aids. All OPDMDs that meet the safety requirements and criteria outlined above can be used on these trails.

3(b)2. Tier 3 Trails

- a. Tier 3 trails are less improved trails located in natural areas, open spaces, mountains or foothills and range from narrow single track to six foot widths and have no shoulders. OPDMDs are allowed on designated safe routes which includes but is not limited to trails with 12% grade or less and where one or two-way traffic would not effectively cause off trail use.
- b. Characteristics of OPDMDs must meet safety requirements and criteria outlined above and not create a substantial risk of significant harm to the trail, surrounding natural environment, operator or other users.

3(c) INQUIRY INTO A DISABILITY

A City of Colorado Springs Parks, Recreation and Cultural Services employee or volunteer inquiring as to the use of an OPDMD shall comply with the following:

3(c)1. An employee or volunteer shall not ask a person using an EAB, EPAMD or OPDMD questions about the nature and extent of the person's disability.

3(c)2. An employee or volunteer may ask a person using a power driven device to provide a credible assurance that the OPDMD is required because of the person's mobility disability.

3(c)3. An employee or volunteer shall accept the presentation of a valid, State-issued disability parking placard, card, or other State-issued proof of disability as a credible assurance that the use of the OPDMD is for the person's mobility disability. A "valid" disability placard or card is one that the person to whom it was issued can produce registration documentation and is otherwise in compliance with the State of issuance's requirements for disability placards or cards. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, the employee or volunteer shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.

3(c)4. If an EAB, EPAMD or OPDMD is being operated outside of the safety requirements or assessment criteria outlined above, an employee or volunteer may request the individual to stop using the EAB, EPAMD or OPDMD and have the operator remove the device from city facilities. If an individual fails to comply the proper policing authority will be called to assist in enforcement.

OTHER

3(c)5. If a member of the public has questions regarding these policies, including trail suitability for an OPDMD or to confirm that an OPDMD meets specified guidelines and is permitted on a particular trail, he or she may contact Parks, Recreation & Cultural Services at (719) 385-5940.

3(c)6. All users must exercise reasonable care and be aware of the inherent risks associated with partaking in recreational activities.

4. Assessment Procedures

A class or subclass of OPDMDs shall be evaluated or “reasonable modifications” to policies, practices, or procedures may be made to permit or deny the use of other power driven mobility devices. Upon request by City personnel or the general public the following assessment shall take place. The product of an assessment shall be documented and made available to the public pursuant to the Department of Justice regulation concerning use of a class of mobility devices in, on or through Colorado Springs Parks, Recreation and Cultural Services’ facilities.

4(a) ASSESSMENT PROCESS

4(a)1. Description and category of the facility for the purposes of applying the assessment factors outlined in 28 CFR§ 35.137 and the City of Colorado Springs Guidelines for Use of “Other Power Driven Mobility Devices” in Parks, Trails and Open Space Areas.

4(a)2. Describe and classify the power driven mobility device(s) for the purposes of applying the assessment factors. Classes will be based on characteristics of the device (e.g., power source, weight, height, speed, etc.) and not the name given to the device (e.g., “ATV”)

4(a)3. The following assessment factors and City of Colorado Springs Guidelines for Use of “Other Power Driven Mobility Devices” in Parks, Trails and Open Space Areas are used to determine if classes of OPDMDs are appropriate for the given facility. If any of the answers contradict the assessment factors then the policy may deny the use of the class, of power driven mobility devices in or on park facilities.

Assessment factors shall consider:

- (i) Does the type, size, weight, dimensions, and speed of the device meet criteria;
 - a. 36” wide or less
 - b. Vehicle weight of 150 pounds or less
 - c. Speeds can be controlled to levels of 0-15 mph
 - d. Maximum **turning clearance diameter** equal to or less than the particular type of facility being evaluated
 - e. Electric powered
 - f. Operational brakes or stopping mechanisms
- (ii) Is the device appropriate for the facility’s volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (iii) Are the facility’s design and operational characteristics conducive to the safe operation of an OPDMD. Consideration may include but is not limited to:
 - a. Services
 - b. Programs
 - c. Is activity conducted indoors
 - d. Dimensions of facility; including but not limited to trail width, slopes, square footage, etc.
 - e. Density and placement of stationary objects or obstacles
 - f. Availability of storage for the device; if requested
- (iv) Can legitimate safety requirements be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Does the use of the other power-driven mobility device create a substantial risk of serious harm to the immediate environment or natural or cultural resources, or pose a conflict with Federal, State or Municipal land management laws, conservation easements and/or other regulations.

4(a)4. Determine, for any category of mobility devices, that the policy will allow or disallow its use and operation at a type of facility. Restrictions, if any, will be determined to ensure safety and mitigate harm to the immediate environment or users (e.g., speed limits, noise restrictions, hours of operation, etc.).

4(a)5. Documentation of steps 1-4 will be provided to the public.

4(a)6. Notices of changes to the policy, what OPDMDs are permitted/prohibited relative to facilities and any restrictions will be posted on the City's website or provided upon request.

5. Policy for Gas and Combustible Fuel Mobility Devices

The City of Colorado Springs Parks, Recreation and Cultural Services (Parks) recognizes that some persons with mobility impairments are utilizing motorized or power driven forms of transportation as their preferred means of locomotion. Parks is committed to making all reasonable efforts to make its facilities accessible to persons with disabilities. This policy covers facilities under the operation and management of Parks. It does not cover other jurisdictional facilities or those privately-owned or leased. Parks will continue to comply with accessibility standards outlined in the Americans with Disabilities Act (ADA). The information contained herein is intended only to provide guidance to assist Parks, Recreation, and Cultural Services (Parks) personnel in evaluating the use of Park property. The information contained herein does not, and is not intended to, constitute, or have the force and effect of, law or regulation, but is non-binding guidance only.

5(a) ASSESSMENT STEPS

The following is a policy on the prohibited use of devices that use gas or other combustible fuel as a power source in, on or through particular park, trails and open space facilities. This includes but is not limited to devices such as ATV's, motorcycles, RUVs, minibikes and motorized scooters.

5(a)1. Description and Category of Facility:

For the purpose of this assessment the following facilities are being evaluated:

All trails associated to Park's inventory

All developed and undeveloped parks, complexes and open space areas

Structures, such as storage buildings, restrooms, etc.

What is not included in policy assessment:

Parking lots and roadways – the established routes or facilities used to circulate or store motorized vehicles.

5(a)2. Class of Other Power Driven Mobility Device

Gas or combustible fuel powered transportation devices.

5(a)3. The following assessment factors apply:

Does the type, size, weight, dimensions, and speed of the device meet criteria;

- a. 36" wide or less – many devices in this category are wider than 36" and would not be permitted.
- b. Any vehicle over 150 pounds would not be allowed.
- c. Maximum **turning clearance diameter** equal to or less than the particular type of facility being evaluated – many devices could not make single point turns within specific trail trends, especially single track or Tier 3 trails.
- d. Electric powered – not electric powered.

Are the facility's design and operational characteristics conducive to the safe operation of an OPDMD? Consideration includes but is not limited to:

- a. Is activity conducted indoors – gas or combustible fuel powered devices are not appropriate for indoor use due to air quality concerns, restrictive square footages and noise.
- b. Programmed uses- on trails, other facility users include pedestrians, equestrians and manually powered cyclists. Width, and in some cases and noise produced by such devices, pose legitimate safety risks and experience issues.

Does the use of the other power-driven mobility device create a substantial risk of serious harm to the immediate environment or natural or cultural resources, or pose a conflict with Federal, State or Municipal land management laws, conservation easements and/or other regulations.

Several factors make gas and combustible fuel powered devices inappropriate for park facilities. One, width and power of devices pose substantial risk to trail facilities, natural and cultural resources. Secondly, many open space parcels are under management policy and/or conservation easements that do not allow the use of motorized vehicles on or off trail. Lastly, there is an increased risk of fire or hazardous material spills.

5(a)4. Determination and Restrictions: OPDMDs using gas or combustible fuel sources are not permitted in on or through the evaluated park facilities.

6. Policy for Golf Carts, Club Cars and Similar Utility Vehicles

The City of Colorado Springs Parks, Recreation and Cultural Services (Parks) recognizes that some persons with mobility impairments are utilizing motorized or power driven forms of transportation as their preferred means of locomotion. Parks is committed to making all reasonable efforts to make its facilities accessible to persons with disabilities. This policy covers facilities under the operation and management of Parks. It does not cover other jurisdictional facilities or those privately-owned or leased. Parks will continue to comply with accessibility standards outlined in the Americans with Disabilities Act (ADA). The information contained herein is intended only to provide guidance to assist Parks, Recreation, and Cultural Services (Parks) personnel in evaluating the use of Park property. The information contained herein does not, and is not intended to, constitute, or have the force and effect of, law or regulation, but is non-binding guidance only.

6(a) ASSESSMENT STEPS

The following is a policy on the prohibited use of devices in the Golf Cart, Club Car or Utility Vehicle class of OPDMDs in, on or through particular park, trails and open space facilities. This includes but is not limited to devices such as golf carts, golf cars, club cars, single or multiple occupancy personal utility vehicles.

6(a)1. Description and Category of Facility:

For the purpose of this assessment the following facilities are being evaluated:

All trails associated to Park's inventory

All developed and undeveloped parks, complexes and open space areas

Structures, such as storage buildings, restrooms, etc.

What is not included in policy assessment:

Parking lots and roadways – the established routes or facilities used to circulate or store motorized vehicles. It is up to the operator of the OPDMD to ensure it is legal to be operated on roadways.

6(a)2. Class of Other Power Driven Mobility Device

Gas or Electric golf carts, club cars or utility vehicles

6(a)3. The following assessment factors apply:

Does the type, size, weight, dimensions, and speed of the device meet criteria;

- a. 36" wide or less – average width is 4 ft
- b. This class of OPDMDs are over 150 pounds
- c. Maximum **turning clearance diameter** equal to or less than the particular type of facility being evaluated – average 18' to 25' which is wider than Tier 1-3 trail tread width
- d. Electric powered – model dependant – combustible fuel models would not be allowed pursuant the Gas and Combustible Fuel Mobility Device policy

Are the facility's design and operational characteristics conducive to the safe operation of an OPDMD? Consideration includes but is not limited to:

- a. Programmed uses- other facility users include pedestrians, equestrians and manually powered cyclists. The widths of such devices pose legitimate safety risks and experience issues.
- b. Is activity conducted indoors – the size of this class of OPDMD's is not appropriate or safe for indoor facilities such as restrooms.
- c. Dimensions of facility; including but not limited to trail width, slopes, square footage, etc. – the inventory of trails in the park system are not wide enough to accommodate the turning clearance diameters of this class of devices. Additionally, because of device width, safe passage, within the trail tread, of one-way and two-way traffic is at risk on narrow trail systems.

Does the use of the other power-driven mobility device create a substantial risk of serious harm to the immediate environment or natural or cultural resources, or pose a conflict with Federal, State or Municipal land management laws, conservation easements and/or other regulations.

Several factors make golf cart devices inappropriate for park facilities. One, the width and limited turning clearance diameter of devices pose substantial risk to trail facilities, natural and cultural resources if and when they are operated outside of the trail tread. Secondly, many open space parcels are under management policy and/or conservation easements that do not allow the use of motorized vehicles on or off trail.

6(a)4. Determination and Restrictions: OPDMDs in this device class are not permitted in on or through the evaluated park facilities.