

OPINION



the Astorian

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Founded in 1873

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GUEST COLUMN

Rule is ‘freaking out’ residents

Who writes the laws in Oregon? The Legislature, the governor or state agencies? Many Oregonians appear “freaked out” by what they see as the de facto answer: state employees, not legislators.

Under the Oregon Constitution, the sole authority to make law rests with the 90-member Legislature. State agencies then write administrative rules to carry out the law. Some legislators, particularly Republicans, have long contended that such rules often exceed the Legislature’s intent.

And in this case, the agency regulations implement Gov. Kate

Brown’s pandemic-related executive orders.

What Republicans say has people freaking out is the Oregon Occupational Safety and Health Administration’s new permanent rule requiring face masks and other COVID-19 protocols at workplaces. More than 70,000 people signed a petition against the rule, which took effect May 4.

This probably boils down to whether people trust their state government and the Brown administration. The lawyerly language in the rule certainly does provide room for worry.

“It’s a confusing process for people back home, and the word ‘permanent’ really is scary,” said state Rep. Daniel Bonham, R-The Dalles.

Oregon OSHA had adopted a temporary rule last year to enforce Brown’s executive orders. However, a temporary rule is limited to 180 days. Thus, the agency went through its regular process for adopting a permanent rule whose provisions “remain in effect until revised or repealed.”

When will that be? No one knows.

Rep. Bill Post, R-Keizer, said, the word “permanent” makes it sound as if the Oregon OSHA rule will live forever, and people are “freaking out.”

The rule promises of itself, “Oregon OSHA will repeal the rule when it is no longer necessary to address that pandemic.”

It goes on to state, “Because it is not possible to assign a specific time for that decision,” the agency will consult with specific advisory committees, the Oregon Health Authority and stakeholders “as circumstances change to determine when all or part of the rule can be appropriately repealed.” The first discussions are to take place by July and then every two months.

Yet science could move faster than state bureaucracy. As an example, the federal Centers for Disease Control and Prevention announced Thursday that fully vaccinated individuals don’t need to wear a mask or physically distance in most circumstances — unless required by state, local or tribal laws.

Late Thursday afternoon, Brown announced that she was modifying some



Hailey Hoffman/The Astorian

Oregon has a permanent rule on masks and other protocols for businesses in response to the coronavirus pandemic.

EMPLOYERS WHO DELIBERATELY, SERIOUSLY FLOUTED REGULATIONS — MULTIPLE TIMES IN SOME CASES — HAVE BEEN FINED \$8,900 TO \$126,749. FEW OF SUCH FINES HAVE BEEN PAID. MOST ARE BEING CONTESTED BY THE EMPLOYERS.

state requirements in light of the CDC recommendations. House Republican Leader Christine Drazan, of Canby, also wrote to Brown, asking that the changes be incorporated into the Oregon OSHA rule.

Drazan and other Republican legislators had tried to have Oregon OSHA officials testify about the rule. But that is outside the Legislature’s purview, according to legislative lawyers and Rep. Paul Holvey, D-Eugene, who chairs the House Business and Labor Committee.

Agency rules are a recurring controversy. Some lawmakers and lobbyists, particularly ones representing business and industry, want the Legislature to have a say over agency rules. Legislative lawyers say the law allows legislators to consider only whether an agency has the authority to make a rule and whether that rule complies with the constitution.

The Oregon OSHA permanent rule met both requirements, the lawyers said. Even if they had found severe prob-

lems, the lone recourse would be going to court.

“Nothing the Legislature does in this process could invalidate the rule or stop it from becoming permanent,” Marisa James, a senior deputy legislative counsel, told the committee.

She said it would be a violation of the separation of powers — among the legislative, executive and judicial branches of government — for the Legislature to interfere with administrative rule-making.

“Each branch has a job to do, and they don’t interfere with the job of the other branches. The Legislature makes the law, and the agencies implement those laws through rule-making,” James said. “It’s good for the Legislature to have information on what the agency has done to see if the Legislature needs to amend the law or change the rule-making authority that’s in the law. But that’s not intended to have the Legislature delay or prevent the agency from engaging in rule-making.”

Holvey said that was why he did not ask Oregon OSHA officials to participate in the committee discussion, much to the dismay of Republicans.

“OSHA not being here today, to me shows the public they are too big, they are too powerful, to be concerned with the hundreds of thousands of Oregonians that are absolutely dismayed with this rule-making process,” said Rep. Shelly Boshart Davis, R-Albany.

Where do the fines go? Oregon OSHA has received more than 23,000 workplace complaints since the pandemic arrived and has issued more than 150 citations to employers.

Employers who deliberately, seriously flouted regulations — multiple times in some cases — have been fined \$8,900 to \$126,749. Few of such fines have been paid. Most are being contested by the employers.

The fines issued for nonwillful but serious violations have ranged from \$100 to \$4,200. About three-quarters of those fines have been paid.

A reader wondered what happens to the fines when they are collected. I asked agency representative Aaron Corvin. Under state law, the money goes into the Premium Assessment Operating Account, which pays for workers’ compensation-related operations, including Oregon OSHA. Corvin said the total penalties typically make up less than 2.5% of the fund revenue.

Dick Hughes has been covering the Oregon political scene since 1976.

LETTERS TO THE EDITOR

Inspiration

I wrote the following to inspire our sales crew, and I thought in these difficult times it might offer some inspiration for others — especially for young people just graduating:

This is going to be a great day. For I am going to picture in my mind the positive outcome of a predetermined plan.

And, I am going to be so committed to a positive purpose, that it will propel me with power and propensity to the very peak of my potential.

I was born to succeed. I will succeed. I am succeeding. Today is my moment, and now is my story.

By the grace of God.

JIM BERNARD
Warrenton

Clear manipulation

I read a letter to the editor remarking on the quality of the stewardship of the current Sunset Empire Park and Recreation District Board. I must say I was surprised to see someone repeat the dog and pony show the park district’s Melissa Ousley was touting regarding a survey showing support for the purchase of Broadway Middle School for being 65%.

I am in receipt of an email we received from a request regarding all correspondence related to the SEPRD board and the purchase of the former middle school.

This is an email on Sept. 1, 2020, from Celeste Bodner, a board member, to Ousley on how to word the survey so respon-

dents would answer the questions in the positive: “Question style. I suggested using the matrix-style/multi-choice system because I think it’s more likely to end up with a higher percentage/result for ‘X’ are supportive (somewhat or highly) of additional space or facilities improvement for child care’ ...”

“Q9 ... I created this because a positive response could yield a quote such as ‘75% of all respondents indicate it is important to keep the BMS property as a public-owned asset.’”

I believe this is a clear manipulation of the survey to get the results SEPRD wanted and not what was intended by the people who responded to the survey. Transparency for SEPRD created a graph showing a majority of the respondents writing letters were not in favor of the purchase. This was a true result.

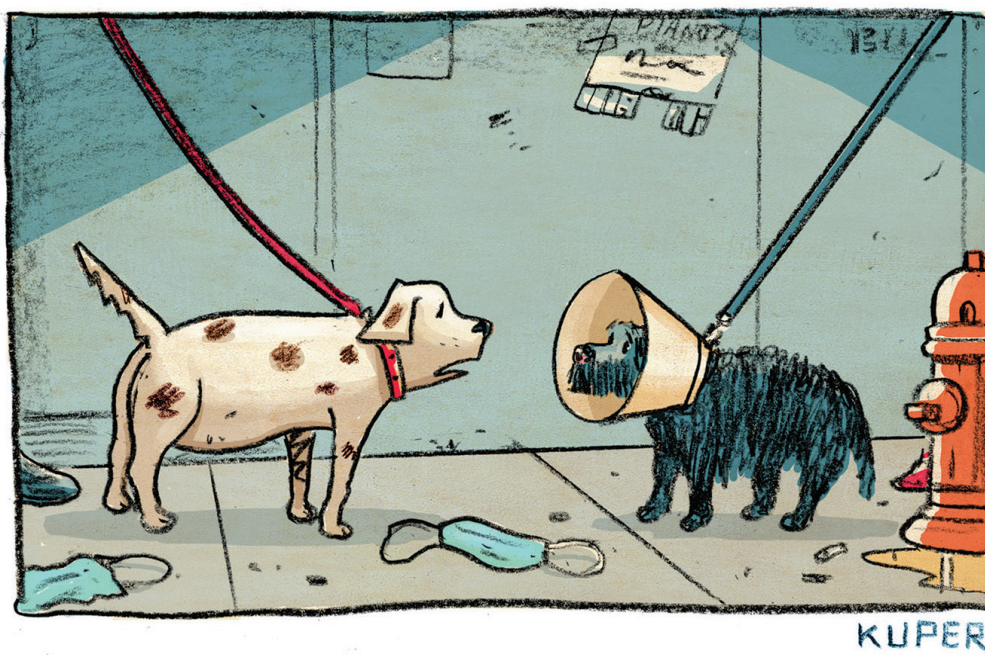
STEPHEN MORRISON
Seaside

What is Warrenton?

What is Warrenton, really? Warrenton is everywhere, and it is nowhere, and today it is what Clatsop County was.

The county is virtually unrecognizable, except for the stadiums. Tourism, and stumps; that’s what the county is all about. This county has been hollowed out by tourism, and the void filled with visitors who never leave. Tourism is the ascendant extractive industry. When there is nothing left to sell, we sell the vapors.

The Warrenton city fathers (a gratu-



“No, the C.D.C. didn’t lift that mandate, even if you’ve had your shots.”

itous paternal trope) are not blind. They are swimming against the tide, but they realize nostalgia has value. Up with nostalgia. They are very aware of the commotion that tourism produces.

There are always more costly quality-of-life issues for the localities which have embraced the mob, but rewards for the locals who have been saddled with them. I write to celebrate a municipality that recognizes this.

Downtown Warrenton is still relatively quiet. Keep it that way. Protect your core; protect your fine old landmarks, those trees lining S. Main Avenue, from the high school

to the post office.

Protect your affordable housing inventory, before you become dependent on a room tax to provide more revenue to manage the crowds. Remember, by law, bed taxes must be shared with the tourism industry. Bed taxes make you complicit in our misery.

Clamp down on vacation rental schemes before they take root. If you don’t take lessons from the mistakes of every other city in “Clapshot” County, you will be doomed to repeat them.

GARY DURHEIM
Seaside