

ORDINANCE NO. 2383

AN ORDINANCE AMENDING TITLE 3, RIGHTS-OF-WAY AND CITY PROPERTY, OF THE BEND MUNICIPAL CODE TO CREATE A NEW CHAPTER 3.100, LIABILITY LIMITED FOR THE CITY OF BEND AND OTHER PARTIES FROM PRIVATE CLAIMS RESULTING FROM USE OF TRAILS IN A PUBLIC EASEMENT OR UNIMPROVED RIGHT-OF-WAY UNDER ORS 105.668

Recital

- A. ORS 105.668(2) limits certain lawsuits against cities, adjacent property owners, and certain nonprofit groups and their volunteers that arise from the use of trails or structures in public easements or unimproved rights of way.
- B. The immunities from liability contained in ORS 105.668(2) apply only to cities with a population of 500,000 or more.
- C. ORS 105.668(3) authorizes cities with populations of less than 500,000 to opt into the immunities provided in ORS 105.668(2) by adoption an ordinance or resolution.
- D. Trails, which are referred to as "multi-use trails" in the Bend Municipal Code, located within public easements and rights-of-way are an important public amenity that support a healthy community.
- E. The City recognizes the Bend Park and Recreation District's (BPRD) Urban Trails Map, as represented in BPRD's Comprehensive Plan, and requires dedication of these trails as part of new development and capital transportation projects wherever possible. BPRD is generally responsible for maintenance and operation of this trail system.
- F. City believes it is important to protect and support the activities of City, private parties, community groups, and volunteers that make the trails available for public use.
- G. City desires to adopt the immunities from liability provided under ORS 105.668 to further the public interest by protecting and supporting efforts and activities of City, BPRD, property owners, and parties that create and maintain trails and make such trails available for public use.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1.** The Bend Municipal Code is amended by creating a new Chapter 3.100 to Title 3, Rights-of-Way and City Property, to read as shown on the attached Exhibit A.
- Section 2.** If any provision, section, phrase, or word of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid

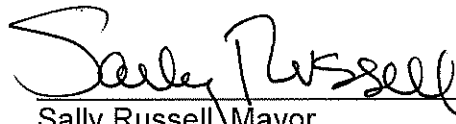
provision or application.

Section 3. All other provisions of the Bend Municipal Code Title 3 remain unchanged and in full effect.

First Reading Date: August 5, 2020

Second Reading and adopted by roll call vote on August 19, 2020.

YES: Sally Russell, Mayor NO: none
Bruce Abernethy
Barb Campbell
Bill Moseley
Justin Livingston
Gena Goodman-Campbell
Chris Piper


Sally Russell, Mayor

ATTEST:


Robyn Christie, City Recorder

Approved as to form:

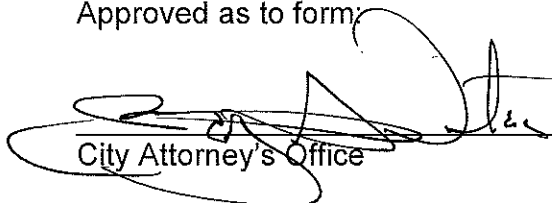

City Attorney's Office

Exhibit A

Title 3

RIGHTS-OF-WAY AND CITY PROPERTY

Chapter 3.100

LIABILITY LIMITED FOR THE CITY OF BEND AND OTHER PARTIES FROM
PRIVATE CLAIMS RESULTING FROM USE OF TRAILS IN A PUBLIC EASEMENT
OR UNIMPROVED RIGHT-OF-WAY UNDER ORS 105.668

3.100.010 Definitions

As used in this chapter, the following definitions apply:

- A. **Public easement** means a platted or dedicated easement for public access that is accessible by a user on foot, horseback, bicycle or other similar conveyance, but does not include a platted or dedicated public access easement over private streets.
- B. **Structures** means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, horseback, bicycle or other nonmotorized vehicle or conveyance.
- C. **Trail** means a travel way for pedestrians and bicycles that is separate from automobiles, and includes a multi-use path or multi-use trail as defined in Bend Development Code Chapter 1.2, but does not include a bike lane, shoulder bikeway, or shared roadway.
- D. **Unimproved right-of-way** means a platted or dedicated public right-of-way over which a street, road or highway has not been constructed to the standards and specifications of the city with jurisdiction over the public right-of-way and for which the city has not expressly accepted responsibility for maintenance, but does not include a platted private street.

3.100.020 Liability Limited

A. A personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, or from use of structures in a public easement or unimproved right-of-way, by a user on foot, on a horse, on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

1. The City of Bend;
2. The City of Bend's officers, employees or agents to the extent the officers,

employees or agents are entitled to defense and indemnification under ORS 30.285;

3. The owner of land abutting the public easement or unimproved right-of-way; or

4. A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right-of-way.

B. The immunity granted by this section from a private claim or right of action based on negligence does not grant immunity from liability:

1. Except as provided in subsection (A)(2) of this section, to a person that receives compensation for providing assistance, services or advice in relation to conduct that leads to a personal injury or property damage.

2. For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct.

3. For an activity for which a person is strictly liable without regard to fault.