



RESOLUTION NO. 3462

A resolution of the City Council rejecting tender of defense of Dr. Clayton Garthe and Central Oregon Emergency Physicians LLC

Findings

- A. On July 31, 2025, a lawsuit was filed in the United States District Court for the District of Oregon, Civil Case No. 6:25-cv-01341-AA, entitled *Angela Connolly, et.al. v. City of Bend, et. al.* The lawsuit is based in part upon the conduct of Dr. Clayton Garthe and Central Oregon Emergency Physicians LLC when Dr. Garthe performed a physical examination of Plaintiff A.C. on December 17, 2023.
- B. On October 14, 2025, Dr. Garthe and Central Oregon Emergency Physicians LLC submitted a written request pursuant to ORS 30.285 (1) to the City of Bend requesting that the City of Bend defend, save harmless and indemnify them, alleging that they were acting as the agents of the City of Bend and within the scope and performance of their duties as the City's agent(s).
- C. After review of an investigation done by the trial counsel defending the lawsuit on behalf of the City of Bend, the Office of the City Attorney for the City of Bend, on behalf of the City of Bend, directed trial counsel to reject the tender. Thereafter, on October 24, 2025, a letter was sent to the attorneys for Dr. Garthe and Central Oregon Emergency Physicians LLC rejecting the tender.
- D. On November 11, 2025, the attorney for Dr. Garthe and Central Oregon Emergency Physicians LLC requested by letter that the City of Bend reconsider the rejection of their tender and they further requested that the City of Bend agree to toll the statute of limitations on any claim or action by Dr. Garthe and/or Central Oregon Emergency Physicians LLC against the City of Bend in which they could assert their rights to indemnity and recoupment of the costs of defense to which they believe that they are entitled under the law.
- E. The City Council, having reviewed the investigation and receiving legal advice during executive session on January 7, 2026, wishes to formally reject the tender of defense.

Resolution

Based on these findings, the City Council of the City Of Bend resolves as follows:

1. The City Council finds that Dr. Garthe and Central Oregon Emergency Physicians LLC were not the agents of the City of Bend and were not acting within the scope and performance of any duties as agents of the City of Bend.



2. The City Council finds that the obligations of the City under ORS 30.287 have been superseded as allowed by ORS 30.287 (5) by the fact that the City of Bend obtained insurance to provide coverage for any officer, employee or agent of the City of Bend.
3. The City Council pursuant to ORS 30.287 (1) rejects the tender of defense of Dr. Garthe and Central Oregon Emergency Physicians LLC as to the original tender and as to the request for reconsideration.
4. The City Council ratifies and approves the decision of the City Attorney's Office in rejecting the tender of Dr. Garthe and Central Oregon Emergency Physicians LLC on or about October 24, 2025.
5. The City Council declines to toll the statute of limitation as requested by Dr. Garthe and Central Oregon Emergency Physicians LLC.

Adopted by the Bend City Council

February 18, 2026

Yes: Kebler, Franzosa, Méndez, Norris, Perkins, Platt, Riley

No:

Melanie Kebler, Mayor

Attest:

Ashley Bontje, City Recorder

Approved as to form:

Ian Leitheiser, City Attorney