

CITY OF WHEELER

RESOLUTION NO. 2024-04

A Resolution Establishing Immunity from Certain Personal Injury or Property Damage Claims Describe in House Bill 2865

WHEREAS, The City Council of the City of Wheeler finds that the Oregon Legislature enacted House Bill 2865 in its 2011 Regular Session; and

WHEREAS, House Bill 2865 limits private claims or rights of action based on negligence for personal injury or property damage resulting from use of a trail that is in public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or on a bicycle or other non-motorized vehicle or conveyance; and

WHEREAS, The City Council finds that House Bill 2865 applies automatically to cities with a population of 500,000 or more and allows cities with a lesser population to opt in to limit liability in the manner established by the law; and

WHEREAS, The City Council finds that the City of Wheeler will limit its liability from certain claims by opting in to the immunity provided for in House Bill 2865; and

NOW THEREFORE, IT IS HEREBY RESOLVED that the City Council of the City of Wheeler hereby adopts the following:

1. The City of Wheeler, on behalf of its officers, employees and agents, hereby opts to limit its liability with respect to personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right-of-way, with respect to claimants who may be a user on foot, on a horse or on a bicycle or other non-motorized vehicle or conveyance.
2. The City of Wheeler further opts to extend the immunity contained in Section 1 of this resolution to:
 - a. The owner of land abutting the public easement in the city, and unimproved right-of-way in the City; and
 - b. 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 in the city.

This Resolution shall become effective immediately upon passage by the City Council.

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ADOPTED by the City Council on this ____th day of ____ 2024, by the following vote:

CITY COUNCIL

WHEELER, OREGON

Aye

Nay

Absent / Abstain

Karen Matthews, Councilor

Deanne Ragnell, Councilor

Gordon Taylor, Councilor

Heidi Stacks, Councilor

Walt Porter, Councilor

Clif Kemp, Mayor

Pax Broder, Recorder

Enrolled
House Bill 2865

Sponsored by Representative GARRETT; Representative GREENLICK, Senator BURDICK (Presession filed.)

CHAPTER

AN ACT

Relating to landowner liability for public use of land.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Structures" means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.

(b) "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.

(2) A personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or 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:

(a) A city with a population of 500,000 or more;

(b) The officers, employees or agents of a city with a population of 500,000 or more to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in a city with a population of 500,000 or more; or

(d) 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 in a city with a population of 500,000 or more.

(3) Notwithstanding the limit in subsection (2) of this section to a city with a population of 500,000 or more, by adoption of an ordinance or resolution, a city or county to which subsection (2) of this section does not apply may opt to limit liability in the manner established by subsection (2) of this section for:

(a) The city or county that opts in by ordinance or resolution;

(b) The officers, employees or agents of the city or county that opts in to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in the city or county that opts in by ordinance or resolution; and

(d) 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 in the city or county that opts in.

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

(a) Except as provided in subsection (2)(b) or (3)(b) 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.

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

(c) For an activity for which a person is strictly liable without regard to fault.

SECTION 2. Section 1 of this 2011 Act applies to use of an unimproved right of way, as defined in section 1 of this 2011 Act, or public easement on or after the effective date of this 2011 Act.

Passed by House April 21, 2011

Received by Governor:

Repassed by House June 15, 2011

.....M.,....., 2011

Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2011

Passed by Senate June 13, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State