



COBURG CITY COUNCIL

ACTION ITEM

Ordinance A-256 – An Ordinance to Limit Liability for Recreational Use of Certain City Property and Declare an Emergency for Adoption

Meeting Date	Staff Contact	Email
June 25, 2024	Adam Hanks, City Administrator Brian Harmon, Public Works Director	Adam.Hanks@ci.coburg.or.us Brian.Harmon@ci.coburg.or.us

REQUESTED COUNCIL ACTION

City staff, in consultation with Lane Council of Governments (LCOG) Legal staff, is presenting an ordinance that addresses remaining gaps in liability to the City from recent state level legal and legislative action relating to recreational immunity.

Due to the potential liability that exists from the recent legislative amendments intended to restore recreational immunity statewide, both City and LCOG staff recommend Council approve this ordinance with a public hearing, first reading and second reading with the proposed emergency clause included to allow for the effective date to be immediately following Council approval. (Coburg City Charter Section 4.2 e)

Suggested Motion

I move to approve first and second reading and declaration of an Emergency of Ordinance A-256, an ordinance to limit liability for recreational use of certain City property.

BACKGROUND

Recreational Immunity has been a long standing legislative tool to protect both public and private land owners from liability when the lands are made available (at no cost/fee) for public use. A recent Oregon Supreme Court ruling functionally altered and reduced the broad immunity the legislation had historically provided.

The Oregon Legislature passed Senate Bill 1576 which restored recreational immunity generally, but the bill did not address a related but separately adopted ORS relating to recreational immunity on trails specifically. This ORS requires Cities to proactively “opt-in” for this particular recreational immunity to be in effect.

ORS 105.668 provides immunity against negligence claims arising from personal injury or property damage from the use of a trail or structures in an unimproved right of way or public easement.

ORS 105.668 immunity extends automatically to:

- Cities with populations of 500,000 or more;
- those cities' agents, officers, and employees, to the extent they are covered by ORS 30.285;
- owners of the land abutting the public unimproved right of way or public easement; and
- nonprofits and their volunteers that construct or maintain the trail or structure in the right of way or public easement.

Cities with populations fewer than 500,000 residents may choose to opt into ORS 105.668 and the immunity will cover the same entities as above. Because Bend has fewer than 500,000 residents, Council must choose to opt into ORS 105.668 immunity. This can be done by resolution or ordinance. Staff recommends that Council opt into ORS 105.668 via ordinance so that the Council's action becomes part of the Bend Code.

Opting into ORS 105.668 immunity is recommended because ORS 105.668 immunity is broader than the recreational immunity already extended to the City through ORS 105.682. ORS 105.668 will provide immunity for negligence claims arising out of personal injuries or property damage resulting from any use, so long as the use is of a trail or structure in an unimproved right of way or easement.

ORS 105.668's language also explicitly extends immunity to a city's officers, employees, and agents, whereas the Oregon Supreme Court has held that ORS 105.682 recreational immunity only applies to the "owner" of the land, which may not include officers, employees, and agents of a city.¹ Therefore, ORS 105.688 fills a gaps left open by the "recreational" limitation of ORS 105.682.

Additionally, ORS 105.668 offers landowners an incentive to grant public easements and rights of way by providing increased protections from liability in the same manner as it does cities and their officers, employees, and agents.

ORS 105.668 only grants immunity for personal injuries or property damage arising from negligence, not from all causes of action. Therefore, the City and the other entities could still be held liable for some personal injury or property damage claims, such as claims arising from intentional acts or activities for which a person is strictly liable

RECOMMENDATION AND ALTERNATIVES

Staff and LCOG Legal Counsel recommend adoption of the draft ordinance to ensure that

¹ Johnson v. Gibson, 358 Or 624, 630, 638, 369 P3d 1151 (2016) (holding that, because "only persons with authority to control and exclude from the land qualify as 'owner[s]'" of the land [for the purposes of ORS 105.682], employees who repaired and maintained city-owned recreational lands were not owners of that land and were therefore not immune from liability under ORS 105.682).

recreational immunity applies to trails in addition to public lands now covered by Senate Bill 1576.

BUDGET / FINANCIAL IMPACT

Legal fees of approximately \$500 were invested in the development of the draft ordinance and for staff briefings associated with the draft ordinance. No additional expenditures are anticipated.

PUBLIC INVOLVEMENT

Information regarding the Oregon Supreme Court case, the decision, temporary strategies implemented to address the decision and the restoration of recreational immunity with SB 1576 was provided to Council in a number of prior meeting packets.

Additionally, the merits of this draft ordinance and Council direction for it to be proposed using the emergency declaration was an agenda item at the May 14, 2024 Council meeting.

NEXT STEPS

Upon approval by Council, the Ordinance will be signed by the Mayor and City Recorder and be in effect.

ATTACHMENTS

1. Draft Ordinance
2. SB 1576 – League of Oregon Cities News Release
3. May 14, 2024 City Council Staff Memo on Recreational Immunity Ordinance