



Where Life is Sweet

Mayor and Members of the City Council
STAFF REPORT
For the Meeting of February 12, 2024

Title/Subject

Resolution No. 2311 - Adopting the Immunity from Liability for use of Trails or Structures in Public Easement or Unimproved Right of Way Provided in ORS 105.668

Summary and Background

On July 6, 2023, the Oregon Court of Appeals issued an opinion effectively ending recreational immunity for improved trails. Public and private landowners of improved trails are no longer protected from lawsuits. (Fields v. City of Newport). In Fields v. Newport a woman was walking with her friend and their dogs on the beach. She walked away from the beach on an improved trail which was owned and maintained by the city of Newport. The woman came to a wooden footbridge that was wet. She slipped and fell, then filed a lawsuit against the City. Ms. Fields' suit alleged the City was negligent in maintaining the bridge and not putting up warning signs. Newport responded that it was immune from suit because Fields was using the Ocean to Bay Trail for a recreational purpose, walking with a friend and their dogs while they talked and socialized.

The trial court agreed with the City, ruling that recreational immunity protects landowners from a lawsuit when they open their property to the public for recreational purposes without a fee. Because of recreational immunity the trial court granted summary judgment, which ended the case early in favor of Newport. The trial court determined "there are no genuine issues of material fact in dispute" and that under state law, the plaintiff was "using the trail for recreational purposes" by "walking her dog on a trail to the beach with a friend," and thus the City was entitled to recreational immunity from any liability.

Plaintiff Fields appealed the trial court's ruling, arguing that the trial court could not conclude that her "principal purpose" (as required under state law) in walking on the trail was recreational as long as she claimed that the subjective intent in her mind was something else.

The Oregon Court of Appeals decided that there is a factual dispute between Plaintiff Fields and the City as to whether her use of the trail was recreational, or whether her primary purpose was instead for "accessing the beach." In other words, the Court of Appeals held that the trial court needed to hold a jury trial to determine whether the plaintiff's principal purpose on the trail was accessing the beach, or to recreate while using the trail with a friend and their dogs while they "socialized." Either way, recreational immunity no longer stops a case at the beginning (an "immunity" from suit), because any plaintiff can claim their "principal purpose" was not to recreate.

This particular case is not the first one that has reduced the scope of recreational immunity. Once again, the League of Oregon Cities and the Association of Oregon Counties are bringing a bill to the Legislature in 2024 to restore recreational immunity. Along with that effort, City/County Insurance (CIS) is recommending to their members that they adopt the provisions of ORS 105.668 and improve signage along our trails to reduce exposure and improve the defense of claims.

With those recommendations, CIS also offered \$5,000 grants to help their members accomplish these goals. We received one of these grants and are working to implement the new signage as well as bringing the resolution for adoption.

Tie-In to Council Goals

N/A

Fiscal Information

Maintenance of signs in the future.

Alternatives and Recommendation

Alternatives

1. Adopt Resolution No. 2311 without modification.
2. Adopt Resolution No. 2311 with specific modifications.
3. Direct staff to make major changes to Resolution No. 2311 and bring back at a later date.

Recommended Action/Motion

Adopt Resolution No. 2311 without modification.

Submitted By: Byron D. Smith