

RESOLUTION NO. 6056

A RESOLUTION OF THE CITY OF ALBANY, OREGON, OPTING IN TO THE RECREATIONAL IMMUNITY PROVIDED BY HB 2865 WHEN ALLOWING PUBLIC USE OF UNIMPROVED RIGHT-OF-WAYS (ROWS).

WHEREAS, recent legislation was adopted to address a specific Portland situation where there was strong interest in making unimproved ROWs available for public recreation purposes; and

WHEREAS, the city and the owners of the land abutting the ROWs were concerned about liability if users of these pathways were injured and claimed the landowner or ROW owner, or both, were at fault for design, construction, or maintenance of the improvements; and

WHEREAS, HB 2865 was introduced as an attempt to provide immunity from liability to cities with a population of 500,000 or more; and

WHEREAS, the bill was later amended to add a provision whereby smaller counties, as well as smaller cities, could opt in by ordinance or resolution; and

WHEREAS, The City of Albany has several trails located in both easements and unimproved ROWs including the Takena Landing trail, portions of the Dave Clark riverfront path, and the trails around Simpson Park; and

WHEREAS, the immunity granted by the legislation lends favorable consideration to the continued public use of the existing trails and any future ROWs made available for similar uses; and


WHEREAS, even if the immunity is not upheld, there seems to be no disadvantage to opting in since a city would be no worse off.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALBANY, OREGON, as follows:

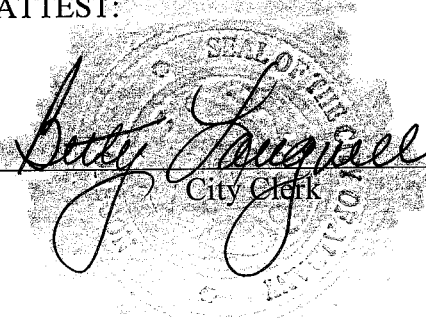
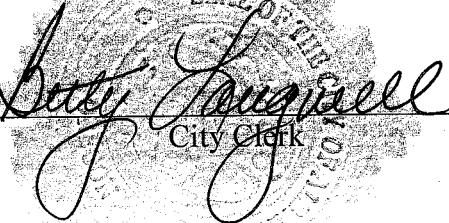
1. The recreational immunity provided by HB 2865 is a consideration in the decision to allow trail use in existing and future ROWs.
2. The City Council hereby opts in to the recreational immunity provided by HB 2865 when allowing public use of unimproved rights of way.

This Resolution shall take effect immediately upon its adoption by the City Council and execution by the Mayor.

DATED AND EFFECTIVE THIS 26<sup>TH</sup> DAY OF OCTOBER, 2011.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
City Clerk

Enrolled  
House Bill 2865

Sponsored by Representative GARRETT; Representative GREENLICK, Senator BURDICK (Pre-session 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;

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- (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. + }