

ORDINANCE NO. 267

AN ORDINANCE AMENDING TITLE I OF THE DUNES CITY CODE OF ORDINANCES TO CREATE A NEW CHAPTER 11, LIABILITY LIMITED FOR THE CITY OF DUNES CITY AND OTHER PARTIES FROM PRIVATE CLAIMS RESULTING FROM THE USE OF TRAILS IN PUBLIC EASEMENTS OR UNIMPROVED RIGHTS-OF-WAY UNDER ORS 105.668, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Dunes City, through its City Council, is responsible for enacting ordinances for the effective and efficient operation of the City of Dunes City for the benefit of its residents; and

WHEREAS, the Dunes City Council finds that the Oregon legislature enacted House Bill 2865 in its 2011 Regular Session; and

WHEREAS, HB 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 a public easement or 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; 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 law; and

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

WHEREAS, The City Council of Dunes City finds that the City is at risk for certain claims until such time as the City opts in under House Bill 2865 and that, consequently, an emergency exists to correct this condition as soon as possible;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. The City of Dunes City, 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, or from use of structures in the public easement or unimproved right of way, with respect to claimants who may be a user on foot, on a horse, on a bicycle, or on other non-motorized vehicle(s) of conveyance.

Section 2. EMERGENCY. The City of Dunes City deems an emergency to exist to effectuate a timely and efficient transition in the water system operations and water rate changes and therefore this ordinance shall be in full force and effect upon passage by the Council and upon signature by the Mayor.

Section 3. A new Chapter 11 shall be added to Title I of the Dunes City Code of Ordinances to read as found in Exhibit A attached hereto and incorporated by reference herein.

Section 4. SEVERABILITY. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decisions, the remainder of this Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant, and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the City.

Section 5. OTHER REMEDIES. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance. Non-exclusive remedies for enforcement are all those available under State and County laws including seizure of property, civil and criminal penalties.

Section 6. CAPTIONS. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 7. SCRIVENER’S ERRORS. Any scrivener’s errors in this Ordinance may be corrected by Resolution of the City Council.

Passed at the first reading in regular meeting of the City Council of Dunes City, Oregon, on the 21st day of February, 2024.

Ayes: 5 Nays: _____ Abstain: _____ Absent: 1 Vacant: _____

Passed at the second reading and placed on final passage, and adopted by the City Council of Dunes City, Oregon on this 21st day of February, 2024.

Ayes: 5 Nays: _____ Abstain: _____ Absent: 1 Vacant: _____

ADOPTED BY THE DUNES CITY COUNCIL THIS 21st DAY OF February, 2024.

Ed McGuire
Ed McGuire, Mayor

ATTEST:
Jamie Mills
Jamie Mills, City Recorder/Administrator

EXHIBIT A

Title I, Chapter 11

LIABILITY LIMITED FOR THE CITY OF DUNES CITY AND OTHER PARTIES FROM PRIVATE CLAIMS RESULTING FROM USE OF TRAILS IN A PUBLIC EASEMENT OR UNIMPROVED RIGHTS-OF-WAY UNDER ORS 105.668.

§ 11.01 Definitions

As used in this Chapter, the following definitions apply:

- A. *Public easement* means a platted or dedicated easement for public access that is accessible by a user on foot, horseback, bicycle or other similar conveyance, but does not include a platted or dedicated public access easement over private streets.
- B. *Structures* means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, horseback, bicycle or other nonmotorized vehicle or conveyance.
- C. *Trail* means a travel way for pedestrians and bicycles that is separate from automobiles, and includes a multi-use path or multi-use trail, but does not include a bike lane, shoulder bikeway, or shared roadway.
- D. *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 entity with jurisdiction over the public right-of-way and for which the City has not expressly accepted responsibility for maintenance, but does not include a platted private street.

§ 11.02 Liability Limited

- A. A personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, by a user on foot, on a horse, on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action on negligence against:
 - 1. The City of Dunes City;
 - 2. The City of Dunes City's officers, employees or agents to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;
 - 3. The owner of land abutting the public easement or unimproved right-of-way; or

4. 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.
- B. The immunity granted by this section from a private claim or right of action based on negligence does not grant immunity from liability:
1. Except as provided in subsection (A)(2) 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;
 2. For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct.
 3. For an activity for which a person is strictly liable without regard to fault.