

ORDINANCE NO. 891

AN ORDINANCE AMENDING THE PARK AND RECREATION AREAS, CHAPTER 13.20 OF THE TROUTDALE MUNICIPAL CODE PROVIDING FOR LIMITATION OF CITY LIABILITY UNDER THE OREGON PUBLIC USE OF LANDS ACT.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. That the Oregon Public Use of Lands Act passed in 1995 with a goal of encouraging public and private owners of land to make their land available to the public for recreational purposes free of charge.
2. That the Oregon Revised Statutes (ORS) 105.668 has provided that landowners, both public and private, who made their land available without charge for recreational use by the public were not liable if a person was injured while using the land for recreational and other purposes.
3. That at the recommendation of the City's insurer, City-County Insurance Services (CIS), the City has sought to avail itself of the liability protections afforded by ORS 105.672 to 105.696 which is collectively referred to as the "recreational immunity law", through the adoption of Resolution No. 1960 on September 9, 2008.
4. That the "recreational immunity law", ORS 105.672 to 105.696 has been modified by the Legislature numerous times including important changes through the 2024 Legislative Session Senate Bill (SB) 1576 which became effective March 27, 2024.
5. That SB 1576 (2024) provides for cities to opt into the reestablished liability protections of recreational immunity which were seriously undermined by a 2023 Oregon Court of Appeals ruling.
6. That the City, through the adoption of Resolution No. 2621 on April 9, 2024, has sought to avail itself of the liability protections to maximum extent allowed by ORS 105.672 to 105.696 and Sections 5 and 6 of the 2024 Act Senate Bill 1576, for immunity from liability for personal injury or property damage resulting from the use by the public of any City property or easement, either improved or unimproved.

7. That the City desires to continue to permit the public recreational use of City property while maintaining the liability protections afforded by the recreational immunity law.

8. That an Ordinance is necessary to update the Troutdale Municipal Code (TMC) Chapter 13.20 Park And Recreation Areas, to obtain the immunity protections provided through SB 1576 (2024), which will serve a valuable, necessary and authorized public purpose, and that doing so is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The above findings are recognized and accepted and the Park And Recreation Areas Chapter 13.20 of the Troutdale Municipal Code select sections are hereby amended to read as provided in Attachment A.

Section 2. The City hereby opts into the immunity from liability for personal injury or property damage resulting from the use of trails or structures in a public easement or in an unimproved right of way provided by ORS 105.668.

Section 3. The City hereby adopts to maximum extent allowed by ORS 105.672 to 105.696 and Sections 5 and 6 of the 2024 Act Senate Bill 1576, immunity from liability for personal injury or property damage resulting from the use by the public of any City property or easement, either improved or unimproved.

Section 4. The City Manager Ray Young, and Risk Manager and Finance Director Erich Mueller, (each a "City Official") are designated, or a designee of the City Official, to act on behalf of the City, and without further action by the City Council, are hereby authorized, empowered and directed to take any and all other required and necessary actions to implement the intent of this Ordinance.

Section 5. Provisions of this Ordinance shall amend the Park And Recreation Areas Chapter 13.20 of the Troutdale Municipal Code, and the City Recorder is authorized to correct any cross-references and any typographical errors, and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word and the sections of the Ordinance may be renumbered, or re-lettered as determined by the City Recorder.

Section 6. This Ordinance shall be effective July 26, 2024.

YEAS: 6
NAYS: 0
ABSTAINED: 0



Randy Lauer, Mayor
Date: June 26, 2024



Sarah Skroch, City Recorder
Adopted: June 25, 2024

**Title 13 STREET TREES, PARKS AND RECREATION AREAS
Chapter 13.20 PARK AND RECREATION AREAS***

13.20.020 Definitions.

As used in this chapter, unless the context requires otherwise:

"City" means the incorporated areas of the city of Troutdale, Oregon.

"Council" means the city council of the city.

"Director" means the director of public works for the city and the director's authorized representatives.

"Dog handler" or "handler" means any person that brings a dog or other domestic animal into a park.

"On-leash" means that an animal is securely tethered to the handler with a leash, tether, or other physical control device not exceeding eight feet in length and that the handler is capable of maintaining physical control and restraint of the animal and capable of maintaining compliance with this chapter.

"On-leash park" means a city park where dogs and other domestic animals are generally permitted on-leash by council resolution.

"Off-leash" means any animal that is not On-leash as defined in this chapter.

"Park" means a forest, reservation, greenway, playground, beach, recreation center or any other area in the city, owned or used by the city and devoted to active or passive recreation.

"Person" means an individual, partnership, company, association, corporation or any other legal entity.

"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.

"Trail" means a travel way for pedestrians, bicycles, and other non-motorized means of transportation.

"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.

"Vehicle" means any wheeled conveyance, whether motor-powered, animal-drawn or self-propelled, including a bicycle and includes any trailer in tow of any size, kind or description, but does not include baby carriages and vehicles in the service of the city parks.

(Ord. 747 § 2 Att. 2 (part), 2004) (Ord. No. 888, § 1(Att. A), 12-12-2023)

13.20.030 Purpose.

The council has determined that it is necessary to adopt regulations in order to insure the efficient operation, protection and maintenance of city parks and to protect the health, safety and welfare of the people of the city, and to limit the liability of the City, and this chapter shall be liberally construed to effectuate this purpose.

(Ord. 747 § 2 Att. 2 (part), 2004)

13.20.420 Liability Limited

A. A personal injury or property damage resulting from use of a park, or 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:

1. The City of Troutdale.
2. The City of Troutdale's officers, employees, or agents to the extent that 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.
4. A nonprofit corporation and its volunteers for the construction and maintenance of the trail or structures in a public easement or unimproved right of way.

B. The immunity granted by this section does not extend to:

1. Except as provided by 13.20.420(A)(2), a person that receives compensation for assistance, services, or advice in relation to conduct that leads to a personal injury or property damage.
2. Personal injury or property damage resulting from gross negligence or from reckless, wanton, or intentional misconduct.
3. An activity for which a person is strictly liable without regard to fault.
