

RESOLUTION NO. 18-795-19

A RESOLUTION OF CITY OF JOHN DAY LIMITING CERTAIN CLAIMS ARISING FROM RECREATIONAL USE OF PUBLIC TRAILS AND/OR STRUCTURES IN PUBLIC EASEMENTS AND UNIMPROVED RIGHT-OF-WAY IN CITY OF JOHN DAY.

WHEREAS, ORS 105.672 to 105.688 provide certain immunities for owners of publicly and/or privately-owned land when landowners allow such land to be used for recreational purposes; and

WHEREAS, ORS 105.668(2) limits certain lawsuits against a city, adjacent property owner(s), and certain nonprofit groups and their volunteers that arise from recreational use of trails or structures in public easements or unimproved rights-of-way; and

WHEREAS, the immunities from liability contained in ORS 105.668(2) apply only to cities with a population of 500,000 or more; and

WHEREAS, ORS 105.668(3) authorizes cities with a population of less than 500,000 to take advantage of the immunities provided in ORS 105.668(2) by adopting either an ordinance or resolution to “opt in” to the provisions under ORS 105.668; and

WHEREAS, City of John Day (“City”) owns, operates, and maintains a system of public trails; and

WHEREAS, City’s trails are an important public amenity that provide recreational opportunities and support a healthy community; and

WHEREAS, City encourages (a) property owners to dedicate easements to the public for use as recreational trails, and (b) private groups and volunteers to construct and maintain certain public trails and/or structures in public easements and/or unimproved rights-of-way; and

WHEREAS, City believes it is important to protect and support the activities of City, private parties, community groups, and volunteers that make the trails available for public use; and

WHEREAS, City desires to adopt the immunities from liability provided under ORS 105.668 to further the public interest by protecting and supporting efforts and activities of City, property owners, and parties that create and maintain trails and make such trails available for public use.

NOW, THEREFORE, City of John Day resolves as follows:

1. Findings. The above stated findings contained in this Resolution No. 18-795-19 (this “Resolution”) are hereby adopted.

2. Limitation on Liability. Pursuant to ORS 105.668(3), City hereby adopts the limitation on liability provided under ORS 105.668(2). Without otherwise limiting the generality of the immediately preceding sentence, personal injury and/or property damage resulting from and/or arising out of the use of a trail that is in a public easement and/or unimproved right-of-way, and/or from use of structures in a public easement and/or unimproved right-of-way, by a user on foot, horseback, bicycle, and/or other nonmotorized vehicle or conveyance, does not give rise to a private claim or right of action based on negligence against any of the following: (a) City; (b) City’s officers, employees, and/or agents to the

extent the officers, employees, and/or agents are entitled to defense and indemnification under ORS 30.285; (c) the owner(s) of land abutting the public easement or unimproved right-of-way; and/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. For purposes of this Resolution, “structures” means improvements in a trail, including, without limitation, stairs and bridges, that are accessible by a user on foot, horse, bicycle, and/or other nonmotorized vehicle or conveyance; “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 City and for which City has not expressly accepted responsibility for maintenance.

3. Exceptions. The immunities granted under Section 2 of this Resolution from a private claim or right of action based on negligence do not grant immunity from liability for the following: (a) except as provided in Section 2(b), to a person that receives compensation for providing assistance, services, and/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 and/or reckless, wanton, or intentional misconduct; and/or (c) for an activity for which a person is strictly liable without regard to fault.

4. Severability; Effective Date. For purposes of this Resolution, the singular includes the plural and the plural includes the singular; the word “or” is not exclusive and the words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Resolution are severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this resolution. This Resolution will be in full force and effect from and after its approval and adoption.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the City Council of City of John Day and signed by the mayor this 10th day of July, 2018.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager