



AGENDA COVER MEMO

Memorandum Date: June 27, 2024
First Reading Date: July 16, 2024
Second Reading / Public Hearing Date: July 30, 2024

TO: Board of County Commissioners
DEPARTMENT: Public Works
PRESENTED BY: Brett Henry, Parks Division Manager
Emily Vario, Assistant County Counsel

AGENDA ITEM TITLE: **ORDINANCE NO: 24-06 / In the Matter of Amending Lane Code Chapter 2 to Adopt Immunity From Liability Arising From Use of Trails or Structures in a Public Easement or Unimproved Right of Way, and Declaring an Emergency (LC 2.060.010)**

I. MOTION

- A. July 16, 2024: I move to approve the first reading of Ordinance No. 24-06 and to set the second reading and public hearing for July 30, 2024, at 2:30 PM in the Lane County Public Service Building, 125 E. 8th Ave, Eugene, Oregon.
- B. July 30, 2024: Alternative motions after public hearing:
1. Move to approve Ordinance No. 24-06.
 2. Move to set a third reading and to direct staff to return with a revised ordinance for the Board's consideration and action.
 3. Move to deny Ordinance No. 24-06.

II. AGENDA ITEM SUMMARY

This item is a work session and first reading on July 16, 2024, followed by a second reading and public hearing on July 30, 2024, on the attached Ordinance No. 24-06 to amend Lane Code Chapter 2 Administration. Following the public hearing, the Board may deliberate and act on the alternative motions provided above.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Lane Code (LC) Chapter 2.060, County Lands and Buildings, establishes provisions allowed on County-owned property. On March 3, 2024, the Oregon Legislature passed Senate Bill 1576 which amended ORS 105.688 (recreational immunity) by clearly defining that recreation includes walking, running, and bicycling. Once the government entity officially adopts a resolution or ordinance, the government-owned property provided immunity will include land and right of way that is both improved and unimproved.

B. Policy Issues

Staff believes the proposed addition to Lane Code is consistent with current policy and is in the County's best interest to adopt via ordinance to provide an additional protection by limiting liability from ordinary negligence claims. Specifically, immunity from liability for injury or property damage arising from use of trails or structures in public easement or unimproved right of way.

C. Board Goals

The Lane County Parks vision aligns with the 2022-2024 Lane County Strategic Plan under Strategic Priority 2: Vibrant Communities. "Invest in Lane County residents by fostering engaged communities with affordable housing options, equitable opportunities, economic vitality and a healthy environment".

D. Financial and/or Resource Considerations

Staff believes there are no financial or resource consequences with the proposed amendments.

E. Health Implications

Parks are an essential resource for healthy communities. They improve the quality of life by providing a location for the public to recreate, play, and mentally

unwind. The following health benefits demonstrate that parks are wise community investments:

Parks, greenways, and trails enable and encourage people to exercise.

Exposure to nature improves psychological and social health.

Play is critical for child development.

Parks help build healthy, stable communities.

F. Analysis

The proposed addition to Lane Code 2.060 through section 2.060.010 includes the recreational immunity language adopted by Senate Bill 1576 at the 2024 Oregon Legislative Session on March 3, 2024. The original bill reflected in ORS 105.688 (recreational immunity) provides protections to local governments through at least January 2026. By inserting “local governments”, SB 1576 allows entities defined in ORS 174.116 to adopt a resolution or ordinance.

A summary of proposed addition to 2.060 to add protections afforded by the passage of SB 1576 are listed below.

2.060.010 – Immunity for Injuries and Property Damage.

A. Definitions.

“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, on a bicycle, 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 the local government with jurisdiction over the public right of way and for which the local government has not expressly accepted responsibility for maintenance.

B. Liability Limited. Personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, or from use of structures in a public easement or unimproved right of way, by a user on foot, on a horse, on a bicycle, or on another nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

1. Lane County;
2. Lane County’s officers, employees, or agents, to the extent such 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 in the County; 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 in the County.

G. Alternatives/Options

Following the public hearing on July 30, 2024, the Board has the following alternative motions:

1. Move to approve Ordinance No. 24-06.
2. Move to set a third reading and to direct staff to return with a revised ordinance for the Board's consideration and action.
3. Move to deny Ordinance No. 24-06.

IV. RECOMMENDATION

Staff recommends the first motion, above, for approval.

V. TIMING/IMPLEMENTATION

On July 16, 2024, the Board will conduct a first reading for Ordinance No. 24-06. On July 30, 2024, the Board will conduct a second reading and public hearing prior to issuing a decision. If approved by the Board, the Ordinance will become effective 30 days following enactment.

VI. FOLLOW-UP

Should the Board choose Motion 2, staff will revise the Ordinance as directed and return for approval on a date certain set by the Board.

VII. ATTACHMENTS

Proposed Ordinance

SB 1576

ORS 105.688

Lane Code Chapter 2

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 24-06

IN THE MATTER OF AMENDING LANE CODE
CHAPTER 2 TO ADOPT IMMUNITY FROM LIABILITY
ARISING FROM USE OF TRAILS OR STRUCTURES
IN A PUBLIC EASEMENT OR UNIMPROVED RIGHT
OF WAY, AND DECLARING AN EMERGENCY
(LC 2.060.010.)

WHEREAS, Oregon Revised Statute 105.668(2) limits liabilities against certain cities, adjacent property owners, and nonprofit groups and their volunteers, for 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.

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

WHEREAS, ORS 105.668(3) authorizes other local governments to opt into the immunities provided in ORS 105.668(2) by ordinance or resolution.

WHEREAS, Lane County desires to opt in to the immunities provided by ORS 105.668 to further advance the public interest in keeping certain land available for public use and to protect the County's financial resources.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDAINS** as follows:

Lane Code Chapter 2 is amended by removing, substituting and adding the following section:

REMOVE THIS SECTION

NONE

INSERT THIS SECTION

2.060.010

This section is attached hereto and incorporated herein by this reference. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion constitutes a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions hereof.

Nothing herein is intended to, nor acts to amend, replace, or otherwise conflict with any other ordinances of Lane County or any other Code or statutory provisions unless expressly so stated.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health, and safety, takes effect upon execution by the Chair of the Board of Commissioners.

ENACTED this ____ day of _____ 2024.

Laurie Triege, Chair
Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

Enrolled

Senate Bill 1576

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Senator Floyd Prozanski)

CHAPTER

AN ACT

Relating to civil matters; creating new provisions; amending ORS 17.095, 105.668, 105.672, 105.688 and 646A.589; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646A.589 is amended to read:

646A.589. (1)(a) The Attorney General may serve an investigative demand upon any person that possesses, controls or has custody of any information, document or other material that the Attorney General determines is relevant to an investigation of a violation of ORS 646A.570 to 646A.589 or that could lead to a discovery of relevant information. An investigative demand may require the person to:

- (A) Appear and testify under oath at the time and place specified in the investigative demand;
- (B) Answer written interrogatories; or

(C) Produce relevant documents or physical evidence for examination at the time and place specified in the investigative demand.

(b) The Attorney General shall serve an investigative demand under this section in the manner provided in ORS 646.622. The Attorney General may enforce the investigative demand as provided in ORS 646.626.

(2)(a) An attorney may accompany, represent and advise in confidence a person that appears in response to a demand under subsection (1)(a)(A) of this section. The person may refuse to answer any question on constitutional grounds or on the basis of any other legal right or privilege, including protection against self-incrimination, but must answer any other question that is not subject to the right or privilege. If the person refuses to answer a question on grounds that the answer would be self-incriminating, the Attorney General may compel the person to testify as provided in ORS 136.617.

(b) The Attorney General shall exclude from the place in which the Attorney General conducts an examination under this subsection all persons other than the person the Attorney General is examining, the person's attorney, the officer before which the person gives the testimony and any stenographer recording the testimony.

(3)(a) The Attorney General shall hold in confidence and may not disclose to any person any documents, including data protection assessments, answers to interrogatories and transcripts of oral testimony, except that the Attorney General may disclose the documents to:

- (A) The person that provided the documents or the oral testimony;
- (B) The attorney or representative of the person that provided the documents or oral testimony;

(C) *[Employees of]* **Persons employed by** the Attorney General; or

(D) An official of the United States or of any state who is authorized to enforce federal or state consumer protection laws if the Attorney General first obtains a written agreement from the official in which the official agrees to abide by the confidentiality requirements of this subsection.

(b) The Attorney General may use any of the materials described in paragraph (a) of this subsection in any investigation the Attorney General conducts under this section or in any action or proceeding the Attorney General brings or initiates in a court or before an administrative agency in connection with the investigation.

(4)(a) The Attorney General may bring an action to seek a civil penalty of not more than \$7,500 for each violation of ORS 646A.570 to 646A.589 or to enjoin a violation or obtain other equitable relief. The Attorney General shall bring the action in the circuit court for Multnomah County or the circuit court of a county where any part of the violation occurred.

(b) A court may award reasonable attorney fees, expert witness fees and costs of investigation to the Attorney General if the Attorney General prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant that prevails in an action under this subsection if the court finds that the Attorney General had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(c) The Attorney General shall deposit the proceeds of any recovery under this subsection into the Department of Justice Protection and Education Revolving Account, as provided in ORS 180.095.

(5) Before bringing an action under subsection (4) of this section, the Attorney General shall notify a controller of a violation of ORS 646A.570 to 646A.589 if the Attorney General determines that the controller can cure the violation. If the controller fails to cure the violation within 30 days after receiving the notice of the violation, the Attorney General may bring the action without further notice.

(6) The Attorney General shall bring an action under subsection (4) of this section within five years after the date of the last act of a controller that constituted the violation for which the Attorney General seeks relief.

(7) The remedies available to the Attorney General under subsection (4) of this section are in addition to and not in lieu of any other relief available to the Attorney General or another person under other applicable provisions of law. A claim available under another provision of law may be joined to the Attorney General's claim under subsection (4) of this section.

(8) The Attorney General has exclusive authority to enforce the provisions of ORS 646A.570 to 646A.589. ORS 646A.570 to 646A.589, or any other laws of this state, do not create a private right of action to enforce a violation of ORS 646A.570 to 646A.589.

SECTION 2. ORS 646A.589, as amended by section 11, chapter 369, Oregon Laws 2023, is amended to read:

646A.589. (1)(a) The Attorney General may serve an investigative demand upon any person that possesses, controls or has custody of any information, document or other material that the Attorney General determines is relevant to an investigation of a violation of ORS 646A.570 to 646A.589 or that could lead to a discovery of relevant information. An investigative demand may require the person to:

(A) Appear and testify under oath at the time and place specified in the investigative demand;

(B) Answer written interrogatories; or

(C) Produce relevant documents or physical evidence for examination at the time and place specified in the investigative demand.

(b) The Attorney General shall serve an investigative demand under this section in the manner provided in ORS 646.622. The Attorney General may enforce the investigative demand as provided in ORS 646.626.

(2)(a) An attorney may accompany, represent and advise in confidence a person that appears in response to a demand under subsection (1)(a)(A) of this section. The person may refuse to answer any question on constitutional grounds or on the basis of any other legal right or privilege, including protection against self-incrimination, but must answer any other question that is not subject to

the right or privilege. If the person refuses to answer a question on grounds that the answer would be self-incriminating, the Attorney General may compel the person to testify as provided in ORS 136.617.

(b) The Attorney General shall exclude from the place in which the Attorney General conducts an examination under this subsection all persons other than the person the Attorney General is examining, the person's attorney, the officer before which the person gives the testimony and any stenographer recording the testimony.

(3)(a) The Attorney General shall hold in confidence and may not disclose to any person any documents, including data protection assessments, answers to interrogatories and transcripts of oral testimony, except that the Attorney General may disclose the documents to:

(A) The person that provided the documents or the oral testimony;

(B) The attorney or representative of the person that provided the documents or oral testimony;

(C) *[Employees of]* **Persons employed by** the Attorney General; or

(D) An official of the United States or of any state who is authorized to enforce federal or state consumer protection laws if the Attorney General first obtains a written agreement from the official in which the official agrees to abide by the confidentiality requirements of this subsection.

(b) The Attorney General may use any of the materials described in paragraph (a) of this subsection in any investigation the Attorney General conducts under this section or in any action or proceeding the Attorney General brings or initiates in a court or before an administrative agency in connection with the investigation.

(4)(a) The Attorney General may bring an action to seek a civil penalty of not more than \$7,500 for each violation of ORS 646A.570 to 646A.589 or to enjoin a violation or obtain other equitable relief. The Attorney General shall bring the action in the circuit court for Multnomah County or the circuit court of a county where any part of the violation occurred.

(b) A court may award reasonable attorney fees, expert witness fees and costs of investigation to the Attorney General if the Attorney General prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant that prevails in an action under this subsection if the court finds that the Attorney General had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(c) The Attorney General shall deposit the proceeds of any recovery under this subsection into the Department of Justice Protection and Education Revolving Account, as provided in ORS 180.095.

(5) The Attorney General shall bring an action under subsection (4) of this section within five years after the date of the last act of a controller that constituted the violation for which the Attorney General seeks relief.

(6) The remedies available to the Attorney General under subsection (4) of this section are in addition to and not in lieu of any other relief available to the Attorney General or another person under other applicable provisions of law. A claim available under another provision of law may be joined to the Attorney General's claim under subsection (4) of this section.

(7) The Attorney General has exclusive authority to enforce the provisions of ORS 646A.570 to 646A.589. ORS 646A.570 to 646A.589, or any other laws of this state, do not create a private right of action to enforce a violation of ORS 646A.570 to 646A.589.

SECTION 3. A court record relating to the settlement of a minor's claim approved under ORCP 27 I is confidential and may not be disclosed, except pursuant to a court order issued for good cause shown. Good cause for purposes of this section includes, but is not limited to, a showing that the claimant is no longer a minor.

SECTION 4. ORS 17.095 is amended to read:

17.095. (1) A public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, may not enter into any settlement or compromise of the action if the settlement or compromise requires that the terms or conditions of the settlement or compromise be confidential.

(2) Notwithstanding subsection (1) of this section:

(a) A public body, or officer, employee or agent of a public body, may enter into a settlement or compromise that requires the terms or conditions to be confidential if federal law requires terms or conditions of that settlement or compromise to be confidential. Only terms and conditions that are required to be confidential under federal law may be confidential in the settlement or compromise.

(b) A court may order that the terms or conditions of a settlement or compromise that reveal the identity of a person be confidential if:

(A) The person whose identity is revealed is a victim of sexual abuse or is under 18 years of age; and

(B) The court determines, by written findings, that the specific privacy interests of the person outweigh the public's interest in the terms or conditions.

(c) A court record relating to the settlement of a minor's claim is confidential when required by section 3 of this 2024 Act.

(3) Any public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall file with the court a full and complete disclosure of the terms and conditions of any settlement or compromise of the claims against the public body, its officers, employees or agents. The disclosure shall be filed prior to the dismissal of the action.

(4) For the purposes of this section:

(a) "Action" means a legal proceeding that has been commenced as provided in ORCP 3; and

(b) "Public body" has that meaning given in ORS 30.260.

SECTION 5. ORS 105.668 is amended to read:

105.668. (1) As used in this section:

(a) "Local government" has the meaning given that term in ORS 174.116.

~~[(a)]~~ **(b)** "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)]~~ **(c)** "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]~~ **local government** with jurisdiction over the public right of way and for which the ~~[city]~~ **local government** has not expressly accepted responsibility for maintenance.

(2) In a city with a population of 500,000 or greater, 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;]~~

(a) The city;

(b) The officers, employees or agents of ~~[a city with a population of 500,000 or more]~~ **the city** 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]~~ **in the city;** 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]~~ **the city.**

(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] A local government 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 **by ordinance, resolution, rule, order or other regulation** for:

~~[(a) The city or county that opts in by ordinance or resolution;]~~

(a) The local government;

(b) The officers, employees or agents of the [city or county that opts in] **local government** 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 the city or county that opts in by ordinance or resolution; and] **in the local government; 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 the [city or county that opts in] **local government.**

(4) [The immunity granted by this section from a private claim or right of action based on negligence] **This section** 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] **the actor** is strictly liable without regard to fault.

SECTION 6. ORS 105.672 is amended to read:

105.672. As used in ORS 105.672 to 105.696:

(1) “Charge”:

(a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner’s land.

(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner’s land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

(2) “Harvest” has that meaning given in ORS 164.813.

(3) “Land” includes all real property, whether publicly or privately owned.

(4) “Owner” means:

(a) The possessor of any interest in any land, including but not limited to the holder of any legal or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land;

(b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties; and

(c) A director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of a person described in paragraph (a) of this subsection.

(5) “Recreational purposes” includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, **walking, running, bicycling**, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) “Special forest products” has that meaning given in ORS 164.813.

(7) “Woodcutting” means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood.

SECTION 7. ORS 105.688 is amended to read:

105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;

(c) All paths, trails, roads, watercourses and other rights of way, while being used by a person to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest products, that are on land adjacent to the land that the person intends to use for recreational pur-

poses, gardening, woodcutting or the harvest of special forest products, *[and that have]* **provided that:**

(A) The right of way has not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products; *[and]* or

(B)(i) The right of way has been improved, designed or maintained to provide access for recreational purposes, gardening, woodcutting or the harvest of special forest products;

(ii) The right of way is not a highway maintained under ORS 810.010; and

(iii) The improvement, design or maintenance was completed in a manner that does not constitute:

(I) Gross negligence or reckless, wanton or intentional misconduct; or

(II) An activity for which the actor is strictly liable without regard to fault; and

(d) All machinery or equipment on the land described in paragraph (a) of this subsection.

(2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement to a public body to use the land.

(3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS 105.682 do not apply if the owner makes any charge for permission to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(4) If the owner charges for permission to use the owner's land for one or more specific recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner's land for recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than \$25 per year for permission to use a specific part of the owner's land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord for permission to use a specific part of the owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner's land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a specific part of the owner's land for harvesting special forest products and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:

(a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land.

SECTION 8. ORS 105.668, as amended by section 5 of this 2024 Act, is amended to read:

105.668. (1) As used in this section:

(a) “Local government” *[has the meaning given that term in ORS 174.116]* **means a city or county.**

(b) “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.

(c) “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 local government with jurisdiction over the public right of way and for which the local government has not expressly accepted responsibility for maintenance.

(2) In a city with a population of 500,000 or greater, 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) The city;

(b) The officers, employees or agents of the city 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 the city; 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 the city.

(3) A local government 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 by ordinance, resolution, rule, order or other regulation for:

(a) The local government;

(b) The officers, employees or agents of the local government 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 the local government; 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 the local government.

(4) This section 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 gross negligence or reckless, wanton or intentional misconduct.

(c) For an activity for which a person is strictly liable without regard to fault.

SECTION 9. ORS 105.672, as amended by section 6 of this 2024 Act, is amended to read:

105.672. As used in ORS 105.672 to 105.696:

(1) “Charge”:

(a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner’s land.

(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner’s land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

(2) “Harvest” has that meaning given in ORS 164.813.

(3) “Land” includes all real property, whether publicly or privately owned.

(4) “Owner” means:

(a) The possessor of any interest in any land, including but not limited to the holder of any legal or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land;

(b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties; and

(c) A director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of a person described in paragraph (a) of this subsection.

(5) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, [*walking, running, bicycling,*] nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) "Special forest products" has that meaning given in ORS 164.813.

(7) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood.

SECTION 10. ORS 105.688, as amended by section 7 of this 2024 Act, is amended to read:

105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;

(c) All paths, trails, roads, watercourses and other rights of way, while being used by a person to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest products, that are on land adjacent to the land that the person intends to use for recreational purposes, gardening, woodcutting or the harvest of special forest products, provided that[.]

[*(A)*] the right of way has not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products; [*or*] **and**

[*(B)(i) The right of way has been improved, designed or maintained to provide access for recreational purposes, gardening, woodcutting or the harvest of special forest products;*]

[*(ii) The right of way is not a highway maintained under ORS 810.010; and*]

[*(iii) The improvement, design or maintenance was completed in a manner that does not constitute;*]

[*(I) Gross negligence or reckless, wanton or intentional misconduct; or*]

[*(II) An activity for which the actor is strictly liable without regard to fault; and*]

(d) All machinery or equipment on the land described in paragraph (a) of this subsection.

(2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement to a public body to use the land.

(3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS 105.682 do not apply if the owner makes any charge for permission to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(4) If the owner charges for permission to use the owner's land for one or more specific recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner's land for recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than \$25 per year for permission

to use a specific part of the owner's land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord for permission to use a specific part of the owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner's land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a specific part of the owner's land for harvesting special forest products and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:

(a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land.

SECTION 11. (1) **The amendments to ORS 105.668, 105.672 and 105.688 by sections 5 to 7 of this 2024 Act apply to actions for personal injury, death or property damage commenced on or after the effective date of this 2024 Act, and before January 2, 2026.**

(2) **The amendments to ORS 105.668, 105.672 and 105.688 by sections 8 to 10 of this 2024 Act become operative on January 2, 2026, and apply to actions for personal injury, death or property damage commenced on or after January 2, 2026.**

(3) **An ordinance, resolution, rule, order or other regulation under ORS 105.668 (3) that is adopted by a local government other than a city or county is not effective after January 2, 2026.**

SECTION 12. **This 2024 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect on its passage.**

Passed by Senate February 22, 2024

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House March 5, 2024

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State

105.688 Applicability of immunities from liability for owner of land; restrictions. (1)

Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;

(c) All paths, trails, roads, watercourses and other rights of way while being used by a person to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest products, that are on land adjacent to the land that the person intends to use for recreational purposes, gardening, woodcutting or the harvest of special forest products, and that have not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products; and

(d) All machinery or equipment on the land described in paragraph (a) of this subsection.

(2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement to a public body to use the land.

(3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS 105.682 do not apply if the owner makes any charge for permission to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(4) If the owner charges for permission to use the owner's land for one or more specific recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner's land for recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than \$25 per year for permission to use a specific part of the owner's land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord for permission to use a specific part of the owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner's land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a

specific part of the owner's land for harvesting special forest products and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:

(a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land. [1995 c.456 §4; 1999 c.872 §7; 2001 c.206 §1; 2009 c.532 §2; 2010 c.52 §2]

- C. The Board decision shall be based upon consideration of whether the public interest would be better served by compensating the applicant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. The Board decision shall be accompanied by a written decision that states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria set forth in LC 2.055.035C.
- D. Within five (5) days after the Board renders a decision, the County shall mail notice of the decision to all parties to the proceeding. The notice shall include a summary of the decision.
- E. The County shall record notice of the Board decision in the county deed records.

(Ordinance 9-00, 12.6.00; Ordinance 18-04, 12.1.04)

2.055.040 - Board Decision Effect.

- A. Pursuant to Ballot Measure 37 (November 2, 2004), and notwithstanding any other law, rule, ordinance, resolution, goal or other enforceable enactment of the County, and notwithstanding any other procedure for release, exception, or otherwise in the Lane Code, the Board is authorized to modify, remove, or discontinue application of a challenged land use regulation by Order pursuant to LC 2.055.005 through LC 2.055.040 when the Board, in its discretion, elects to do so rather than paying compensation to the property owner.
- B. Any modification, removal, or discontinued application of a regulation shall be in effect during such time as the owner owns the subject property and shall automatically cease when the property is owned by a new owner. Following termination of ownership of the property by the owner, the discontinued regulation or any subsequent amendments shall be reinstated and apply to the property, and the new property owner shall, to the maximum extent permitted by law, bring the property immediately into compliance with the reinstated regulation.
- C. If the Board grants an Order modifying, removing, or discontinuing application of a challenged land use regulation as a means to avoid having to compensate, or as a means to limit compensation to, an owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), and if, based on an appellate court interpretation or invalidation of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), in the same or any other case, the applying owner was not entitled to compensation in relation to the modified, removed, or discontinued challenged land use regulation, then the Order shall be deemed to have been invalid and ineffective as of and after the date of the Board's Order. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the County being required to compensate the owner under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).
- D. Any modification, removal, or discontinued application of a challenged land use regulation Order granted under LC 2.055.005 through LC 2.055.040 shall terminate automatically on the occurrence of any event which determines the owner or future owner of the private real property that is the subject of the modified, removed, or discontinued application of a challenged land use regulation Order would not be entitled to just compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) in relation to the land use regulation made inapplicable by the Board Order.

(Ordinance 9-00, 12.6.00; Ordinance 18-04, 12.1.04)

2.060 – COUNTY LANDS AND BUILDINGS

2.060.005 - Parking.

- A. The Board may designate by separate order certain locations on County-owned or controlled lands for parking purposes and may further order such regulation of parking considered reasonable and appropriate, including establishing user's fees and administrative charges in connection with such parking.
- B. For purposes of administration of any parking regulations ordered in accordance with LC 2.060.005A it shall be presumed:
 - 1. That a motor vehicle or other transportation vehicle was used with the owner's consent.
 - 2. That the owner of record was operating the vehicle whenever the actual operator is unknown.
 - 3. That a vehicle was parked for one-half the chargeable period whenever the actual time period is unknown.

(Ordinance 17-72, 9.8.72; Ordinance 18-77, 11.23.77)

2.065 – FEES AND ASSESSMENTS

2.065.005 - Fees to be Charged by the County Clerk for Recording and Other Services.

- A. The County Clerk shall charge no fees to Lane County or any of its Departments for recording.
- B. The fee for approval of a plat by the county court is five dollars (\$5).
- C. For recording and indexing any plat, the County Clerk, in whose office the deed records of the County are kept, shall charge twenty dollars (\$20) plus ten dollars (\$10) per lot.
- D. Pursuant to ORS 203.148 a fee of ten dollars (\$10) shall be charged for recording any instrument under ORS 205.130(2). This fee is in addition to any other fee charged by the County Clerk. All moneys collected under this section shall be deposited in the Public Land Corner Preservation Fund.

(Ordinance 8-79, 7.26.79; Ordinance 5-84, 6.15.84; Ordinance 6-86, 6.18.86; Ordinance 19-86, 2.6.87; Ordinance 15-87, 9.27.87; Ordinance 5-03, 7.17.03; Ordinance 6-08, 1.2.09)

2.065.010 - Law Enforcement Medical Liability Account Assessment.

Within sixty (60) days of receipt of an assessment levied by Lane County Justice Courts pursuant to Section 5(4)(a) of Ch. 778 of 1991 Or Laws (SB 1142), the assessment shall be transmitted to the Oregon Department of Revenue for placement in the Law Enforcement Medical Liability Account.

(Ordinance 4-92, 6.12.92)

2.065.015 - Forfeiture Assets.

Property or proceeds distributed to Lane County under Oregon Constitution article XV 10(7)(c) shall be deposited in the General Fund to be available for all lawful General Fund purposes.

(Ordinance 8-02, 7.11.02)

Lane Code

2.060.010 – Immunity for Injuries and Property Damage

A. Definitions.

“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, on a bicycle, 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 the local government with jurisdiction over the public right of way and for which the local government has not expressly accepted responsibility for maintenance.

B. Liability Limited. Personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, or from use of structures in a public easement or unimproved right of way, by a user on foot, on a horse, on a bicycle, or on another nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

- 1. Lane County;**
- 2. Lane County’s officers, employees, or agents, to the extent such 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 in the County; 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 in the County.**

2.060.010 – Immunity for Injuries and Property Damage.

A. Definitions.

“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, on a bicycle, 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 the local government with jurisdiction over the public right of way and for which the local government has not expressly accepted responsibility for maintenance.

B. Liability Limited. Personal injury or property damage resulting from use of a trail that is in a public easement or an unimproved right-of-way, or from use of structures in a public easement or unimproved right of way, by a user on foot, on a horse, on a bicycle, or on another nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

1. Lane County;
2. Lane County’s officers, employees, or agents, to the extent such 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 in the County; 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 in the County.