

BEFORE THE COMMON COUNCIL OF CANNON BEACH

AN ORDINANCE AMENDING CANNON BEACH ) ORDINANCE NO. 24-03  
TO ADOPT LIMITATION OF LIABILITY FOR )  
CERTAIN CLAIMS ARISING FROM THE USE OF )  
TRAILS OR STRUCTURES WITHIN PUBLIC )  
EASEMENTS AND UNIMPROVED RIGHTS OF )  
WAY UNDER ORS 105.668

**WHEREAS**, ORS 105.668(2) limits the liability of cities, adjacent property owners, and certain non-profit groups for injuries or property damage that result from the public’s non-motorized use of trails or structures that are in a public easement or an unimproved right of way; and

**WHEREAS**, ORS 105.668(3) authorizes cities with populations less than 500,000 to adopt such limitation of liability by ordinance; and

**WHEREAS**, Cannon Beach’s population is less than 500,000; and

**WHEREAS**, Cannon Beach has trails or structures within its public easements and unimproved rights of way that may be used by the public for non-motorized activities such as walking, hiking, or biking; and

**WHEREAS**, Cannon Beach finds that the Cannon Beach’s trails and structures are an important public amenity, that the public’s use of such trails or structures is important for the health and enjoyment of the community, and that use should be encouraged; and

**WHEREAS**, Cannon Beach finds that it is important to protect Cannon Beach, adjacent property owners, and certain nonprofit groups who provide the public with access to and perform maintenance for such trails and structures so that the public may continue to access such trails and structures; and

**WHEREAS**, Cannon Beach finds that adopting the limitation of liability in ORS 105.668(2) will provide Cannon Beach, adjacent property owners, and nonprofit groups with such protection and will encourage the public’s continued use of trails and structures in Cannon Beach’s public easements and unimproved rights of way.

NOW, THEREFORE, THE CITY OF CANNON BEACH ORDAINS AS FOLLOWS:

- Section 1. **Findings.** The above findings are hereby adopted.
- Section 2. **Limitation on Liability.** The Cannon Beach Municipal Code is hereby amended as shown on the attached Exhibit A.
- Section 3. **Severability.** If any provision, section, phrase, or word of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does in

affect other provision that can be given effect without the invalid provision or application.

Section 4. Continued Effect. All other provisions of the Cannon Beach Municipal Code shall remain unchanged and in full effect.

Section 5. Effective Date. This Ordinance shall be effective on the 30th day following its passage.

Ordinance adopted by the City Council of the City of Cannon Beach on this 7<sup>th</sup> day of May, 2024 by the following roll call vote:

YEAS:  
NAYS:  
EXCUSED:

\_\_\_\_\_  
Barbara Knop, Mayor

Attest:

Approved as to Form:

\_\_\_\_\_  
Bruce St. Denis, City Manager

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Ashley Driscoll, City Attorney

## EXHIBIT A

### Title 12 Streets, Sidewalks and Public Places

#### Chapter 12.44 Limitations of Liability

##### 12.44.010 Definitions.

As used in this limitation of liability section, 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, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.
- C. "Trail" means a travel way for pedestrians, bicycles, and other non-motorized means of transportation.
- 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 city with jurisdiction over the public right of way and for which the city has not expressly accepted responsibility for maintenance.

##### 12.44.010 Liability Limited.

- A. 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:
  - 1. The City of Cannon Beach.
  - 2. City of Cannon Beach 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 provide by subsection [(A)(2)] of this section, 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.