

**ORDINANCE NO. 662
CITY OF DAYTON, OREGON**

**AN ORDINANCE OF THE DAYTON CITY COUNCIL AMENDING THE MUNICIPAL
CODE 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, the City of Dayton population is less than 500,000; and

WHEREAS, the City of Dayton 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, the City of Dayton finds that the City'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, the City of Dayton finds that it is important to protect the City, 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, the City of Dayton finds that adopting the limitation of liability in ORS 105.668(2) will provide the City, adjacent property owners, and nonprofit groups with such protection and will encourage the public's continued use of trails and structures in the City's public easements and unimproved rights of way.

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

Section 1: Findings. The above findings are hereby adopted.

Section 2: Limitation on Liability. The DAYTON 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 not affect other provision that can be given effect without the invalid provision or application.

Section 4: Continued Effect. All other provisions of the DAYTON 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.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 21st day of October 2024.

Mode of Enactment:

Date of first reading: October 7, 2024, In full _____ or by title only XX

Date of second reading: October 21, 2024, In full _____ or by title only XX

XX No Council member present at the meeting requested that the ordinance be read in full.

_____ A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

Final Vote: Hover, Mackin, Maguire, Teichrow, Wildhaber

In Favor:

Opposed:

Absent: Frank, Hildebrandt

Abstained:

Annette Frank

Annette Frank, Mayor

10/20/24

Date of Signing

ATTESTED BY:

Rocio Vargas

Rocio Vargas, City Recorder

10/21/24

Date of Enactment

Attachment: Exhibit A

EXHIBIT A
DAYTON MUNICIPAL CODE ADDITION

6.13 Trails or Structures within Public Easements and Unimproved Rights of Way

6.13.1 Definitions

For the purposes of this subsection, the following terms shall have the following meaning:

- 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.

6.13.2 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 Dayton
 - 2. The City of Dayton'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 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.