

ORDINANCE

24-03

AN ORDINANCE OF THE SILVERTON CITY COUNCIL 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; 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 Silverton's population is less than 500,000; and

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

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

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

Section 2. **Limitation on Liability.** The City of Silverton Municipal Code Chapter 12.49 is hereby added 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 City of Silverton Municipal Code Title 12 shall remain unchanged and in full effect.

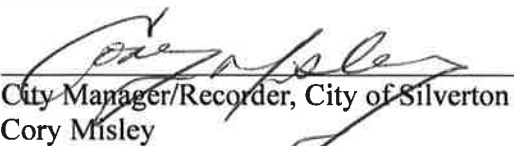
Section 5. Effective Date. This Ordinance shall be effective on the 30th day following its passage.

Ordinance passed by the City Council of the City of Silverton by a vote of 6 "for" and 0 "against" on this 4th day of March 2024.



Mayor, City of Silverton
Jason Freiling

ATTEST:



City Manager/Recorder, City of Silverton
Cory Misley

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EXHIBIT A

12.49.010 Definitions.

As used in this Chapter 12.49, 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.

12.49.020 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. City of Silverton
 - 2. City of Silverton 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 12.49.010. 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.