



Parks and Recreation Committee

Wednesday, April 19, 2023 at 6:00 pm

Committee Members

Lori Jean Sickles - Dennis Sickles - Dani Haviland - TJ Bailey - Laura Britton - Georgia Griffith -
Laura Evans - Chris Martin

Agenda

1. Call to Order
2. Pledge of Allegiance
3. Motion to Adopt the Entire Agenda
4. Consent Agenda - Motion Action Approving Consent Agenda Items
5. Public Comments

Citizens may address the Committee or introduce items for Committee consideration on any matter.

The Committee may not be able to provide an immediate answer or response but may direct staff to follow up on any questions raised. Out of respect to the Committee and others in attendance, please limit your comment to five (5) minutes. Please state your name and city of residence for the record.

6. Old Business
 - a. TJ Bailey- Skate Park Discussion
7. New Business
 - a. Recreational Changes to include Payment for Camping

Attachments:

- Recreatinal Immunity (Changes_to_Recreational_Immunity.pdf)

8. Correspondence, Comments and Ex-Officio Reports
9. Committee Announcements
10. Adjourn

Contact: Jeremy Teal (jteal@fallscityoregon.gov 5037873631) | Agenda published on 04/17/2023 at 3:23 PM

Changes to Recreational Immunity & Liability

Q: What is the legal implication when recreational immunity defense cannot be used and assuming that there is also no discretionary immunity?

Let's start with how things worked before *Johnson v. Gibson*. In the past, there were instances when a person injured himself in a park and then sued a city or county, and also named a park maintenance employee in that same suit. The public body could stop the suit and have it dismissed from court by asserting that recreational immunity protected both the maintenance employee and the public body from being sued at all.

After *Johnson v Gibson*, recreational immunity technically still applies to the city or the county, but it no longer applies to the employees of the city or the county. Using the same example, recreational immunity would stop the lawsuit from going forward against the city/county, but recreational immunity would have no effect on the case against the employee. And who pays for the suit against the employee? The employer*. The outcome is just like the city/county is being sued directly, as if recreational immunity never existed.

When recreational immunity is not in play, the plaintiffs will be able to go forward with lawsuits, but will still have the legal burden of proving that the city/county's employee was negligent, and that the employee's negligence is what caused the injury to the plaintiff. The defending city/county and its employee will then have the opportunity to bring forward evidence showing that they were not negligent and did not cause the person's injury.

*If the city/county is insured with CIS, then even though the city is legally obligated to defend its employee, CIS will cover the cost of that defense.

Q: Can a volunteer be named in a lawsuit?

Yes. Volunteers and agents are covered like employees by CIS and the Oregon Tort Claims Act. A best practice is to have a volunteer management program with clear job expectations of volunteers. CIS provides sample programs on the CIS website.

Park Fees

Q: Is charging for parking a problem? How does recreational immunity apply when there is a parking or entrance fee?

Charging for parking should not be a problem. Oregon's recreational immunity statute specifically excludes charging a fee does not include "the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day." ORS § 105.672(1)(c).

Because of an earlier Oregon Supreme Court case, there was an argument that recreational immunity did not apply when a person paid to enter a portion of the land, such as a campground, but then injured him or herself in a different area that is free and open to the public. The Oregon Legislature clarified the law. Even if the person paid more than \$15, so long as he or she is informed what areas of the land they paid to access, and which areas are free, then recreational immunity will apply to the free areas.

But keep in mind that, no matter how much or how little is charged for parking, because of the new case of *Johnson v. Gibson*, recreational immunity no longer protects employees of the landowner. No matter what portion of a park the plaintiff is in when he or she gets injured, recreational immunity will not protect from allegations that the employee caused an injury to someone who was using the land.

Best Practices and Signage

It is a best practice to have warning signs and an inspection and maintenance plan for parks. Below is suggested language for various types of parks.

Campgrounds

Usually a fee is charged for campgrounds waiving recreational immunity. A best practice is to place a sign (see below) on trails or areas outside the campground, warning participants that they are leaving the fee area. Campgrounds should have an inspection and maintenance plan.

- Entering free recreational area
- Enter at your own risks — be warned of possible injury or death
- List possible dangerous conditions
- Oregon law (ORS 105) provides the owner of land is not liable for injury death or property damage that arises out of use of the land for recreational purposes (known as “recreational use immunity”).