

RESOLUTION NO. 2250

**A RESOLUTION DESIGNATING CERTAIN CITY PARKS FOR
RECREATIONAL PURPOSES TO ESTABLISH RECREATIONAL USE IMMUNITY.**

WHEREAS, ORS 105.682 provides in part:

“(1) [A]n owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products when the owner of land either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.”

WHEREAS, the City Council may designate and permit the free use of certain publicly owned parks for recreational purposes pursuant to ORS 105.682; and

WHEREAS, it is in the public interest to limit city liability and manage risk on city property.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

- Section 1. That the Wilsonville City Council hereby permits the free use of Memorial Park, Murase Park, Boones Ferry Park, Town Center Park, Tranquil Nature Park, River Fox Park, Willamette River Water Treatment Park, Merryfield Neighborhood Park, Willow Creek/Landover City Park, Canyon Creek Park, Montebello Park, Hathaway Court Park, and Courtside Neighborhood Park for recreational purposes consistent with other areas in the city generally regarded as outdoor recreational areas as specified under ORS 105.682 save and except in designated areas.
- Section 2. The City Council authorizes the Community Services Director to post the required notices to maintain recreational immunity outside paid areas.

Section 3. Future parks and any other free-use, publicly owned properties are designated in like fashion.

Section 4. This resolution is effective upon adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 2nd day of August, 2010, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY of Votes:

Mayor Knapp	Yes
Council President Kirk	Yes
Councilor Hurst	Yes
Councilor Núñez	Yes
Councilor Goddard	Yes

MEMORANDUM

To: Honorable Mayor and City Council

From: Paul A. Lee, Assistant City Attorney and Rond Chananudech, Legal Intern

Date: August 3, 2010

Re: Designating City Parks for Recreational Use to Establish Recreational Use Immunity. Resolution No. 2250

I. Introduction and Background

Cities and the state are not liable for injuries arising from recreational use of free public parks. This lack of liability, also known as recreational use immunity, does not apply if the park charges a fee to use the land.¹ Last year, the Oregon Supreme Court ruled that if a landowner charges a fee for recreational use for a portion of his land, the recreational use immunity no longer applies to other portions of land open to the public for free. In other words, if a camper pays for a campsite located in a free public park, and is injured while using a trail in the public park, the park owner is liable. If a day hiker who does not pay for a campsite or park entrance fee is injured on the exact same trail doing the exact same thing, the park is not liable because it has recreational use immunity.

In response to the Supreme Court decision, the legislature amended the law to extend recreational use immunity to landowners who make their land available for recreational use but still charge a fee for use to a portion of the land. No recreational use immunity is available for portions of the land the landowner charges for use. However, if the landowner provides notice to paid land users that the rest of the area is free for recreational use, then the landowner maintains recreational use immunity in the free public area. So if a camper rents a camp site in a city park and is injured on a hiking trail in the free public park outside of her paid campsite, the city is shielded from liability as long as it provides notice that the rest of the park is free to use.

The City of Wilsonville currently has thirteen parks available to the public for free. Within the free public parks, the City allows the public to rent, for a fee, six recreational sites and several plots in the community garden.

II. Issue

The City currently does not post the required notice to maintain recreational use immunity outside paid areas. Staff is working on including the required notice to anyone who rents a recreational site or community garden. To make clear which portion of the land is free and which portion requires a fee, staff will attach maps to rental receipts when someone rents a

¹ The limitation on liability also does not apply if a person is injured while engaging in activities other than the use of land for recreational purposes or if a person is intentionally injured on the land.

recreational site or community garden plot. The maps will delineate which area is available to the public for free and which area the renter reserved. The attached Memorial Park map is an example of how staff intends to use highlighting or shading to designate which area in the park a group can rent.

In the meantime, to protect the city from liability, the city's insurance company has recommended that the City pass a resolution identifying city parks as areas designated for recreational use open to the public. Staff agrees. To use recreational immunity as a defense against liability, the City has to establish that it made the land available for a recreational purpose. Essentially, the resolution announces that the City intends to make its parks available to the public for recreational purposes. Therefore, the City would not be liable for any injury resulting from recreational use of the park.

III. Conclusion and Recommendation

Although state law does not require the City to pass a resolution identifying city parks for recreational use to receive recreational use immunity, staff believes the resolution would strengthen the City's position against potential litigation. The resolution announces that the City is aware of recreational use immunity and intends to exercise that immunity in the city parks.

Staff respectfully recommends that the City Council pass Resolution No. 2250 to limit the City's liability in city parks.

