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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5
6 FOR THE COUNTY OF MULTNOMAH

7 BIKELOUD PDX, an Oregon Non-profit
Corporation
8
9 Plaintiff,
10
11 v.
12 THE CITY OF PORTLAND, by and through
its Commissioners Jo Ann Hardesty, Mingus
Mapps, Carmen Rubio, Dan Ryan, and Mayor
Ted Wheeler, in their official capacities,
13
14 Defendants.

Case No.
COMPLAINT
(Declaratory and Injunctive Relief)
**Claims Not Subject to
Mandatory Arbitration**
Amount claimed (ORS 21.160(1)(c)):
Declaratory and Injunctive Relief

15 Plaintiff alleges as follows:

16 **INTRODUCTION**

17 1.

18 Despite “Vision Zero” goals adopted by the Portland City Council, fatal and serious
19 crashes in Portland continue to rise, including crashes harming children, elders and other adults
20 walking, riding bicycles and using mobility devices.

21 2.

22 Despite goals adopted by the Portland City Council to address climate change and make
23 neighborhoods livable by reducing reliance on single-occupancy vehicles and reducing pollutant
24 emissions, the percentage of trips taken by single-occupancy vehicles continues to rise.

25 3.
26

1 Further, despite specific “mode share” goals adopted by the Portland City Council for
2 Portlanders to use bicycles for 25% of trips by 2035—and rapid progress in cities that have built
3 safe infrastructure—bicycle mode share in Portland has stagnated below 7% and begun to
4 decline.

5 4.

6 Research by the City of Portland indicates that approximately 60% of Portlanders want to
7 be able to ride bicycles but are afraid to do so.

8 5.

9 Portland’s safety, climate and livability failures should come as no surprise in significant
10 part because the City of Portland has not only failed to implement its Council-approved Plans to
11 provide safe places for people to bicycle, walk and use mobility devices on and around Portland
12 streets, the City of Portland has failed to meet its most basic legal obligations to provide safe
13 streets.

14 6.

15 Among those most basic legal obligations, since 1971, is the duty to provide pedestrian
16 and bicycle facilities when streets are constructed, reconstructed, or relocated pursuant to ORS
17 366.514, known as the “Pedestrian and Bicycle Bill.”

18 7.

19 As detailed herein, since 1971, the City of Portland has (a) failed to adopt any policies or
20 procedures to implement its obligations under the Pedestrian and Bicycle Bill, and (b) has
21 systematically failed to comply.

22 8.

23 By this action, Plaintiff seeks a declaration of rights and a Judgment directing compliance
24 with the statute.

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26 ///

1 **PARTIES**

2 9.

3 At all material times, BikeLoudPDX (hereinafter “BikeLoud”) is a non-profit Oregon
4 corporation, organized and existing under the laws of the State of Oregon. Said corporation was
5 created with the mission to ensure Portland follows its own goal to make the city a place where
6 one quarter of all of our trips are done on bicycles. Since its founding in 2014, BikeLoud and its
7 members have advocated for safe, convenient infrastructure for people in Portland to be able to
8 ride bicycles safely. Its activities include advocacy for Safe Routes to School, bikeway
9 maintenance and vehicle speed reduction, in addition to organizing rides and raising awareness
10 following preventable crashes that continue to kill people riding bicycles, walking and using
11 mobility devices on public rights-of way in Portland. Further, BikeLoud, through its approximately
12 250 members, advocates for a safe and complete bicycle network by writing letters in support of
13 improvements, testifying at hearings, meeting with elected leaders, and taking transportation
14 decision-makers on policy rides.

15 10.

16 Members of BikeLoud regularly use or attempt to use streets throughout Portland,
17 including but not limited to one or more of the initially-identified locations named in Paragraph
18 16 of this Complaint while walking or riding bicycles.

19 11.

20 BikeLoud and its members are substantially affected by the City of Portland’s compliance
21 or non-compliance with the Pedestrian and Bicycle Bill in their safety, their ability to use Portland
22 streets, and their ability to promote use of bicycles, walking and rolling on public rights-of-way as
23 a safe and viable option in Portland.

24 12.

25 The City of Portland is an Oregon Municipal Corporation organized and existing under the
26 laws of the State of Oregon, and Jo Ann Hardesty, Mingus Mapps, Carmen Rubio, Dan Ryan, and

1 Ted Wheeler (Mayor) are the duly elected and serving commissioners for the City of Portland and
2 constitute its governing body.

3 13.

4 The City of Portland, by and through its Bureau of Transportation, receives state highway
5 funds.

6 **FIRST CLAIM FOR RELIEF**

7 14.

8 ORS 366.514. provides, among other things, “Out of the funds received by the
9 department or by any county or city from the State Highway Fund, reasonable amounts shall be
10 expended as necessary to provide foot paths and bicycle trails, including curb cuts or ramps, as
11 part of the project. Foot paths and bicycle trails including curb cuts or ramps as part of the
12 project shall be provided wherever a highway, road, or street is being constructed, reconstructed,
13 or relocated ... (5) As used in this Section, “bicycle trail” means a publicly owned and
14 maintained lane or way designated and signed for the use as a bicycle route.”

15 15.

16 The City of Portland has constructed, reconstructed and relocated numerous streets within
17 the City of Portland without providing the bicycle and/or pedestrian facilities required by ORS
18 366.514. Further, the City of Portland is in the process of constructing, reconstructing and/or
19 relocating certain streets within the City of Portland without providing bicycle and/or pedestrian
20 facilities required by ORS 366.514.

21 16.

22 The City of Portland has no policies or procedures to ensure compliance with ORS
23 366.514. The City of Portland has failed or is failing to comply with ORS 366.514 at numerous
24 times and at numerous locations throughout the City of Portland, including but not limited to the
25 following initially-identified locations:

- 1 a) The “Hoyt Yards” area of the Pearl District in NW Portland, which comprises at
2 least 24 complete city blocks, and was constructed entirely without bicycle
3 facilities;
- 4 b) NW 13th Avenue;
- 5 c) NW Kearney and NW Johnson from 9th to Station Way;
- 6 d) NW 23rd Ave south of Lovejoy St and the NW Vaughn St intersection;
- 7 e) NW Savier St east of NW Aspen Ave;
- 8 f) NW Thurman St NW 29th Ave to NW 32nd Ave (including bridge);
- 9 g) NE Killingsworth from Commercial to MLK;
- 10 h) NE MLK at Columbia (intersection);
- 11 i) NE Lombard from St Louis to Richmond;
- 12 j) NE Everett Ct from NE 97th Ave to NE 99th Ave
- 13 k) NE 33rd Avenue over NE Lombard St which was constructed and/or
14 reconstructed without bicycle facilities, and in part without pedestrian facilities;
- 15 l) NE Thompson E of 149th;
- 16 m) NE San Rafael from 148th to 162nd;
- 17 n) NE 46th Ave north of Columbia;
- 18 o) NE Couch and Davis East of 97th Ave and 97th Ave;
- 19 p) NE 136th between Whitaker Way and Prescott Ct;
- 20 q) NE and SE 82nd Ave;
- 21 r) Overpasses over I-205 at SE Market; NE Glisan; NE Prescott, NE Sandy;
- 22 s) SE Hawthorne Blvd;
- 23 t) SE Division St from SE 10th to SE Cesar Chaves;
- 24 u) SE 118th Ave from Pardee to Raymond; and
- 25 v) SW 11th from Gibbs to Gaines.

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1 17.

2 On information and belief, the list of initially-identified locations in the preceding
3 paragraph is incomplete, and numerous additional non-compliant locations will be identified
4 when the City of Portland can be compelled to produce documents in response to long-
5 outstanding public records Requests nos. C129069-031620 and C121169-011720 which seek
6 compliance documents and were issued by BikeLoud *et al* to the City of Portland in January and
7 March of 2020, respectively, and and/or through discovery. Plaintiff hereby provides notice of
8 intent to amend this Complaint to include additional streets identified through those processes.

9 18.

10 Plaintiff and its members' rights, status and other legal relations are affected by
11 defendant's failure to comply with ORS 366.514. They suffer real and probable injury by virtue
12 of their inability safely and efficiently to use the initially-identified locations described in
13 Paragraph 16 for walking and cycling, and all non-compliant locations city-wide. The relief
14 requested in this case will have a practical effect on their rights to the safe and efficient use of
15 the public right-of-way and transportation facilities at the initially-identified locations and city-
16 wide.

17 19.

18 Plaintiff is entitled to a declaration that defendant has violated and is violating ORS
19 366.514 at the initially-identified locations described in Paragraph 16 above and similar locations
20 that will be identified.

21 **SECOND CLAIM FOR RELIEF**

22 Plaintiff realleges Paragraphs 1 - 19.

23 20.

24 The plaintiff has no adequate or speedy remedy at law, and unless the defendant City of
25 Portland is enjoined from its violation of ORS 366.514 and required to provide State-Law-

1 mandated bicycle and pedestrian facilities, citizens of the City of Portland and the members of
2 BikeLoud, will be irreparably harmed.

3 **PRAYER**

4 WHEREFORE, plaintiff demands judgment for the following relief:

- 5 1. For a declaration that defendant has violated and is violating ORS 366.514 at the
6 initially-identified locations described in Paragraph 16 above and at such further
7 locations as are identified as described herein.
- 8 2. For an injunction ordering and requiring the City of Portland to comply with ORS
9 366.514 by providing compliant bicycle and pedestrian facilities on projects subject
10 to ORS 366.514 and for which such facilities were not provided;
- 11 3. For a further injunction ordering and requiring the City of Portland to implement its
12 Bicycle Plan for 2030 and like Council-Approved Plans as applicable as a *cy pres*
13 remedy in such locations, if any, where the City of Portland proves that compliance
14 for past failures to provide bicycle and pedestrian facilities in violation of ORS
15 366.514 is no longer practicable;

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- 1 4. For a further injunction enjoining the City of Portland from any further construction
2 of in-process and planned projects subject to ORS 366.514 unless and until the City
3 demonstrates that the projects comply with ORS 366.514;
- 4 5. For plaintiff's costs and attorney's fees pursuant to the Court's equitable powers,
5 including those set forth in *DeYoung v. Brown*, 300 Or App 530 (2019); and
- 6 6. For such other and further relief as to the Court shall seem equitable and just.

7 DATED: November 18, 2022

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