

ORDINANCE No. 188942

*Authorize a Class Action Settlement Agreement related to the installation and remediation of curb ramps in pedestrian right of way along City streets (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Americans with Disabilities Act of 1990, 42 U.S.C. §§ (“ADA”), and Section 504 of the Rehabilitation Act of 1973, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ (“Section 504”) require that state and local government not discriminate against qualified persons with disabilities in the provision of its programs, services and activities.
2. The Civil Rights Enforcement and Education Center (“CREEC”) on behalf of three named Plaintiffs and a class of similarly situated individuals who are residents of or visitors to the City of Portland with mobility disabilities, including, but not limited to, those who use a wheelchair, scooter, or other assistive devices (collectively, the “Settlement Class”), notified the City in the summer of 2016 that the City lacked adequate curb ramps in the pedestrian right of way that comply with applicable requirements of federal disability rights laws.
3. Each of the named Plaintiffs is an individual with a disability within the meaning of Section 3(2) of the ADA, and Section 504 of the Rehabilitation Act and adequately represents the Settlement Class.
4. In the fall of 2016 at the direction of Bureau of Transportation Commissioner Steve Novick, the City entered into a Negotiations Agreement with Plaintiffs and attorneys for the Settlement Class to work cooperatively to resolve the allegations and to improve access to the City’s pedestrian right of way.
5. The City does not admit that it has violated or failed to comply with or has any liability to Plaintiffs or the proposed Settlement Class under any provisions of the ADA or Section 504 relating to accessibility for persons with mobility disabilities to the pedestrian right of way, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements.
6. The City and CREEC have conducted a thorough examination and investigation of the facts and law relating to the City’s curb ramps and accessibility of the City’s pedestrian right of way, and have engaged in extensive and arms-length negotiations including the exchange of information and documents pertaining to the status of existing curb ramps in the City’s pedestrian right of way.

7. The City has concluded that after extensive analysis of the facts and applicable law and taking into account the risks and uncertainties associated with litigation including substantial attorneys' fees, that it is in the City's best interest to enter in to a Class Action Settlement Agreement and Consent Decree. Entering into a Class Action Settlement Agreement and Consent Decree is desirable to avoid the time, risk, and expense of defending protracted litigation, and to fulfill the City's long-standing commitment to promoting and enhancing the rights of those with disabilities, to ensure compliance with laws protecting the rights of individuals with mobility disabilities, and to resolve potential claims of the Plaintiffs and the Settlement Class.
8. A Proposed Consent Decree along with a Joint Motion for Class Certification and Preliminary Approval of Consent Decree shall be filed with the Court to certify a proposed Settlement Class and appoint the named Plaintiffs and their counsel as representatives of the Settlement Class. In addition, a Notice of Proposed Settlement of Class Action Lawsuit will be submitted to the United States District Court for the District of Oregon for preliminary and final approval under Rule 23 of the Federal Rules of Civil Procedure, upon adoption by the City Council.
9. Each of the named Plaintiffs representing the Settlement Class will receive a payment in accordance with the Court's directive in full and final satisfaction and release of their claims and in recognition of the services they rendered on behalf of the Settlement Class from the Risk Management Insurance and Claims Fund.
10. If the Court grants preliminary and final approval of the Consent Decree, pursuant to Rule 23(h) Plaintiffs are entitled to reasonable attorneys' fees, costs and expenses for the period January 1, 2016 through the Effective Date of the Settlement Agreement from the Risk Management Insurance and Claims Fund.

NOW, THEREFORE, the Council directs:

- a. That the Class Action Settlement Agreement, attached hereto as Exhibit A, is hereby accepted and the Commissioner in Charge is authorized to execute said documents on behalf of the City.
- b. That the Proposed Consent Decree, attached hereto as Exhibit B, is hereby accepted, and the Commissioner in Charge and the City Attorney's Office are authorized to execute said document on behalf of the City, together with any and all documents required to implement the Class Action Settlement Agreement and Proposed Consent Decree.
- c. That Risk Management is authorized to pay Plaintiffs claims, including reasonable attorneys' fees, costs and expenses out of the Risk Management Insurance and Claims Fund in accordance with the Court's directive.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in settling this lawsuit; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

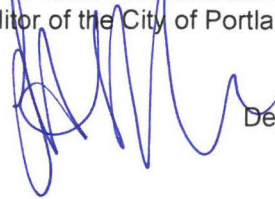
Passed by the Council: MAY 16 2018

188942

MARY HULL CABALLERO

Auditor of the City of Portland

By

A handwritten signature in blue ink, appearing to be 'MH Caballero', written over the word 'By'.

Deputy

Commissioner: Dan Saltzman
Prepared by: Eva Huntsinger
Date Prepared: May 7, 2018

Agenda No.
ORDINANCE NO. 188942
 Title

***Authorize a Class Action Settlement Agreement related to the installation and remediation of curb ramps in pedestrian right of way along City streets, and pay claims of named class representatives together with Plaintiffs attorneys' fees as directed by the Court.** (Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: Saltzman</p>	<p>CLERK USE: DATE FILED <u>MAY 08 2018</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Wheeler <i>W</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Eudaly</p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Susan P. P. P.</i></u> Deputy</p> <p>ACTION TAKEN:</p>
<p>BUREAU APPROVAL</p> <p>Bureau: PBOT <i>ebh</i> Bureau Head: Leah Treat</p> <p>Prepared by: K. McGair/S. Moede Date Prepared: May 7, 2018</p>	
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>Kam</i></p>	
<p>Council Meeting Date May 16, 2018</p>	

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/> Start time: 10:05 a.m.</p> <p>Total amount of time needed: 15 min (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/> Total amount of time needed: (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish →	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	