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# 191295

Emergency Ordinance

## \*Authorize City Attorney to settle lawsuit related to sidewalk obstructions created by campsites and pay claims of named plaintiffs, including attorneys' fees as directed by the Court

Passed

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 to discriminate against qualified persons with disabilities in the provision of its programs, services and activities.
2. Each of the Plaintiffs are individuals with Mobility Disabilities or caretakers of individuals with Mobility Disabilities within the City of Portland, including, but not limited to, those who use a wheelchair, scooter, or other assistive device for any Mobility Disability. Each of the Plaintiffs is an individual with a disability or a caretaker of individuals with disabilities within the meaning of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131(2), 12102(1) ("ADA"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 705(20), 794(a) ("Section 504"). Plaintiffs have filed a lawsuit entitled *Tozer at al. v. City of Portland*, Case No. 3:22-cv-01336-MO in the United States District Court for the District of Oregon (the "Lawsuit").
3. The City does not admit that it has violated or failed to comply with or has any liability to Plaintiffs 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.
4. The City and plaintiffs have conducted a thorough examination and investigation of the facts and law relating to the plaintiffs' claims of

Introduced by

[Mayor Ted Wheeler](#)

Bureau

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Contact

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Requested Agenda Type

Regular

Date and Time Information

<p><b>Requested Council Date</b> May 31, 2023</p> <p><b>Time Requested</b> 30 minutes</p>
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sidewalk obstructions, and have engaged in extensive negotiations including the exchange of information and documents pertaining to the City's programs for identifying, evaluating, and remediating campsites obstructing sidewalks.

5. 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, the Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, 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.
6. As described in detail in Exhibit A, the settlement requires the City to prioritize the removal of campsites obstructing sidewalks. The City will assess reported sidewalk obstructions within 5 business days, and the City will commit 40% of annual campsite removals to address sidewalk obstructions. In addition, requests for accommodations by persons with disabilities will receive priority for this work. The City will maintain an integrated campsite reporting system, and the City generally will not distribute tents, except in limited situations.
7. The settlement will require the City to maintain minimum annual funding of the Impact Reduction Program services to address campsite removals. These minimum funding requirements include \$8 million in Fiscal Year 2023-2024 and \$3 million for each of the following four fiscal years, totaling \$20 million over the five-year term of the settlement agreement.
8. Each of the named Plaintiffs will receive a payment in full and final satisfaction and release of their claims out of the Risk Management Insurance and Claims Fund.
9. Pursuant to the Settlement Agreement, Plaintiffs will be entitled to reasonable attorneys' fees, costs, and expenses to be determined by the Court and paid out of the Risk Management Insurance and Claims Fund.


NOW, THEREFORE, the Council directs:

- A. That the Settlement Agreement attached hereto as Exhibit A is hereby approved and the City Attorney is authorized to execute the Settlement agreement on behalf of the City.
- B. That Risk Management is authorized to pay Plaintiffs claims in the amount set forth in the Settlement Agreement and 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.

## Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2023/tozer-settlement-agreement.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/tozer-settlement-agreement.pdf) 897.34 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council  
May 31, 2023

Auditor of the City of Portland  
Simone Rede

## Impact Statement

### Purpose of Proposed Legislation and Background Information

On September 6, 2022, Plaintiffs filed a lawsuit against the City of Portland alleging that the City had violated their rights under the Americans with Disabilities Act of 1990 ("ADA") and the Rehabilitation Act of 1973 ("Rehabilitation Act") by failing to maintain City sidewalks clear of debris and tent encampments. The City and Plaintiffs' counsel began an extended negotiation to reach a compromise settlement that requires the City prioritizes the removal of campsites obstructing sidewalks.

### Financial and Budgetary Impacts

The Settlement Agreement will require the City to maintain minimum annual funding of the Impact Reduction Program services to address campsite removals. These minimum funding requirement include \$8 million in Fiscal Year 2023-2024 and \$3 million for each of the following four fiscal years, totaling \$20 million over the five-year term.

The Settlement Agreement also contemplates additional procedures to link ADA accommodation requests with campsite removal requests and quarterly reporting to track the City's compliance. To comply with these terms, PBOT has estimated that it will require an additional 0.5 – 1.0 FTE to assist with ADA accommodation assessment and reporting. PBOT estimates \$110,000 annually to fund the position (\$550,000 total). It further contemplates signage posted at locations where campsites blocking the

sidewalk are a repeated issue. PBOT estimates that compliance with the signage requirement could cost \$80,000 per year (\$400,000 total).

Finally, the Settlement Agreement includes a \$5,000 award to each Plaintiff (\$50,000 total) and the payment of reasonable attorneys' fees to Plaintiffs, which will be determined by the Court. The source of funding for the payment to Plaintiffs and their attorneys is the City's Insurance and Claims Fund.

## **Community Impacts and Community Involvement**

The Settlement Agreement is intended to improve accessibility of the City sidewalks throughout the entire City. Access to sidewalks are essential for individuals with mobility disabilities to navigate the neighborhoods and access public transportation. Without accessible sidewalks, people are forced to travel in the street, which poses a significant safety risk. The requirements set forth in the Settlement Agreement will benefit the specific Plaintiffs as they navigate City streets, but the prioritization is not specific to Plaintiffs and will provide a portal for all persons with mobility disabilities to request accommodations and gain priority so the sidewalks they need are accessible.

The Ordinance settles a lawsuit. No public involvement or input was sought regarding this Ordinance. The City Attorney's Office and Risk Management have concluded that it is not appropriate to have public involvement in settlement negotiations regarding lawsuits against the City. No future public involvement is anticipated or necessary.

## **100% Renewable Goal**

Not applicable.

## **Budget Office Financial Impact Analysis**

The settlement agreement includes an award to each plaintiff of \$5,000, which totals \$50,000 to be paid within sixty days of Council Approval of this settlement. The agreement also includes payment of reasonable attorneys' fees to Plaintiffs which will be determined by the Court. The source of funding for these costs is the City's Insurance and Claims Fund. Further, the City must maintain funding levels in the Impact Reduction Program to address campsite removals, and to prioritize the removals in the Right-of-Way over the next five years. The financial commitment for this level of funding is \$20.0 million. The Settlement Agreement would likewise require support from PBOT, which estimates compliance costs totaling \$190,000 annually, including between 0.5-1.0 FTE and signage.

## Agenda Items

437 Regular Agenda in [May 31-June 1, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/31)  
(<https://www.portland.gov/council/agenda/2023/5/31>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea