

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

Liberty Resources, Inc. et al. v. City of Philadelphia, Civ. No. 2:19-cv-03846-HB (E.D. Pa.)

ATTENTION: If you meet the following description, then you may be a member of the proposed settlement class affected by this lawsuit:

1. You have a disability or impairment that affects your mobility (including, for example, people who use wheelchairs or other mobility devices, as well as those who are blind or have low vision), and
2. You use or will use pedestrian rights of way, in the City of Philadelphia.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LAWSUIT.

WHY AM I RECEIVING THIS NOTICE?

The purpose of this notice is to inform you of the proposed settlement in a pending class action lawsuit brought on behalf of persons with disabilities or impairments that affect their mobility who use or will use pedestrian rights of way in the Philadelphia, PA. The lawsuit, *Liberty Resources, Inc., et al. v. City of Philadelphia*, Case No. 2:19-cv-03846-HB, filed in the U.S. District Court for the Eastern District of Pennsylvania in 2019, was brought by Named Plaintiffs Liberty Resources, Inc.; Disabled in Action of Pennsylvania, Inc.; Philadelphia ADAPT; Tony Brooks; Liam Dougherty; Fran Fulton; and Louis Olivo. The lawsuit alleges that the City of Philadelphia (“the City”) has discriminated against individuals with disabilities that affect their mobility in violation of federal anti-discrimination laws. The City expressly denies and disputes Plaintiffs’ allegations that the City has failed to comply with federal anti-discrimination laws and disputes that it has any liability or has committed any wrongdoing. The Named Plaintiffs and the City have reached an agreement to settle the lawsuit. That settlement must be approved by the Court before it can be finalized. The details of the settlement, summarized below, are contained in the Settlement Agreement.

AM I PART OF THE SETTLEMENT CLASS?

If you (1) are a person with a disability or impairment that affects your mobility—including, for example, people who use wheelchairs or other mobility devices, as well as those who are blind or have low vision—and (2) use or will use pedestrian rights of way such as public sidewalks, curb ramps, and crosswalks, in Philadelphia you may be a member of the proposed Settlement Class affected by this lawsuit and the proposed Settlement Agreement. Please read this notice carefully because your rights may be affected.

WHAT WOULD THE PROPOSED SETTLEMENT AGREEMENT DO?

A. The City will install or remediate 10,000 curb ramps.

The City will install or remediate at least 10,000 curb ramps over the 15-year Settlement Period. This is called the “Curb Ramp Obligation” and it includes installation and remediation of curb

ramps on any road controlled by the City, whether as part of street resurfacing, through the Request System (described below) or as a result of any other third-party activity for which the City requires a Compliant Curb Ramp, including, for example, work done by utility companies.

3-year Milestones. During the Settlement Period, the City will meet milestones every three fiscal years:

- 2,000 curb ramps by the end of Year three (3)
- 4,000 curb ramps by the end of Year six (6)
- 6,000 curb ramps by the end of Year nine (9)
- 8,000 curb ramps by the end of Year twelve (12)
- 10,000 curb ramps by the end of Year fifteen (15)

If the City exceeds any given milestone, the excess curb ramps will count towards the following milestone. For example, if the City completes 2,500 ramps during the first three fiscal years, then it will only need to complete another 1,500 ramps during the next three fiscal years in order to meet the Year 6 milestone.

Installation. Whenever the City (or a third-party for the City) newly constructs a road or street with a pedestrian walkway, it will install accessible curb ramps, as required by ADA regulation, except where the City can demonstrate that such installation is technically infeasible (defined below) or where pedestrian crossing is banned for all pedestrians due to safety concerns.

Remediation/Alteration. Whenever the City (or a third-party for the City) alters a road or street with a pedestrian walkway under its control, it will remediate (fix) existing but non-compliant curb ramps, and/or install new accessible curb ramps, as required by ADA regulation, except where the City can demonstrate that it is technically infeasible to have an accessible curb ramp at the location or where pedestrian crossing is banned for all pedestrians due to safety concerns.

B. The City will maintain curb ramps

The City will also maintain curb ramps over which it has responsibility in operable working condition as required by ADA regulation.

C. The City may not install curb ramps at all corners and some ramps may not meet all of the technical compliance standards.

Banned Pedestrian Crossings. When the City installs something to indicate it has banned pedestrian crossing for all pedestrians at a particular location, it must be consistent with standards issued by the Pennsylvania Department of Transportation (PennDOT). The City has sole discretion to determine that pedestrian crossing is banned.

Technical Infeasibility. There will be instances when it will not be physically possible for a curb ramp installed or remediated to be constructed in full and strict compliance with ADA

requirements because of physical or site constraints. This is called “technical infeasibility.” In such circumstances, the City must provide accessibility to the maximum extent possible. In doing so, the City will consider the extent to which physical or site constraints can be addressed by alternative curb ramp designs. These situations will be documented on agreed upon forms.

D. The City will establish a Curb Ramp Request System

The Settlement establishes a “Curb Ramp Request System” for City residents to request installation, remediation, or maintenance of ramps at any crossing on the Local Streets Network or FAM streets network. The specific streets that make up these two networks are listed in Exhibits A and B attached to the Settlement Agreement.

Initiation of the System. The request system will be in place by the end of the third fiscal year that the Settlement is in effect.

Submission of Requests. Requests may be submitted using the City’s existing 311 service request system, via website, dedicated mobile phone application, telephone, or in person. The City will make best efforts to investigate requests within 30 days through a process and under standards detailed in the Settlement.

Fulfillment of Requests. Following investigation and verification, requests for maintenance on the Local Streets Network must be performed as soon as practicable but no later than within 9 months of the conclusion of the investigation. Requests for installation or remediation must be completed within 12 months of the conclusion of the investigation. These time periods are subject to certain exceptions specified in the Settlement Agreement.

Numbers of Ramps Covered. Each fiscal year, the City will only be required to install or remediate fifty (50) requested curb ramps, and to maintain fifty (50) requested curb ramps. If the City receives more than that many requests in a fiscal year, the remainder may be completed in a subsequent fiscal year.

Priorities. Generally, the City will prioritize work performed in response to requests based on the order in which the requests were received. Should the City receive requests that warrant Installation, Remediation, or Maintenance in excess of the annual numerical limits, the work shall be prioritized based on a publicly available Accessibility Score.

Requests on Federally Funded Streets. Where the City has identified installation, remediation, or maintenance is required in response to a request regarding a curb ramp at any crossing on the network receiving federal funding, the City will perform such work subject to funding and contract requirements.

E. The City will publicly report information about curb ramp installation and remediation.

Public Notice Generally. The number and location of curb ramps for which the City has finalized notice of work to proceed for installation or remediation will be publicly available for the duration of the Settlement Period.

Annual Status Report. On an annual basis, the City will prepare a Status Report containing:

- the number and location of curb ramps the City installed or remediated over the prior year (including as part of street resurfacing, through the Request System, or as a result of any other third-party activity for which the City requires a Compliant Curb Ramp);
- the number and location of curb ramps for which the City has noticed work to proceed for Installation or Remediation within the prior year as part of street resurfacing on the Local or FAM Streets Networks or through the Request System; and
- the number, location, and basis of any banned pedestrian crossings.

Each Status Report will be made available to the public on the City’s website in a format that complies with the Web Content Accessibility Guidelines (WCAG) published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium.

WHAT ELSE DO I NEED TO KNOW ABOUT THE SETTLEMENT AGREEMENT?

A. Resolution & Release of Claims

Except for claims to enforce the Settlement, the Named Plaintiffs release the City from all claims (including any potential claims for monetary damages) related to the accessibility, installation, remediation, or maintenance of the City’s pedestrian facilities through the end of the fifteen-year Settlement Period.

The other members of the Settlement Class will release the City from all claims for injunctive or declaratory relief arising under the ADA, Section 504, or similar statutes relating to the accessibility, installation, remediation, or maintenance of the city’s pedestrian facilities, through the end of the Settlement Period. Members of the Settlement Class who are not named plaintiffs will not release any potential claims for monetary damages.

Additionally, the Settlement Agreement does not release any claims to enforce the terms of the Settlement Agreement. Class members cannot bring a claim alleging violation of or non-compliance with the Settlement unless the Parties have complied with all of the dispute resolution procedures in the Settlement.

B. Monetary Relief

The Settlement Agreement does not provide for any monetary relief to be paid to members of the Settlement Class or the Named Plaintiffs.

C. Attorneys’ Fees & Costs

The Settlement Class is represented by attorneys employed by Disability Rights Advocates and the David Ferleger Law Office (“Class Counsel”). Class Counsel has not charged Plaintiffs for

representation in this matter. Instead, the City will pay Class Counsel's fees and costs through the Settlement's effective date in the amount of \$1,100,000.

In addition, the City will pay Class Counsel their fees and costs for all work reasonably necessary to monitor, implement, and administer the Settlement Agreement subject to a tri-annual cap of \$60,000, including payment to a third party to provide technical expertise in monitoring the Settlement to ensure compliance with the Settlement Agreement.

The parties did not negotiate fees or costs until after all other terms of the Settlement were finalized.

D. Fairness of Agreement

The class representatives and Class Counsel have concluded that the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and in the best interests of the Settlement Class. In reaching this conclusion, the class representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes if they were to continue the lawsuit, and the expense and length of time associated with bringing the lawsuit to trial and any possible appeals.

WHAT IF I WANT TO OBJECT TO THE SETTLEMENT AGREEMENT?

The Court has preliminarily approved the Settlement Agreement, and has scheduled a hearing for February 7, 2023 at 2:00 p.m. to determine whether the proposed Settlement Agreement is fair and reasonable and should be approved on a final basis. The hearing will be held in the Courtroom of the Honorable Judge Harvey Bartle III located at:

James A. Byrne U.S. Courthouse
Courtroom 16-A
601 Market Street
Philadelphia, PA 19106

If you are a member of the Settlement Class, you can ask the Court to deny approval by filing an objection. You cannot ask the Court to modify the terms of the Settlement Agreement; the Court can only approve or deny the Settlement Agreement. If the Court denies approval, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

Although you are not required to attend the final approval hearing, as a Class Member, you may participate in, and be heard at, the hearing if you have filed a timely written objection. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. The hearing date may be changed by the Court without further notice to the entire class. If you wish to receive electronic notice of any changes to the schedule, please file a notice of appearance with the Court and include a valid e-mail address at which you can receive notice.

To file an objection, you must send the Court a written statement that you object to the Settlement in *Liberty Resources, Inc., et al. v. City of Philadelphia*, Case No. 2:19-cv-03846-HB (E.D. Pa.). Be sure to include your name, address, telephone number, signature, and a full

explanation of why you object to the Settlement. Your written objection must be mailed to the Court, postmarked no later than January 9, 2023. The Court's address is Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Your written objection also must be mailed to **all** of the following lawyers, postmarked no later than January 9, 2023:

Class Counsel:

Disability Rights Advocates
Attn: Erin Gallagher
655 Third Avenue, 14th Floor
New York, NY 10017

David Ferleger Law Office
Attn: David Ferleger
620 W. Mt. Airy Ave.
Philadelphia, PA 19119

Counsel for the City:

Sean McGrath, Deputy City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102

Kymberly K. Evanson
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL BE DEEMED TO HAVE WAIVED YOUR OBJECTION AND SHALL BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT AGREEMENT.

WILL I BE BOUND BY THE SETTLEMENT AGREEMENT?

The proposed Settlement Agreement, if given final approval by the Court, will bind all members of the Settlement Class. This will bar any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement Agreement for the term of the Settlement Agreement.

HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed Settlement Agreement. You can review the actual Settlement Agreement and its precise terms and conditions by:

1. Visiting <https://dralegal.org/case/lri-v-philadelphia/> or www.ferleger.com/phillycurbcutsettlement

2. Contacting class counsel at either of the following:

Disability Rights Advocates
Attn: Erin Gallagher
655 Third Avenue, 14th Floor
New York, NY 10017
PhillySettlement@dralegal.org
Telephone: (332) 217-2298

David Ferleger Law Office
Attn: David Ferleger
info@phillycurbcutsettlement.com

3. Accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.paed.uscourts.gov> (Civil Action No. 2:19-cv-03846-HB).

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT AGREEMENT.

To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

This Notice is also available in Spanish. To obtain copies of this Notice or the Settlement Agreement in Spanish, please see the information provided about the settlement on the City's website: www.phila.gov.

Este Aviso también está disponible en español. Para obtener copias de este Aviso o el Acuerdo resolutorio en español, consulte el sitio web de la Ciudad: www.phila.gov.