



## REQUEST FOR COUNCIL ACTION

**Agenda Date:** May 23, 2022  
**To:** Council Members  
**From:** Kate Swise, City Attorney

**AGENDA ITEM:** Resolution No. 413-22/23 Approve Class Action Consent Decree

**ACTION REQUESTED:** Approve and Adopt the Resolution.

**DESCRIPTION:** In 2018, a class-action lawsuit was filed claiming that the City failed to maintain accessible pedestrian rights-of-way. The lawsuit was certified as a hybrid class action lawsuit on April 19, 2021. This resolution is to settle all claims asserted in the class action lawsuit through a consent decree. In this consent decree, the City agrees to hire an engineering consultant to survey all sidewalks within the City of Pekin and then to create a “transition plan” to prioritize repair and improvement of all inaccessible sidewalks. The City agrees to spend a minimum of \$250,000 a year on accessibility improvements for the duration of the consent decree. The City also agrees to spend or procure an additional \$1.5 million on accessibility improvements in the next three years. The term of the consent decree will be determined by the Court after the transition plan is developed.

### FINANCIAL IMPACT:

The Consent Decree calls for the following investment by the City:

1. City’s cost-share for settlement of the class action lawsuit, in partnership with the Illinois Municipal League-Risk Management Association;
2. A Minimum of \$250,000 annually spent on accessibility improvements (located in the FY23 Budget 445-041-584000);
3. Expenses related to the development of a new transition plan development and its oversight by consultants (located in the FY23 Budget 445-041-561200);
4. Additional commitment of \$1.5 million spent on accessibility improvements in next 3 years.

Requested Amount: Up to \$400,000 for settlement costs

Line Item: General Fund Reserves

Budgeted Amount: N/A

Remaining Funds: N/A

**IMPACT IF APPROVED:** The City will enter into a Class Action Consent Decree

**IMPACT IF DENIED:** The City will not enter into a Class Action Consent Decree

**ALTERNATIVES:** N/A

### RELATED TO THE 2019-2021 CITY COUNCIL GOALS:

**5 Year CIP.** The Five-Year Capital Improvement Plan reflects all current and future capital improvement needs of the City of Pekin. The Plan is designed to be updated annually by staff and submitted to the Council for review and approval prior to the annual budget process.

**Enhance Code Enforcement Services.** The Council understands the importance of a strong Code Enforcement Program in that it has an impact on many facets of living and doing business inside the City of Pekin.

**Business Friendly Community.** The Council strives to bring new businesses to Pekin while helping to maintain and expand all existing businesses. It is therefore essential to work cooperatively to make Pekin a “Business-Friendly” Community.

**Efficient and Effective Municipal Operations.** A fundamental responsibility of elected officials, City Staff and Employees is the exercise of good stewardship over public funds. Therefore, it is important that municipal services be delivered with maximum efficiency and effectiveness.

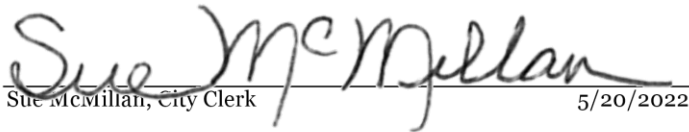
**Employee Residency.** It is the goal of the Council to develop a policy that encourages more full-time non-union employees who participate in a City funded pension program to reside within the city limits of Pekin.

**REQUIRED SIGNATURES**

**Finance Department** (Certification of Availability of Funds):

Date:

**City Manager:**

  
Sue McMillan, City Clerk 5/20/2022

Date:

**Resolution No. 413-22/23 Approve Class Action Consent Decree**

**WHEREAS**, on December 5, 2018, a class-action lawsuit, captioned *Berardi, et al. v. City of Pekin, et al.*, Case No. 1:18-cv-01438, was filed in the U.S. District Court for the Central District of Illinois, Peoria Division, asserting, *inter alia*, the City's failure to construct or maintain accessible pedestrian rights-of-way throughout the City of Pekin in violation of applicable accessibility laws; and

**WHEREAS**, on April 19, 2021, the lawsuit was certified as hybrid class action lawsuit under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and the Court certified the plaintiff class to include all persons with mobility disabilities who were residents of the City of Pekin from December 11, 2016, through December 11, 2018, and who were denied meaningful access to public pedestrian rights-of-way in the City during that timeframe; and

**WHEREAS**, the City Council believes it is in the best interests of the City and its residents to enter into the Consent Decree attached hereto as Exhibit A with the plaintiffs in this suit to avoid the time, risk and expense of defending protracted litigation, to fulfill its 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 Class; and

**WHEREAS**, the Consent Decree will be submitted to the United States District Court for the Central District of Illinois, Peoria Division, for preliminary and final approval.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The above recitals are found to be true and correct and are incorporated herein.

**Section 2.** The Mayor and Attorney Austin Zimmer, as Counsel of record for the City in this case, are authorized and directed to enter into the Class Action Consent Decree in substantially the form attached hereto as Exhibit A, with such revisions and modifications as the Mayor, with the advice of Counsel, deems necessary and appropriate.

**Section 3.** The City Clerk is directed to attest to the execution of the Class Action Consent Decree as negotiated and approved by the Mayor and/or City Manager.

**ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of Pekin this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK