

Email received June 7, 2022

Dear Commissioners:

I am writing this in regards to the proposed redesign of Grand St adding bike lanes and removing half of the parking in the process. Many of the Grand St residents are elderly and if this proposed change goes through it will make life very difficult for them if not impossible for them to remain in their homes. It will be harder for care givers, home health aides, delivery services and friends and family to visit. East Bay Paratransit or similar services will not be able to stop in front of their homes to pick them up. There are some homes that have driveways that are too narrow for a person with a walker to navigate for which they need access from the street. For those residents that don't lose their parking, they will have to navigate the bike lane and then the buffered area in order to reach a vehicle. We don't live on Grand St but this would be a real problem for us if we did. My husband has Parkinson's and the extra steps required and the challenge of not getting hit by a bicycle just to get into a car would make our life harder. I was on Telegraph Ave in Oakland where they have made similar changes to what is proposed for Grand and I almost got hit by a bicyclist who was flying down the street. In a protected lane they go faster and don't look for pedestrians. In all the areas where bike lanes have been added, they have not reduced the parking. On Shoreline, they actually added parking as the south side of the street originally had 2 lanes of traffic, one of which cars could park in the evening but needed to be vacated by morning. I am in favor of the bike lanes that are on Grand and restriping to make them safer but this plan with buffered bike lanes and moving the bike lane to be adjacent to the curb is going to make it really hard for those who live on Grand St to age in place and will force some out of their homes. Thank you for your consideration.

**Regards,
Karen Miller
720 Paru St**

Email received June 14, 2022

Dear Ms. Gottstein,

In response to your request, city staff reviewed the 2009-2018 crash data used for the Vision Zero Action Plan. Between the lagoon bridge and Encinal there was the following KSI crash:

- 10/3/2016: fatal solo bicycle crash, Grand and Clinton

In total, due to crashes on Grand St from Encinal to Dayton from 2009-2018...

- A total of 30 people were injured or killed
- 1 person died (bicyclist)
- 5 people suffered other visible injuries (4 bicyclists – 3 of whom were age 14 or younger – and 1 pedestrian)
- 25 people complained of pain (2 bicyclists, 1 pedestrian, 1 motorcyclist, 21 people in motor vehicles)

I am happy to provide additional data as requested.

Best regards,
Robert

Robert Vance, P.E.

Pronouns: he, him, his
Deputy Director/City Engineer
City of Alameda Public Works
510-747-7972 (office)
510-225-5920 (mobile)

From: Carol Gottstein [<mailto:carolgottstein@yahoo.com>]

Sent: Tuesday, June 14, 2022 11:12 AM

To: Robert Vance <rvance@alamedaca.gov>; Erin Smith <ESmith@alamedaca.gov>; Andrew Thomas <athomas@alamedaca.gov>; Jennifer Roloff <jenniferrolloff@yahoo.com>; Sarah Henry <SHenry@alamedaca.gov>; Disability Issues Commission <disabilitycomm@alamedaca.gov>

Cc: Marilyn Ezy Ashcraft <MEzyAshcraft@alamedaca.gov>; Tony Daysog <TDaysog@alamedaca.gov>; Trish Spencer <tspencer@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>

Subject: [EXTERNAL] Grand Street Project Questions

To: Robert Vance, Grand Street Project Manager, Public Works Deputy Director, City of Alameda

RE: Granular Supporting Data for Removal of Grand Street Parking Between Encinal Ave. and the Lagoon Bridge

Dear Mr. Vance:

Thank you for your previous response to my previous email. I do not need extensive information as to the type and locations of crashes in the entire project area. I just want you to answer one question, similarly stated in my previous email:

How many of these KSI crashes actually occurred on this limited section of Grand Street from Encinal to the lagoon bridge, and **when** did they occur?

By "**when**", I expect you to provide the month, day, and year each crash occurred. Please also provide the approximate intersection or other location reference corresponding to each dated KSI incident.

Please do not include KSI crashes on Grand Street which occurred South of Otis Drive or North of Encinal Avenue.

Thank you,

Carol Gottstein MD
1114 Grand Street
Alameda, CA 94501-4027

On Thursday, June 9, 2022, 05:32:28 PM PDT, Robert Vance <rvance@alamedaca.gov> wrote:

Hello Ms. Gottstein,

Thank you for your questions about the data used in the Vision Zero analysis. I reviewed the data file, and the numbers presented in Appendix E and F are both correct but refer to different measurements and dates.

- Appendix E refers to the number of *people* who were killed or experienced severe injuries. The time period is January 1, 2011 to Dec 31, 2017. In this period there were 81 KSI crashes with 16 people who died and 82 people who experienced severe injuries.
- Appendix F references the number of KSI *crashes*. A single KSI may include more than one death or severe injury. The time period is January 1, 2009 to Dec 31, 2018. In this period there were 113 KSI crashes with 19 people who died and 128 people who experienced severe injuries.

Regarding the designation of Grand Street as a high-injury corridor, the map on page 7 of the [Vision Zero Action Plan](#) shows the location of crashes (severe and non-severe). The map on page 15 shows the designated high injury corridors (HIC). Grand Street is a Tier One HIC between Lincoln and Otis and a Tier Two HIC between Otis and Shore Line. The intersections of Grand/Otis and Grand/Shore Line are shown as high crash intersections. I will need to get back to you next week on the type and locations of crashes in our project area.

I look forward to continuing our discussion of solutions for this corridor, including accommodations for people with disabilities.

Best regards,
Robert

Robert Vance, P.E.
Pronouns: he, him, his
Deputy Director/City Engineer

City of Alameda Public Works
510-747-7972 (office)
510-225-5920 (mobile)

From: Carol Gottstein [<mailto:carolgottstein@yahoo.com>]
Sent: Thursday, June 9, 2022 2:44 PM
To: Robert Vance <rvance@alamedaca.gov>; Andrew Thomas <athomas@alamedaca.gov>
Cc: Anthony Daysog <tony_daysog@alum.berkeley.edu>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>
Subject: [EXTERNAL] Grand Street Project Questions

To: Robert Vance, Grand Street Project Manager, Public Works Deputy Director, City of Alameda
RE: Granular Supporting Data for Removal of Grand Street Parking Between Encinal Ave. and the Lagoon Bridge

Dear Mr. Vance:

Could you please provide me with the actual dates (month- day--year) of each "KSI" crash you counted on the part of Grand Street between its intersection with Encinal and its intersection with Palmeta Court, that occurred during the time period you studied?

Since Alameda is such a small city, it should be easy to find news accounts of all traffic collisions occurring on Grand Street that resulted in either deaths or serious injuries during that limited time period. I certainly remember the KSI crashes I read about happening on Fernside, Shoreline, Otis, and other streets of the city. But I have lived in my Grand Street house (more or less) since 1955 and I have not been able to find similar incidents in the past ten years for this section of Grand Street.

Could you also please state for the record the exact time period that was studied? The high injury corridors maps read: "Crash Analysis, 2009-2018 Data" but this is vague. Is the time measured from Jan 1, 2009 to Dec 31, 2018, or some other interval? One source of my confusion is that Vision Zero Appendix E (pg 1) states: "from 2011 to 2018, 16 people died and 82 suffered severe, life changing injuries on Alameda streets,.. " That sums to 98 KSI.

But Appendix F, Tables 14 Ped (39 KSI); 15 Bike (30 KSI); 30 Mcycle (21 KSI); 31 MV (23 KSI) = 113 KSI. Is the difference in the numbers due to 2009-2010? Or am I misunderstanding the tables?

How many of these KSI actually occurred on this limited section of Grand Street and when did they occur?

I am a third generation Alamedan. My grandparents and great uncle built some of the older houses and apartments still standing on this island. I have seen many changes on the streets of this city over the decades. And I am having a hard time understanding how this limited part of Grand Street currently meets the definition of a "high injury corridor". The Vision Zero maps themselves completely exclude Grand Street as high injury corridors for motorcycles and automobiles. Yet Grand Street is still (arbitrarily) designated a "Tier 1 High Injury Corridor".

I have searched through Vision Zero Action Plan Appendix F:Detailed Crash Data Analysis; looking for specific data supporting this designation for just this section of Grand Street, but have not found it. There is no data localizing this KSI crash problem to the area of Grand Street where drastic removal of parking is proposed.

On pg 2, Appendix F, bottom, a most significant statement reads: "Historical crash data (ten years) suggest bicycle and pedestrian crashes have remained relatively stable with a possible marginal decline in recent years".

Disability Concerns: I was hit by a car as a pedestrian in a San Francisco crosswalk many years ago. I have had six spine fusion surgeries since and have 20+ pieces of hardware holding me together. I do not want to be forced to cross the street to load and unload my car, which I have done for years with the safety of curbside access in front of my home.

So I also did a word search of Appendix G, but got no results for "disabled" or "disability" or "accommodation".

I would appreciate a response to my inquiry before your presentation to the Disability Commission on Wednesday 6.15.2022. Thank you!

Carol Gottstein MD
1114 Grand Street
Alameda, CA 94501-4027
510.930.4471

Email received June 14, 2022

Hello Commission on Persons with Disabilities:

RE: Agenda Item 4B. Grand Street Proposed Reconfiguration.

I want to submit a letter as public comment plus 3 supporting documents

Attached are the pdfs of my public comment letter, plus two 2015 - 2016 letters to City Attorney et al; and Caselaw text of Sarafaty v. Los Angeles.

Please include all of these in the agenda packet for Wednesday's meeting. Thank you.

Carol Gottstein
1114 Grand Street, 94501-4027
510.930.4471

Date: 6.14.22. RE: 6.15.2022 Commission on Persons With Disabilities Agenda Item 4B

Dear Disability Commissioners and Staff:

What is the point of completely realigning a street if it makes it more dangerous to the residents of that street? Why would a City want to repeatedly violate a 30 year old Federal Law (Americans with Disabilities Act 42 USC Section 12131) which guards the civil rights of a protected class of those residents and their families?

Background: In Nov 2021, this project was announced by postal mail to the current residents of Grand Street as "pavement resurfacing and safety improvements". We were invited to attend Zoom community workshops and fill out online surveys.

The surveys contained no questions specific to disabilities or accommodations or removal of existing accessible features. Disability accommodation in parking was not discussed by staff in the presentations to the community workshops.

The Notices alerted us to upcoming Zoom meetings of the Transportation Commission and the City Council when there would be public hearings to consider the two alternative plans proposed by City Transportation Staff. A scheduled presentation to the Commission on Persons With Disabilities was conspicuously missing. Such a presentation would most appropriately be held before the Transportation Commission meeting, not after.

Public comment was solicited and received for the TC meeting. Four batches of Correspondence were listed on the agenda. One Grand Street resident had circulated a petition expressing strong concern for the negative aspects of the staff-recommended plan. This petition has 105 signatures of impacted residents identified by address.

Outside of public comment, there was little to no discussion of concerns of persons with mobility impairments. Notably, no one mentioned the previous well-documented 2015 City violation of Federal ADA Title II in the removal of accessible on-street parking on Shoreline Drive, although City staff should certainly have been well aware of it.

The Transportation Commission unanimously approved the City's recommended plan. Two commissioners did express their concerns about staff outreach, but voted approval anyway. Would they have voted this way if the Commissioners knew the City is on record of currently being in violation of ADA Title II?

PROBLEMS: Everyone, no matter where they live, was able to access and participate in the two Online surveys and Zoom community workshops. The City staff apparently gave equal weight to all responses. This is wrong. The responses of residents on the stretch of Grand Street where parking is to be removed need to be weighted most heavily for the simple obvious reason that we are forced to use the on-street access to and from our homes on a daily basis, 24/7.

Furthermore, these surveys needed to state explicitly how access to parking will be adversely affected by the proposed plan, because what the City proposes does indeed violate the ADA, Section 504 of the Rehabilitation Act, and California Government Code Section 11135. for the second time. Even though it has been federal law for 30 years, and supported repeatedly by court rulings, most people, even attorneys, are not able to appreciate the civil rights protections of the ADA. Persons with mobility impairments are a protected class. Unimpaired bicyclists are a special interest group. A protected class should not be asked to get out of the way of a special interest group.

The City already violated Federal ADA law in its realignment of parking on Shoreline which resulted in the removal of all existing accessible on-street parking spaces. In 2015, Disability Rights Advocates sent letters [see attached] to the City; including specifically addressing the Transportation Commission Coordinator (who still happens to be the current Transportation Coordinator) advising it (pg 2) "Additionally, by removing existing accessible parking, the City has violated Title II's requirement that it maintain existing accessible features of its facilities. See 28 CFR Section 35.133".

Disability Rights Advocates is not a for-profit law firm. It is a non-profit civil rights law firm dedicated to advancing the rights of persons with disabilities through class actions.

Case Law:

There are at least three California cases regarding on-street parking which the cities lost in favor of the disabled plaintiff.

- *Fortyone v. City of Lomita*, 766 F. 3d 1098, 1103 (9th Cir. 2014)
- *Bassilios v. City of Torrance*, 166 F. Supp. 3d 1061 (C.D. Cal. 2015)
- *Sarfaty v. City of Los Angeles*, No. 2:17-CV-03594-SVW-KS, 2020 WL 4697906 (C.D. Cal. 8.12.2020)

The Sarfaty case [pdf attached] is particularly applicable to the City of Alameda's current Recommended Plan for Grand Street, as it states ("Findings of Fact"):

"2. In April 2015, the City [Los Angeles] altered its on-street public parking on Reseda Boulevard as part of the City's "Great Streets Initiative"...The alterations included the installation of cycle tracks and buffer zones containing bollards, and the restriping/relocation of parking spaces away from the curb...The alteration to this portion of Reseda Blvd. was undertaken based on the elevated rate of serious and fatal accidents that had occurred on this stretch of Reseda.."

The next page of Sarfaty goes on to explain how the city failed to consider accommodations for persons with mobility disabilities in its enthusiasm to construct "Great Streets", to its legal peril. I encourage all to read further and consider the City of Alameda's exposure to similar liability issues if it continues on a similar path.

The City of Alameda's previous violation of Title II's requirement that it maintain existing accessible features of its facilities [28 CFR Sec 35.133] was brought to its attention in 2015-2016, in both correspondence and in-person meetings with DRA counsel.

The only recognizable Title II compliance feature in the current proposed realignment of Grand Street parking is that the width of the parking lane has been preserved at 8 feet. Forcing existing residents to cross the street or walk around the block to get to their new parking spot probably overwhelms this minor compliance feature, leaving the City in substantial violation of Title II.

For the Grand Street project, there was no specific outreach done to actual members of the community as to mobility disability status. How hard would it have been to incorporate into the survey a question like: "Do you or any member of your family, now or in the past, use mobility aids such as a cane, a walker, crutches, or a wheelchair to access the sidewalk from your parked cars?"

In fact, no analysis has been done by the City as to whether the reconfiguration of Shoreline Drive or the placement of bollards at a dangerous crosswalk has increased or decreased safety. So far, two elderly persons (Wilma Chan, 72, crossing Shoreline in Nov 2021 and Fred Zehnder, 87, crossing Lincoln at Walnut in June 2021) have been hit and killed since these "safety improvements"

This project appears to be pushed forward solely because Federal infrastructure money is available to do it. This has the ironic effect of using Federal funds from one source to violate a different Federal law. In the long run, however, the loss of life and legal exposure to disability lawsuits may not be worth it to the City.

The City could avoid creating accessibility issues and calm traffic simply by adding more stop signs and speed bumps to Grand Street, instead of what it has planned. If increased safety is truly the goal, these are tried and true solutions. Many current residents are in favor of this alternative.

There is also little evidence that persons with disabilities who do not use Zoom or the internet have been able to meaningfully participate in this life-altering discussion!

I know better than most people the difference between real safeguards and theoretical ones. I am a 50+ year Grand Street resident who was hit by a car many years ago in a traffic light controlled San Francisco crosswalk. I have since had six spinal fusions and I can no longer ride a bike. I must use a car and a cane and have limits on how far I can walk and what I can carry. It would be cruel to take away the parking I use every day in front of my mid-block home to satisfy the activism of the special interest bicyclists.

It does not appear this project complies with Federal or State disability rights laws. It also appears to make Grand Street more unsafe. More work is needed.

Please review the attached Sarfaty case and correspondence file the city has on the 2015 Shoreline Drive reconfiguration.

Thank you.

Carol Gottstein
1114 Grand Street
Alameda, CA 94501

Attachments:

1. 11.25.2015 DRA Letter to City of Alameda re: Removal of Accessible Parking
2. 03.30.2016 DRA Letter to City of Alameda after in person meeting
3. Sarfaty v. City of Los Angeles (C.D.Cal. 8.12.2020)



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November 25, 2015

Via First Class Mail

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City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

Re: Removal of Accessible Parking at Shoreline Drive and Proposed
Removal of Accessible Parking at Central Avenue

Dear Ms. Herrera Spencer, Ms. Kern, and Ms. Payne

Disability Rights Advocates ("DRA") is a non-profit, civil rights law firm dedicated to advancing the rights of persons with disabilities through class actions and other systemic litigation. DRA writes on behalf of Anne Steiner, Carol Gottstein, JoanAnn Radu-Sinaiko and other residents and visitors to the City Alameda (the "City") with mobility impairments who have difficulty walking long distances. Specifically, DRA writes to request that the City remedy its failure to provide accessible parking for persons with mobility impairments on its recently completed "Complete Streets" project on Shoreline Drive and to urge that the City avoid making the same mistake on its upcoming "Complete Streets" renovation of Central Avenue.

As you may be aware, Title II of the Americans with Disabilities Act ("ADA") requires that each City facility constructed or altered after June 26, 1992 be readily accessible to and useable by persons with disabilities. 28 C.F.R. §35.151(a)(1) and (b)(1). This regulation extends to newly constructed or altered street parking facilities. *Fortyune v. City of Lomita*, 766 F.3d 1098, 1103 (9th Cir. 2014).¹ At Shoreline Drive, the City violated these requirements by altering several city blocks worth of street parking that provide direct access to the beach, eliminating existing accessible parking spots, and then failing to include any accessible parking spots at all throughout the entirety of Shoreline Drive, a prime point of access to Alameda Beach.

¹ Please note that the flexibility Title II of the ADA provides cities with respect to existing facilities, including the provision of accessible parking at other nearby sites, does not apply to newly constructed facilities. See *Fortyune*, 766 F.3d at 1102-03.

Particularly troubling is the City's removal of four accessible parking places from the proposed design of Shoreline Drive without providing suitable replacements with direct beach access.

The result of the City's newly constructed Shoreline Drive is a complete lack of accessible parking with direct beach access and a net loss of accessible spaces on the beach-side. The only accessible parking spots the City now provides are at three cross streets that intersect Shoreline Drive on the opposite side of the beach. Parking in these three spots requires persons with mobility impairments to cross a major thoroughfare and the newly constructed bike lane just to reach the sidewalk at Shoreline Drive, where the beach access routes for pedestrians are located.

The removal of accessible parking at Shoreline Drive has been problematic for Ms. Radu-Sinaiko, an Alameda resident who often used to park her car in the accessible parking space that had existed on the beach side of Broadway at Shoreline. Ms. Radu-Sinaiko is an accomplished sunset photographer who has had five calendars of her sunset photographs published. Prior to the City's renovation of Shoreline Drive, Ms. Radu-Sinaiko would frequently park her car in the accessible spot at Broadway and Shoreline and walk the short distance to the beach to photograph the sunset over the San Francisco Bay. However, since the City removed the accessible parking on the beach side, due to her various mobility impairments and fatigue from a traumatic brain injury, she has difficulty making the trek from the newly constructed accessible spaces to the pedestrian beach access, since doing so would require her to cross Shoreline Drive and the newly-constructed bike lane. As a result, Ms. Radu-Sinaiko has not been able to keep up her sunset photography at Alameda Beach.

Ms. Steiner is another Alameda resident who has mobility disabilities, in her case due to Post Polio Syndrome. Ms. Steiner was a frequent visitor to Alameda Beach prior to the City's alteration of Shoreline Drive. She would frequently park her car on Shoreline Drive to enjoy what she describes as "one of the best things about living in Alameda – the beach." However, since the construction and elimination of accessible parking on Shoreline, Ms. Steiner has not visited the beach access at Shoreline Drive at all. The accessible spaces the City provided on cross streets are too far away for her to travel from those spaces to the beach independently and they would require Ms. Steiner to cross a traffic thoroughfare and the newly constructed bike lane, both of which present dangers.

Fifty-plus-year Alameda resident Carol Gottstein uses a walker as a result of mobility impairments that limit her ability to walk long distances. She, too, has been forced to abandon one of the activities she enjoys the most—going to the beach at Shoreline Drive, because she can no longer park and exit her car safely on the beach-side or anywhere else on Shoreline Drive. Ms. Gottstein attended multiple Community Outreach Meetings and Transportation Committee meetings in 2012, 2013, and 2014 to express concerns about the modified plans for Shoreline Drive and the elimination of accessible parking. The City failed to respond to these concerns.

Rather than eliminating accessible parking altogether on Shoreline Drive, the City could have explored alternatives that would have accommodated the need of all residents, including bicyclists and pedestrians with mobility impairments. It has recently come to

our attention that the City plans similar construction and the removal of accessible parking spaces as a part of its "Complete Streets" renovation of Central Avenue, another key thoroughfare for Alameda residents and visitors alike. We urge the City to reconsider plans to remove accessible parking from Central Avenue.

Ms. Radu-Sinaiko, Ms. Steiner and Ms. Gottstein are willing to engage in structured negotiations with City of Alameda regarding: (1) modifications to the completed construction at Shoreline Drive to provide accessible parking, with direct access to the beach, for residents and visitors with mobility impairments; and (2) modifications to the plans for the "Complete Streets" renovation of Central Avenue to ensure sufficient on-street accessible parking for residents with mobility disabilities, including Ms. Radu-Sinaiko, Ms. Steiner and Ms. Gottstein. Such negotiations must include concrete, agreed-upon goals and a reasonable timeline.

Please let me know within two weeks of receipt of this letter whether the City is willing to engage in structured negotiations on these issues. Feel free to contact me at 510-665-8644 if you have any questions.

Sincerely,

Stuart Seaborn
Disability Rights Advocates

Sarfaty v. City of Los Angeles

Decided Aug 12, 2020

CASE NO. 2:17-cv-03594-SVW-KS

08-12-2020

RON SARFATY Plaintiffs, v. CITY OF LOS ANGELES Defendant.

HON. STEPHEN V. WILSON UNITED STATES DISTRICT JUDGE

FINDING OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

On July 22, 2020 and July 23, 2020, the Court held a bench trial in this action to determine whether Defendant the City of Los Angeles ("the City") violated Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (the "ADA" or "Title II"), Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"), and California Government Code § 11135. In advance of trial, Plaintiff Ron Sarfaty ("Plaintiff") and the City submitted declarations containing their witnesses' direct testimony, as required by the Court's Standing Order for non-jury trials. The parties presented their witnesses at trial, at which time the Court engaged in its own questioning of each witnesses and allowed subsequent cross-examination and re-direct questioning by the parties. Having carefully reviewed and considered the evidence presented at trial, the Court issues the following *2 findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). For all findings of fact set forth below, in making any credibility determinations regarding witness testimony, the Court has considered, among other things, the

manner in which the witnesses testified, their interest in the outcome of the case, and the reasonableness of their testimony in light of all of the evidence. The Court has also considered the relevant factors in Section 1.14 of the Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit (2017 Edition), located at http://www3.ce9.uscourts.gov/jury-instructions/sites/default/files/WPD/Civil_Instructions_2018_9_0.pdf

FINDINGS OF FACT

1. Plaintiff is unable to walk or stand independently as the result of a stroke. He uses a wheelchair for mobility and a modified van equipped with a power lift for transportation. Dkt. 87 at 2. At the time of the events that precipitated this litigation, he used a side-deploying wheelchair lift that deployed out of the passenger side of his van. *Id.* Currently, Plaintiff uses a rear-deploying lift on his new modified van. On occasion he travels in his friend's van and uses a portable ramp that lets him enter and exit through the passenger side of the vehicle. *Id.* 2. In April 2015, the City altered its on-street public parking on Reseda Boulevard as part of the City's "Great Streets Initiative." Plaintiff Trial Ex. 7 at 3, 13. The alterations included the installation of cycletracks and buffer zones containing bollards, and the restriping/relocation of parking spaces away from the curb. *Id.*; *see also* City Trial Ex. 4, 5, 6. *3 3. The alteration to this portion of Reseda Boulevard was undertaken based on the elevated rate of serious and fatal accidents that had occurred on this stretch of Reseda. Dkt. 84 at 3; Dkt. 84-5 at 2-3. The Great Streets Project as a whole was

implemented to protect the public and increase safety on the City's streets. Dkt. 84 at 1-2. The City asserts that one of the goals of the Great Streets Project was to "improve access and mobility" and that the alterations to Reseda Boulevard involved accessibility review. *Id.* at 2-3. No portion of the information packet describing the Reseda Boulevard project to residents discusses accessibility, references disabled individuals, or depicts wheelchair use. *See generally* City Trial Ex. 5. A recurring graphic in the informational packet distinguishes between the separated bike lane, with the phrase "BIKE" below it, and the sidewalk, with the phrase "WALK" below it. *Id.* 4. During the course of the alteration, the City conducted community evaluations and engaged in accessibility tests, including utilizing lifts, ramps and other mobility devices used by disabled persons on the altered portions of Reseda Boulevard. Dkt. 84-5 at 3-4. Individuals reported to City personnel involved with the project that side vehicle lifts used by disabled individuals could not longer be directly deployed onto the sidewalk. *Id.* at 4. 5. The altered on-street parking provides 73 public parking spaces dispersed over ten block faces. Plaintiff's Ex. 7 at 13. None of the altered parking spaces are marked or identified as reserved for use by individuals with disabilities or are directly adjacent to an accessible route to reach the sidewalk. *4 6. There is a signaled, mid-block crosswalk on the altered portion of Reseda between Rayen and Nordhoff streets that has curb ramps on each end. The rest of the altered portion of Reseda contains no mid-block curb ramps, only active and abandoned vehicular driveways. All but one of these driveways present slopes exceeding 8.33%. Dkt. 89 at 2; Dkt. 85 at 7-8, Plaintiff Trial Ex. 7 at 14. 7. Given the position of the mid-block curb ramp approximately halfway between Rayen and Nordhoff, this means that in most cases (with the exception of the shorter distance between Rayen and Gresham, which is only 356 feet), there are roughly 200 yards between accessible intersections on the altered portion of Reseda Boulevard. *See* City Trial Ex. 4. The parking

spaces on the altered portion of Reseda Boulevard are not evenly distributed, and in some cases cluster near the intersections, and in other cases are clustered near the middle of the block because of the existence of buffer zones near intersections that restrict parking. *Id.* 8. Before April 2015, Plaintiff frequented businesses on Reseda Boulevard including Falafel Palace and Njoy Games and Comics a few times a month. On these occasions, Plaintiff would park his van curbside on Reseda and exit directly onto the sidewalk using his side-deploying wheelchair lift and proceed to his intended destination via the sidewalk. 9. After the 2015 alterations to the on-street parking on Reseda Boulevard. Plaintiff could no longer park curbside and exit his vehicle directly on to the sidewalk. Plaintiff had to deploy his lift into the active bike lane and travel extended distances in the active bike lane to get to the nearest *5 intersection with a curb ramp. Plaintiff was almost hit by a screaming bicyclist while traveling in the bike lane, making him anxious and uncomfortable and causing him to experience difficulty, distress and embarrassment. Plaintiff could not ride continuously in the buffer zone between the parking space and the bike lane because there were bollards placed there. Dkt. 87 at 3. 10. On August 25, 2015, Plaintiff again visited Reseda Boulevard and encountered the same problems with the on-street parking spaces described above. Plaintiff testified that he has substantially curtailed his visits to establishments in this area of Reseda Boulevard on the basis of these experiences. The Court found Plaintiff's testimony on his prior experiences to be credible throughout the trial. 11. Plaintiff wrote letters to the City's Department of Street Maintenance¹ on April 6, 2015, August 25, 2015, and January 6, 2016. These letters are essentially identical and indicate that he was unable to use his van to offload onto the sidewalk, and instead was forced to roll "nearly 100 yards" to reach a lowered curb. He suggests that the alterations must have been "designed by a moron with no sensitivity whatsoever to disabled or handicapped persons."

He requests "an ETA when the streets will be brought back to the safe way it was configured before this silliness" at the end of each letter. *See* Plaintiff Trial Ex. 11, 12, 13. None of Plaintiff's letters request additional accessible parking on the altered portion of Reseda Boulevard. Plaintiff never attempted to call the Department of Street Maintenance, and never received a response to his letters. *6 12. Multiple City employees submitted un rebutted direct testimony declarations that no records exist of any complaints made by Plaintiff. Dkt. 84-2 at 3; Dkt. 84-4 at 2. There is no evidence in the record or testimony that suggests that the Department of Street Maintenance has any responsibility for accessibility issues with regard to the City's on-street parking. Angela Kaufman ("Kaufman"), previously an ADA compliance officer for the City during the relevant time period, testified that while ADA complaints received by other departments should (as a general policy) be forwarded to the City's Department of Disability ("DOD") to determine whether accommodations can be made, in practice this does not necessarily occur. 13. Plaintiff and Kaufman had a phone call in September 2016, after Plaintiff's Counsel instructed him to both call and write to her. Plaintiff expressed his displeasure with the cycletracks, asked that they be removed, and expressed his belief that the ADA required the City to do so. Kaufman has a limited recollection of the phone call, and testified that she informed him that the City would not remove the cycletracks, and that it did not believe that the ADA required additional alterations to the cycletracks on Reseda Boulevard. Kaufman also provided Plaintiff with contact information for the Federal Highway Administration ("FHA") and suggested he contact them regarding his cycletrack complaint. Plaintiff later filed this lawsuit. *7

¹ Plaintiff's direct testimony declaration alternatively refers to the Department of Street Maintenance as the "Department of Street Services." Dkt. 87 at 4. Each letter is addressed to the Department of Street Maintenance. Plaintiff Trial Ex. 11, 12, 13.

CONCLUSIONS OF LAW

1. The Court reaffirms its conclusions made on the record on July 22, 2020 before the beginning of the bench trial that Plaintiff's claims are not moot because he has purchased a new rear-unloading handicapped van to replace the side-unloading handicapped van he used at the time he filed this lawsuit. Plaintiff remains a disabled individual, the on-street parking on the altered portion of Reseda Boulevard remains in the same configuration, and a determination that it violates the ADA may still lead to injunctive relief that will benefit Plaintiff. *See Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) ("A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.") 2. The Court also incorporates by references its prior Orders, to the extent that they held that the settlement reached in *Willits v. City of Los Angeles*, No. 10-05782-CBM-MRW (C.D. Cal. Aug. 25, 2016) (the "*Willits* settlement") does not preclude Plaintiff's claims. *See* Dkt. 38 at 5-8; Dkt. 74 at 6-8. As previously stated "[t]he Court concludes both that (1) the express language of the *Willits* settlement does not preclude Plaintiff's claims, and (2) that even if it did, the 'identical factual predicate' test would prevent the *Willits* settlement from releasing these claims, because they are based on accessibility issues arising from alteration of the City's on-street parking facilities, rather than accessing or travelling on the City's pedestrian facilities." Dkt. 74 at 8. *8 3. The Court also reincorporates the relevant facts that are not disputed by the parties and were addressed in the Court's prior Order— "that the City is a 'public entity' for the purposes of Title II of the ADA, that Plaintiff Sarfaty is a disabled person for the purposes of the ADA, [and] that on-street public parking falls within the category of a 'service, program or activity' for the purposes of Title II of the ADA. *See e.g., Fortune v. City of Lomita*, 766 F.3d 1098 (9th Cir. 2014)." Dkt. 74 at 3 n.4. 4. In *Fortune*, the Ninth Circuit expressly held that

both 28 C.F.R. § 35.150 and 28 C.F.R. § 35.151 require on-street parking provided by a public entity like the City be accessible. In particular, the Ninth Circuit stated that 28 C.F.R. § 35.151(b)(1) "require[s] that all public on-street parking facilities constructed or altered after the ADA's effective date be accessible." 766 F.3d at 1103. 5. 28 C.F.R. § 35.151(b)(1) states that: "Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992." *Id.* (emphasis added). There is no dispute that the alteration of Reseda Boulevard was completed in April 2015. *9 6. The Court previously concluded that the installation of cycletracks and movement of the preexisting parking spaces away from the curb on this stretch of Reseda Boulevard constituted an alteration for purposes of 28 C.F.R. § 35.151(b)(1), and that therefore the City's on-street parking on this portion of Reseda must "to the maximum extent feasible . . . [be] readily accessible to and usable by individuals with disabilities. . . ." Dkt. 74 at 4-6. 7. No technical specifications for on-street parking exist under the relevant ADA standards. *See* 2010 ADA Standards for Accessible Design available at <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf>; *see also* 28 C.F.R. § 35.151(c)(3) (alterations after March 15, 2012 must comply with the 2010 ADA Standards). However, in *Fortyune* Ninth Circuit held that *Auer* deference to the opinion of the Department of Justice ("DOJ") with regard to proper interpretation of § 35.151(b)(1). *Fortyune*, 766 F.3d at 1104. In an amicus brief filed in *Fortyune*, the DOJ stated that (1) in the absence of technical specifications, Title II's program accessibility standards (expressly referencing § 35.150(a) and § 35.151(a)(1) and (b)(1)) apply to a public entities' on-street parking, and (2) public entities "have a

degree of flexibility" in achieving the program accessibility requirements embodied in § 35.150 and § 35.151, and that technical specifications for similar structures (like the accessible spaces for parking lots addressed in the 2010 ADA Standards) provide a "template" for public entities to "apply and to modify as needed to achieve *10 accessibility of [their] on-street parking." *See* Dkt. 44-7 at 7-8 (DOJ amicus brief in *Fortyune*). 8. The Court does not find in these circumstances that reference to the technical specifications in the 2010 ADA Standards is helpful in determining whether Plaintiff has established a violation of the ADA. While it is clear from the exhibits presented at trial that none of the on-street parking spaces on Reseda Boulevard meet the technical specifications for accessible parking in the 2010 ADA Standards (because no designated accessible parking is provided), the accessibility challenges Plaintiff testified that he encountered during his use of these on-street parking spaces do not specifically relate to any of the technical requirements in the 2010 ADA Standards. Instead, the challenges he describes arises solely from the broader layout of on-street parking on Reseda, and the distance between the parking spaces and the sidewalk. Because the Court interprets the 2010 ADA Standards as "guidance" for meeting the general program accessibility requirements embodied by § 35.150 or § 35.151 with regard to on-street parking, finding an ADA violation based solely on the basis of a failure to apply those technical requirements by rote would not be appropriate here. 9. Accordingly, the Court finds that broader program accessibility standard embodied in § 35.151(b)(1), which requires that the altered portion of Reseda Boulevard be "readily accessible" to individuals with disabilities is the proper lens through which to evaluate Plaintiff's claims. *See, e.g.* *11 *Kirola v. City & Cty. of San Francisco*, 860 F.3d 1164, 1182 (9th Cir. 2017) (affirming district court analysis of program accessibility under lower standard applicable via § 35.150(a)). The City's argument that "readily accessible" in the on-street parking

context requires only compliance with § 35.151(i)'s requirement that accessible curb ramps exist at each intersection is not consistent with the Ninth Circuit's precedent in *Fortyune* and *Kirola*, each of which clearly articulate a broader approach to program accessibility. *See Kirola*, 860 F.3d at 1180-81 (finding that if the relevant technical specifications relevant in that case did not apply, § 35.151 would still require the Court to analyze that "general standard" to determine public entity ADA compliance); *Fortyune*, 766 F.3d at 1103 (describing § 35.151(b)(1) as creating a "general mandate of accessibility"). 10. The Court begins its analysis under this standard by noting two facts it finds to be undisputed on this evidentiary record. First, on-street parking cannot properly be considered "accessible" without consideration of how disabled individuals reach the sidewalk from a parking space, because a parking space is useful only to the extent it permits individuals to reach businesses and other establishments that are connected to on-street parking by a public sidewalk. Turning to the 2010 ADA Standards for guidance on this issue, the Court notes that Section 502.3 of the 2010 ADA Standards expressly requires that "Access aisles shall adjoin an accessible route." 2010 ADA Standards for Accessible Design, available at <https://www.ada.gov/regs2010/2010ADASTandard> s/2010ADASTandards.pdf *12 f. Similarly, Section 208.3.1 requires that accessible parking spaces be located on the "shortest accessible route" from parking to an entrance. *Id.* Based on this guidance, the Court concludes that whether the on-street parking along the altered portion of Reseda Boulevard is "readily accessible" depends (in part) on whether individuals like Plaintiff may park their vehicles in those spaces and successfully reach the sidewalk in order to reach their final destination. 11. Second, the existence of a curb presents an additional challenge to wheelchair-bound individuals that other individuals do not face, because they cannot physically step up onto the sidewalk, unlike ambulatory individuals.² Therefore, when on-street parking spaces are

uniformly placed a substantial distance from the curb, to reach the sidewalk, an ambulatory individual is required only to "cross" the bike lane to access the sidewalk. In contrast, a wheelchair-bound individual must proceed in the bike lane until they reach an accessible curb ramp. 12. The parties do not dispute that at the intersections of the cross-streets in this portion of Reseda Boulevard, there are accessible curb ramps (i.e. curb ramps as mandated by § 35.151(i)) that are accessible to wheelchair-bound individuals. Additionally, an accessible mid-block curb ramp exists between Rayen Street and Nordhoff Street in the altered portion of Reseda. Given the position of the mid-block curb ramp approximately halfway between Rayen and Nordhoff, this means that in most cases (with the
 13 *13 exception of the shorter distance between Rayen and Gresham, which is only 356 feet), there are roughly 200 yards between accessible intersections. The parking spaces on the altered portion of Reseda Boulevard are not evenly distributed, and in some cases cluster near the intersections, and in other cases are clustered near the middle of the block because of the existence of buffer zones near intersections that restrict parking. *See City Trial Ex. 4.* The Court finds based on this configuration that individuals with disabilities who utilize wheelchairs will frequently have to travel more than 50 yards, and in some cases closer to 100 yards before they reach an accessible curb ramp that permits them to exit the bike lane and enter the sidewalk. 13. There are a limited number of inactive driveways on this portion of Reseda Boulevard, which create breaks in the curb. *See Dkt. 89 at 2; Dkt. 85 at 7-8, Plaintiff Trial Ex. 7 at 14.* However, there is undisputed evidence in the record that the slopes of all but one of these inactive driveways exceed 8.33%. *Dkt. 85 at 7-8, Plaintiff Trial Ex. 7 at 14.* This exceeds the maximum slope permitted under Section 405.2 of the 2010 ADA Standards.³ With the exception articulated in the footnote below, these inactive driveways do not constitute an accessible route to reach the sidewalk from on-

14 street parking.⁴ *14 **14.** The Court concludes that because the on-street parking on this portion of Reseda Boulevard requires wheelchair-bound individuals to roll in the bike lane for a significant period of time before reaching a sidewalk, it cannot be considered "readily accessible" from the program accessibility perspective dictated by § 35.151(b)(1). The following evidentiary findings and caselaw support this conclusion. **15.** The Court found Plaintiff's testimony regarding his past encounters and continuing fear of cyclists hitting him in the bike lane to be credible. His testimony was also corroborated by the exhibits depicting the width and construction of the bike lanes— each provides a single, relatively narrow bike lane moving in the direction of traffic, and the narrow striped portion of the cycletracks surrounding each of the bollards is not wide enough to permit an wheelchair-bound individual to remain in that zone while rolling towards a curb ramp. It is readily apparent that any encounter between a cyclist and a wheelchair-bound individual in this narrow bike lane carries the potential risk of a collision and possible harm. This constitutes a significant accessibility concern for individuals like Plaintiff. **16.** The Ninth Circuit's holding in *Cohen v. City of Culver City*, 754 F.3d 690 (9th Cir. 2014) also supports this conclusion. After concluding that the "more exacting standards" of § 35.151 applied to an alleged ADA violation, the Ninth Circuit found

15 that "the existence of an arguably *15 marginally longer alternative route" within approximately 20 yards of a blocked curb ramp could not justify summary judgment on that plaintiff's claims under the ADA. *Id.* at 693, 699. Here, the City altered the on-street parking on Reseda Boulevard for reasons unrelated to ADA compliance, and the mere fact that the bike lane will permit wheelchair-bound individuals to *eventually* reach the sidewalk from on-street parking spaces is not sufficient in this context to satisfy the higher standard of program accessibility articulated in § 35.151. **17.** The Court also finds that the City's alterations to Reseda Boulevard particularly

disadvantages wheelchair-bound individuals, because they must frequently roll in the bike lane for a significant period of time and avoid cyclists in order to reach the sidewalk.⁵ Ambulatory individuals do not face these challenges because they merely need to cross the bike lane to access the sidewalk. Title II of the ADA is plainly intended to redress "*unequal* treatment in the administration of a wide range of public services, programs, and activities . . ." *Tennessee v. Lane*, 541 U.S. 509, 525 (2004) (emphasis). Accordingly, the fact that the City's alteration of the on-street parking on Reseda Boulevard places a substantially higher burden on disabled individuals than on ambulatory individuals

16 supports the Court's *16 conclusion that the altered portion of Reseda Boulevard is not "readily accessible" for purposes of 28 C.F.R. § 35.151(b)(1). **18.** The City argued at trial that the existence of accessible parking provided by private entities in off-street parking lots on this portion of Reseda Boulevard supports a finding that the City's on-street parking is readily accessible. The Court can find no support in Ninth Circuit or persuasive caselaw for the proposition that the Title III obligations of private businesses should factor into the program accessibility requirements of Title II that are specifically mandated for public entities like the City. As a practical matter, this would create substantial uncertainty because different kinds of establishments have different obligations under the ADA, and may or may not be obligated to provide accessible off-street parking. Determining whether the City has complied with Title II based on the then-current Title III compliance of the businesses currently operating on Reseda Boulevard would inappropriately make provision of accessible parking "contingent upon the cooperation of third persons." *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1269 (D.C. Cir. 2008); *see also Disabled in Action v. Board of Elections in the City of New York*, 752 F.3d 189, 200 (2d Cir. 2014) (access "should not be contingent on the happenstance that others are available to help"). Moreover, as Plaintiff noted in

his testimony, some off-street accessible parking on Reseda Boulevard is not fully ADA-compliant, and to the limited extent it was available during his visits, these parking spaces were often already
 17 in use by other customers *17 **19.** Plaintiff's expert witness Paul Bishop ("Bishop") testified regarding modifications to the on-street parking on the altered portion of Reseda Boulevard. In particular, he identified specific locations on the altered portion of Reseda Boulevard near the intersection of Reseda and Dearborn Street, Rayen Street, Nordhoff Street, and fronting 8920 Reseda Boulevard where accessible parking could be provided, generally near existing curb ramps at intersections. Bishop's testimony established that relatively minimal modifications at these locations would be feasible, because in most cases the changes would amount to painting and signing these locations to reserve them for disabled individuals, and moderate adjustments to the size of the buffer zone and width of the cycletracks. In one circumstance, these modifications require adding a curb ramp. *See* Dkt. 85 at 8-12. **20.** The Court finds that the inclusion of four disabled parking spaces at these locations would adequately address the accessibility violations the Court has found exist on this portion of Reseda Boulevard. In particular they ensure that wheelchair-bound individuals have access to on-street parking spaces that are in close proximity to accessible curb ramps, limiting the period of time they must roll in the bike lane in order to reach the sidewalk from the on-street parking spaces.⁶ The Court also notes
 18 that Bishop's *18 recommendations are also consistent with guidance on integrating accessible parking with cycletracks recommended by the Federal Highway Administration in a report provided as an exhibit by the City. *See* City Trial Ex. 8 at 97-98 (articulating guidance that accessible parking should be placed near the start of a block and providing exhibits connecting accessible parking to curb ramps). **21.** Public entities like the City are required to meet the "readily accessible" standard with regard to program accessibility of altered facilities "to the

maximum extent feasible . . ." **28 C.F.R. § 35.151(b)(1).** The court interprets this language to place the burden on the City to show that the changes proposed by Bishop are infeasible. **22.** The City has not shown that these modifications to the on-street parking spaces would be infeasible. The only dispute the City raised at trial was with regard to the slope of these parking spaces, and Bishop's proposed modifications to these locations do not require altering the slope of the road in a manner that would interfere with other state and federal regulations regarding roadways slopes and safe drainage of water. **23.** The only other objection to this proposal raised by the City is general testimony that community response to including accessible parking on Reseda Boulevard was negative. Dkt. 84-5. The Court does not find that this type of community reaction constitutes sufficiently probative evidence of infeasibility, under these circumstances, to defeat feasibility
 19 given the *19 general purpose of the ADA, and the lack of caselaw supporting such an inference. *See Chapman v. Pier 1 Imports (U.S.) Inc.*, **631 F.3d 939, 944-45** (9th Cir. 2011 ("[the ADA's] passage was premised on Congress's finding that discrimination against the disabled is 'most often the product, not of invidious animus, but rather of thoughtlessness and indifference, of 'benign neglect,' and of 'apathetic attitudes rather than affirmative animus'"). A negative community reaction to inclusion of disabled parking spots does not make increasing accessibility infeasible in these circumstances. *See Bassilios v. City of Torrance*, **166 F. Supp. 3d 1061, 1078** (C.D. Cal. 2015) (finding that community objections to installing a disabled parking spot was not a "relevant consideration"). **24.** Because the Court finds that the public on-street parking on the altered portion of Reseda Boulevard is not "readily accessible," and that modifications to the parking that would remedy this issue are not infeasible, it finds that Plaintiff has established that the City has violated Title II of the ADA. **25.** The Court now addresses Plaintiff's damages claim based on the City's alleged deliberate indifference with regard

to its violation of the ADA. 26. In order to recover monetary damages under the ADA, individual plaintiffs must prove that the public entity *intentionally* discriminated against disabled individuals. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001) (citing *Ferguson v. City of Phoenix*, 157 F.3d 668, *20 674 (9th Cir. 1998)). In *Duvall*, the Ninth Circuit affirmatively adopted "deliberate indifference" as the standard for proving this intentional discrimination. *Id.* at 1138. To establish deliberate indifference, a plaintiff must show that (1) the defendant had "knowledge that a harm to a federally protected right is substantially likely," and (2) the defendant "fail[ed] to act upon that ... likelihood." *Id.* at 1139. The first element of the deliberate indifference test—notice—is satisfied "[w]hen the plaintiff has alerted the public entity to his need for accommodation (or where the need for accommodation is obvious, or required by statute or regulation)." *Id.* at 1139. The second element of deliberate indifference is satisfied where "the entity's failure to act [is] a result of conduct that is more than negligent, and involves an element of deliberateness." *Updike v. Multnomah County.*, 870 F.3d 939, 951 (9th Cir. 2017) (quoting *Duvall*, 260 F.3d at 1139); see also *Payan v. L.A. Cmty. Coll. Dist.*, 2018 WL 6164269, at *17 (C.D. Cal. Oct. 16, 2018). 27. The Court does not find that Plaintiff placed the City on notice of his request for accommodation. First, there was no evidence or testimony in the case establishing whether the three letters plaintiff claims he sent to the City's Department of Street Maintenance ("DSM") were ever actually received. Multiple witnesses for the City stated in their direct testimony declarations (and were not cross-examined by Plaintiff on this point) that they could find no records of these letters. Dkt. 84-2 at 3; Dkt. 84-4 at 2. The Court does not find Plaintiff's assertion that he mailed these letters to the DSM sufficient to constitute notice of a request for accommodation. Deliberate indifference requires *intentional* discrimination, and to the *21 extent that Plaintiff's requests were sent to a City department that does not handle

accessibility issues, the Court finds this to be insufficient to satisfy the notice requirement, without any evidence that the City intentionally ignored his request for accommodation. *Duvall*, 260 F.3d at 1138. To the extent that "bureaucratic slippage" may have caused a failure to transfer the letters to the appropriate City Department, the Court also finds that the Ninth Circuit's holdings with regard to the second prong (failure to act) can also be applied to the notice requirement. See *Duvall*, 260 F.3d at 1138-39 ("bureaucratic slippage" not sufficient to constitute a deliberate failure to act). 28. Plaintiff did have a conversation with Angela Kaufman in her capacity as an ADA compliance officer in September 2016. Plaintiff's direct testimony declaration states that he had a conversation with Kaufman where he made a "request for accessible parking." Dkt. 87 at 5. In his trial testimony, Plaintiff did not testify that he made such an express request, just that he expressed his general displeasure with the cycletracks and wanted them to be removed by the City because he believed they violated the ADA. Ms. Kaufman testified that she remembered the conversation only in general terms (after being refreshed by her participation in this litigation), and that she told Plaintiff that the cycletracks were not going to be removed, and that the City believed they were currently ADA-compliant. The relief that Plaintiff now seeks is not removal of the cycletracks at all, and the Court finds that Plaintiff's conversation expressing his displeasure and seeking their removal is not sufficient notice to constitute a request for accommodation in this factual context. *22 29. Even if the record contained sufficient evidence to show that Plaintiff made a request for accommodation, the Court also finds that the City's conduct here does not meet the second prong of the deliberate indifference standard. The testimony of Angela Kaufman ("Kaufman") during the trial and Plaintiff's recollection of the conversation established that the City believed that further alteration of the public on-street parking on Reseda Boulevard was not legally required by the ADA. Similarly, the

direct testimony declaration of Luis Mata established that the City's position at this point in time, as determined by the Department of Disability ("DOD") responsible for addressing accessibility issues, was that complaints regarding the on-street parking on Reseda Boulevard would be resolved through the *Willits* settlement, based on his investigation into the complaint filed by prior Plaintiff Gary Scherer. Dkt. 84-4 at 2. Finally, exhibits provided by the City, the direct testimony declaration of Robert Sanchez, and portions of Kaufman's testimony established that the City had engaged in testing of the cycletracks with wheelchair-bound individuals during installation of the cycle tracks. *See* City Trial Exhibit 10; Dkt. 84-5 at 3-4. 30. The Court finds that this evidence establishes that the City did not take further action because (1) it did not believe that the ADA required additional modifications to the on-street parking on Reseda Boulevard given the lack of technical specifications for on-street parking, (2) it believed that the parking spaces provided on Reseda were adequate to deploy wheelchairs from vehicles based on previous testing, and (3) the DOD believed that the *Willits* settlement would address the type of complaints raised by Plaintiff in his call with Kaufman. *23

23 31. The City was ultimately incorrect given the conclusions this Court reached above. But the Court does not find that their conduct with regard to Plaintiff can appropriately be described as "conduct that is more than negligent, and involves an element of deliberateness." *Updike*, 870 F.3d at 951. There were (and remain) no technical specifications for on-street parking in the 2010 ADA Standards, and the Ninth Circuit only held that the ADA imposes program accessibility requirements on public entities for on-street parking in September 2014, shortly before the cycletracks were installed. *See Fortyune*, 766 F.3d at 1103. There have been no subsequent Ninth Circuit cases (and very limited district court precedent) applying these broad program accessibility requirements to public on-street parking. *See, e.g. Bassilios*, 166 F. Supp. 3d at

1072-1081. The Court was required to hold a bench trial before it ultimately concluded that the on-street parking on Reseda Boulevard violated the program accessibility requirements of § 35.151(b)(1). Similarly, this Court previously agreed with the City regarding the impact of the *Willits* settlement on these claims, and only reached a different conclusion after considering extrinsic evidence. *Compare* Dkt. 20 with Dkt. 38. 32. As the Court has previously explained, it does not find that rote application of the 2010 ADA Standards regarding off-street parking is appropriate given the nature of Plaintiff's accessibility claims. Therefore, the fact that the on-street parking on the altered portion of Reseda did not comply with those technical specifications does not mean the City's failure to act was deliberate. Similarly, the City's efforts to test the accessibility of the cycletracks with wheelchair-bound individuals during the cycletrack *24

24 installation process on Reseda strongly suggests that the City's (incorrect) belief that further alteration was not necessary was based on a good faith belief that the cycletracks (as constructed) complied with the ADA. 33. In these circumstances, the Court does not find that the City acted with deliberate indifference or intentionally discriminated against Plaintiff. 34. By violating the ADA, the City also violated Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and California Government Code § 11135. The elements of Plaintiff's ADA claim and claims under these statutes are co-extensive. *See Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1045 (9th Cir. 1999); Cal. Gov't Code § 11135(b). 35. The City is ordered to install four ADA-compliant accessible parking spaces and make the modifications proposed by Bishop at the locations specified in his expert report. *See* Dkt. 85 at 8-12. 36. Plaintiff is instructed to submit a proposed Final Judgment in accord with these Findings of Fact and Conclusions of Law within 21 days of the filing of this Order. IT IS SO ORDERED Date: August 12, 2020

- 2 While no evidence was presented on this point, the Court finds this fact to be subject to judicial notice under [Fed. R. Evid. 201\(b\)\(1\)](#).
- 3 The single inactive driveway with an ADA-compliant slope between Rayen and Gresham is adjacent to three parking spaces on the east side of the street. *See* City Trial Ex. 4 at 1. While the location and distance to that inactive driveway with an ADA-compliant slope make the parking spaces (viewed in isolation) sufficiently accessible, because they are no more than 66 feet from an accessible route, the Court's analysis above applies to each of the other stretches of Reseda Boulevard relevant to this case.
- 4 The Court finds that applying the ADA's fixed slope standards to disqualify these steeply sloped inactive driveways in assessing the distance wheelchair-bound individuals must traverse to reach an accessible curb ramp is consistent with Ninth Circuit precedent applying "feature-specific" standards to public entity facilities, even when no specific guidelines existed for the facilities. *See Kirola*, 860 F.3d at 1179-80.
- 5 The Court also notes that many wheelchair-bound individuals utilize side exit ramps in their vehicles, like Plaintiff did at the time he encountered difficulties parking on Reseda and rolling in the bike lane, because he was no longer able to deploy his lift directly onto the sidewalk. *See* Dkt. 87 at 3. The 2010 ADA Standards expressly mandates for access aisles of 60 inches parallel to accessible parking spots. *See* Section 502.3, 2010 ADA Standards. The advisory guidelines specifically note that "Wheelchair lifts typically are installed on the passenger side of vans. Many drivers, especially those who operate vans, find it more difficult to back into parking spaces than to back out into comparatively unrestricted vehicular lanes. For this

reason, where a van and car share an access aisle, consider locating the van space so that the access aisle is on the passenger side of the van space." Section 502.4 (emphasis added). The Court finds these portions of the 2010 ADA Standards relevant in assessing whether the City's decision to install cycletracks and move on-street parking substantially further from the curb creates an accessibility challenge for individuals like Plaintiff.

- 6 In its arguments at trial, the City describes these proposed modifications as "preferential treatment" for disabled individuals, which the ADA does not require. This is not preferential treatment. The alterations to Reseda's on-street parking create a unique challenge for wheelchair-bound individuals. Providing reserved parking at specific locations that are in close proximity to curb ramps simply minimizes the negative impact of the City's alterations on these individuals. -----

/s/_____

HON. STEPHEN V. WILSON

UNITED STATES DISTRICT JUDGE





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March 30, 2016

Via Certified Mail

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Rochelle Wheeler, Planner
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

Re: Removal of Accessible Parking on Shoreline Drive and Proposed Removal of Accessible Parking on Central Avenue

Dear Ms. Kern, Ms. Brown, Ms. Payne, Ms. Ott, and Ms. Wheeler:

We appreciate the opportunity you provided my clients to meet with City staff on February 22, 2016 to discuss my clients' request for accessible street parking for persons with mobility impairments on Shoreline Drive and Central Avenue. We write to confirm a few of the points and action items discussed at that meeting and to provide clarification regarding the City's obligation to provide accessible parking for persons with mobility impairments.

Regarding Shoreline Drive, as we discussed at the meeting, my clients need parking spaces that are a minimum of 8-foot-wide in order to have sufficient space to exit their vehicles safely with their canes or walkers once parked. Additionally, due to their mobility disabilities, they can only walk short distances, even with their canes or walkers. When the City altered the parking on Shoreline Drive, it removed all of the 8-foot-wide spaces as well as the accessible parking space on Broadway at Shoreline on the beach-side of the street. Though the City's initial, public construction plans included a few accessible, 8-foot-wide spaces on Shoreline, the City removed those spaces from the plans prior to construction. The result is a net loss of all 8-foot-wide spaces with beach access. None of the spaces the City installed on Shoreline Drive contain sufficient space for my clients to park and exit their vehicles safely, leaving them unable to access the beach.

At our in-person meeting, my clients requested that the City consider installing 8-foot-wide spaces at three points along Shoreline Drive – one at each end (Broadway and Westline) and at least one 8-foot-wide space between Grand Street and Westline Drive. My clients asked that this request be included in the City's post-construction evaluation of the

project as described in your February 2, 2016 letter. At this point, we seek confirmation that my clients' request has been included in the post-construction evaluation and a reasonable timeline for the City's response to the request.

Regarding Central Avenue, my clients understand that the City Council approved the Central Avenue construction project "in concept" at the City's public meeting on Monday, February 29, 2016. To the extent the City plans to go forward with the planned construction on Central Avenue, my clients seek confirmation from the City that the request they made at our meeting for at least one 8-foot-wide parking space per block be included in the design -- in addition to the blue spaces already contemplated.

Finally, to respond to the City's position, as stated in your February 2, 2016 letter, that, ". . . neither any applicable standards nor the decision in *Fortyune* require that the City have accessible parallel on-street parking," Title II of the Americans with Disabilities Act has two separate obligations for cities regarding accessible street parking. First, as confirmed by *Fortyune v. City of Lomita*, 766 F.3d 1098, 1103 (9th Cir. 2014), to the extent the City provides newly constructed or altered facilities, including parking facilities, whether they be parallel, diagonal or other types of parking facilities, it must ensure that the newly constructed or altered facilities be readily accessible to and useable by persons with disabilities. See 28 C.F.R. §35.151(a)(1) and (b)(1).¹ Second, cities must ensure that their programs and services, including programs such as parking and beach-access parking, when viewed in their entirety, are readily accessible to and useable by persons with disabilities. See 42 U.S.C. § 12132; 29 U.S.C. § 794; 28 C.F.R. § 35.150. Here, the City has an affirmative obligation to ensure that its newly constructed and altered facilities as well as its existing programs and services are readily accessible to persons with mobility impairments who use walkers and canes. To meet those requirements, the City must provide parking spaces that are wide enough for such persons to safely enter and exit their vehicles where the City has newly constructed or altered facilities and in locations that allow such persons safe and independent access to the beach and other City programs and services.

Additionally, by removing existing accessible parking, the City has violated Title II's requirement that it maintain existing accessible features of its facilities. See 28 C.F.R. § 35.133.

Thank you again for meeting with us and for your consideration of these critical issues. Please contact me at your earliest convenience to confirm the action items from our February 22, 2016 in-person meeting and any progress that the City has made regarding my clients' requests.

Sincerely,



Stuart Seaborn
Disability Rights Advocates

¹ The recent decision in *Bassilios v. City of Torrance*, Case No. 2:14-cv-03059-AB-JEM (Dec. 4, 2015) (Docket No. 76, Order Granting Plaintiffs' Motion for Partial Summary Judgment) clarified that the *Fortyune* decision applies to all on-street parking programs, rather than being limited to diagonal parking.