



ADMINISTRATION
CITY MANAGER'S OFFICE
Joseph L. Lessard, City Manager
Sabrina Cotta, Deputy City Manager

February 14, 2023

Sent via USPS & Email:

Mr. Mark Baker



mbaker@softlights.org

Dear Mr. Baker:

For the reasons outlined in the letter to you by the City of Ashland's legal department, the City of Ashland denies your request for reasonable accommodations related to the RRFBs.

Sincerely,

Sabrina Cotta,
Deputy City Manager

ADMINISTRATION
CITY MANAGER'S OFFICE

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LEGAL DEPARTMENT

Douglas M. McGeary, Acting City Attorney
Carmel Stout Zahran, Assistant City Attorney
Dana Smith, Administrative Analyst

February 14, 2023

Sent via USPS & Email:

Mr. Mark Baker

mbaker@softlights.org

Dear Mr. Baker:

This letter is in response to your Americans with Disabilities (“ADA”) request for reasonable accommodations regarding the Rectangular Rapid Flashing Beacons (“RRFBs”) deployed at certain pedestrian crossings in the City of Ashland (“City”). Your stated concern regarding RRFBs is that they are visual impairing and cause you anxiety and fear. The City has had numerous discussions with you in our attempts to further evaluate whether there are any reasonable accommodations that are technologically and economically feasible, while also maintaining the essential function of ensuring pedestrian safety. Some of these discussions occurred in relation to the lawsuit you filed in the Jackson County Circuit Court, case #22CV36402. That case was dismissed without prejudice. Nonetheless, the City met with you again on January 31, 2023, to further its evaluation of whether any reasonable accommodation exists in relation to the RRFB’s.

After review and consideration, it is this legal department’s recommendation that City management deny your request for reasonable accommodation related to the RRFB’s. During our meeting, despite your lack of technical expertise, you did suggest tungsten filament lighting, bulb-out crosswalk design, or 24-hour crossing guards as possibilities. The City repeatedly consulted with Scott Fleury, Ashland’s Public Works Director, before and after our January 31, 2023 meeting. Modification of the RRFB’s is not possible without sacrificing the City’s safety standards, which have been vetted by engineers and transportation agencies. As you know, they are the nationwide best practice for locations where the City has deployed RRFB’s. Your stated alternatives fall short of federal standards.

The City cares deeply that disabled members of our community have an equal opportunity to benefit from its public services and facilities. As you know, a public entity must make reasonable modifications to avoid discrimination against persons with disabilities, unless it can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity it provides and/or would impose undue financial burden or hardship. Here, removing RRFBs fundamentally alters the nature of these pedestrian safety devices and unacceptably risks fatalities at these high traffic locations. The City is aware of no acceptable alternative and your proposals do not cure our concerns.



LEGAL DEPARTMENT

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The City's roads, sidewalks, and rights-of-way must be available to everyone and RRFB's are specifically designed for pedestrians to safely cross higher-risk roadways. Modification of the RRFB's would fundamentally alter the nature of the RRFB's (i.e. pedestrian safety). Even if the City were to adopt some of your recommendations for modification, the City would be making a capricious decision outside of transportation guidelines. The City cannot make safety and transportation decisions based on your complaint. Rather, we rely on the engineering and architectural opinions of professionals who, as part of their compliance, consider the ADA needs for a variety of disabilities. The RRFB's compliance with federal regulations was also outlined in the City's motion to dismiss. In essence, your challenge is not to the City of Ashland policies or practices; it is an outright challenge to the federal agencies' guidelines and mandates we are bound to follow related to RRFB's.

If you dispute the guidelines outlined to cities, you can and certainly should raise those concerns with the federal departments and/or agencies via the Administrative Procedure Act. The City is aware that you have challenged those foundational authorities through complaints and/or appeals to the Food and Drug Administration, the U.S. Department of Energy, the Federal Highway Association, the Environmental Protection Association, the U.S. Department of Labor Occupational Safety and Health Administration, the Consumer Product Safety Commission, and have even reached out to legislators.

In the absence of a technologically and economically feasible alternative to RRFBs, the City is nonetheless concerned regarding your statements that you close your eyes and have a panic attack when you intentionally operate a vehicle near these crosswalks RRFB's. This is particularly true considering the lights only activate when the crosswalk is occupied by one or more pedestrians. The City is aware of certain glasses that are specifically designed to address your stated concerns and they filter light from pulsing fluorescents, LEDs, bright sunshine, and more. Please advise if you need further information on that approach to ensuring pedestrian, motorist, and your health and safety. This option would also allow you to safely access Siskiyou Blvd like all other motorists without risking pedestrian safety.

Sincerely,

Carmel S. Zahran,
Assistant City Attorney

cc: Casey Murdock: Frohnmayer, Deatherage, Jamieson, Moore, Armosino & McGovern, P.C.
Scott Fleury: Ashland, Director of Public Works