



MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Ryan Russo
Director, DOT

SUBJECT: Managing Exposure to Lawsuits
Involving Bicyclists and Potholes

DATE: April 15, 2022

City Administrator
Approval

Date May 11, 2022

INFORMATION

Bicyclist-involved personal injury lawsuits against the City of Oakland are infrequent, but can present substantial liabilities to the City, due to the inherent risks of bicycling and the vulnerability of bicyclists. This memorandum summarizes five strategies that OakDOT employs to manage and reduce this exposure:

- (1) Use Measure KK, Oakland's Infrastructure Bond, to improve the quality of pavement citywide, including 35 miles of bikeways per the 2019 Three Year Pavement Prioritization Plan and 145 miles of bikeways per the 2022 Five Year Pavement Prioritization Plan.¹
- (2) Prioritize pothole service requests on bikeways over comparable streets that are not bikeways.
- (3) Partner with the bicycle advocacy community to identify 10 potholes per month that are of heightened importance to bicyclists and prioritize the repair of these potholes.
- (4) Leverage transportation grants to augment the funds available for paving.
- (5) Communicate to the public the inherent risks (and benefits) of bicycling, particularly in the Oakland Hills, and the structural deficit in funding for paving.

Before explaining these strategies, the memorandum provides background on the characteristics, frequency, and settlement costs of these lawsuits.

Background on Bicyclist-involved Lawsuits

Bicyclist-involved lawsuits are infrequent but can present significant liabilities to the City of Oakland due to the vulnerability of bicyclists. A small number of lawsuits with large payouts

¹ Bikeways are streets and paths designated by the City of Oakland for bicycle travel. The term "bikeways" includes bicycle paths, bicycle lanes, and bicycle routes. See *Let's Bike Oakland: 2019 Oakland Bike Plan*, p. 80.

have involved bicyclists in the Oakland Hills alleging that potholes caused them to crash and sustain severe or fatal injuries. Recreational bicycling in the Oakland Hills is a popular and challenging activity due to roads with steep grades and sharp curves – conditions that may exacerbate the severity of a crash when a bicyclist loses control of their bicycle.

A five-year analysis (2011 through 2016) of all lawsuits and claims in the work areas of the Department of Transportation (OakDOT) and Public Works Department (OPW) found 162 incidents with payouts of \$10,000 or more (Attachment A). Of these 162 incidents with \$17.4 million in total payouts, nine involved bicyclists (6%) with \$5.6 million in payouts (32%). Two of the nine bicyclist-involved payouts account for \$5 million (89%) of all bicyclist-involved payouts in this five-year period. Both of these payouts were pothole-related.

In comparison, the same five-year analysis (2011 through 2016) found pedestrian-related cases (e.g., trip-and-fall) amounted to 81 incidents (50%) with \$4.0 million in payouts (23%). While pedestrian-related incidents were much more frequent, bicyclist-related incidents were infrequent but involved larger payouts due to the severity of the personal injuries.

A separate analysis examined all City of Oakland bicyclist-related lawsuits and claims from 1990 through 2015 (Attachment B). Of 266 bicyclist-related lawsuits and claims, the most common categories were as follows: 152 involved roadway surface issues (57%), 35 involved stolen bicycles (13%), and 29 involved collisions with City vehicles (11%). Over this 26-year period, the two large payouts noted above are the only pothole-related payouts over \$500,000: Bower (\$3 million settlement in 2014) and Lee (\$2 million settlement in 2015). Both incidents occurred in 2011. From 2016 through November 2021, there was one additional pothole-related payout over \$500,000: Gilbert (\$1.75 million settlement in 2021, incident in 2018).

OakDOT's Strategies for Managing Exposure

OakDOT uses the following five strategies to manage and reduce the City of Oakland's exposure to personal injury lawsuits involving bicyclists and potholes.

(1) Use Measure KK, Oakland's Infrastructure Bond, to improve the quality of pavement citywide, including 35 miles of bikeways per the 2019 Three Year Pavement Prioritization Plan and 145 miles of bikeways per the 2022 Five Year Pavement Prioritization Plan.

Due to Measure KK, Oakland's voter-approved Infrastructure Bond, the City has dramatically more resources to invest in paving than at any previous time in recent decades. Over many years a structural deficit in available funding resulted in a massive backlog of deferred maintenance - \$538 million as of 2018 and \$432 million as of 2021. The City of Oakland's 2019 Three Year Pavement Prioritization Plan made a \$100 million investment to begin rectifying this backlog, and the 2022 Plan proposes an additional \$300 million investment. The majority of new funding is from Measure KK (2016), with significant contributions from Senate Bill 1 (2017), and Measure BB (2014). The 2019 Three Year Pavement Prioritization Plan included 35 miles of existing and proposed bikeways including the upper portion of Claremont Ave, a popular (and steep) route used by bicyclists in the Oakland Hills. The 2022 Plan includes the remainder of

Claremont Ave in the Oakland Hills, along with Golf Links Rd, Grizzly Peak Blvd, Keller Ave, portions of Skyline Blvd, and Tunnel Rd. Oakland's previous Paving Plans included other paving projects in the Oakland Hills frequented by recreational road cyclists, including the entirety of Grizzly Peak Blvd (5.5 miles) and Skyline Blvd from Redwood Rd to Keller Ave (3.4 miles).

(2) Prioritize pothole service requests on bikeways over comparable streets that are not bikeways.

When pothole service requests are received via 311, a higher priority (Priority 2 - High) is given to those on existing bikeways (and on Major Roadways). Potholes on other streets are assigned "Priority 3 - Medium." All service requests are entered into Cityworks, a software application for intaking, assigning, and tracking the resolution of these requests. The system uses a five-level prioritization scheme: 1 (emergency), 2 (high), 3 (medium), 4 (low), and 5 (evaluated/no further action). The bikeway data used for the prioritization of pothole service requests is updated twice yearly to ensure that recently installed bikeways are included in the prioritization.

(3) Partner with the bicycle advocacy community to identify 10 potholes per month that are of heightened importance to bicyclists and prioritize the repair of those potholes.

Since 2014, the City has partnered with Bike East Bay to help prioritize pothole repair based on complaints from their members. This "crowdsourcing" helps OakDOT identify potholes of heightened importance to bicyclists. Bike East Bay provides their membership and the general public with "Hazard Reporting Resources" (<https://bikeeastbay.org/HazardReporting>), helping individuals to identify issues and report them in a clear and detailed manner to the appropriate agencies. For Oakland's 10 priority potholes per month, a long-time Bike East Bay volunteer, Mr. Ian MacDonald, has emailed a monthly report to Oak311 and key Oakland staff, adding ten new requests and providing a summary of past requests. Oak311 creates a service request for each location and assigns each as Priority 1 (emergency) to expedite their repair. Over the life of this collaboration approximately one thousand potholes have been identified, prioritized, and resolved.

(4) Leverage transportation grants to augment the funds available for paving.

OakDOT is aggressive in seeking and receiving funding for pavement upgrades as part of transportation grants. Recent examples include Affordable Housing Sustainable Communities Program (AHSC) funding for 18th St in West Oakland (\$3.3 million); as well as Active Transportation Program (ATP) funding for six miles of bikeways in East Oakland (\$17.3 million) and to upgrade Thomas Berkley Wy (formerly 20th St) between Broadway and Lake Merritt (\$4.6 million). In these examples, the funding amounts are for the total grant awards which include significant safety and access improvements. A portion of these amounts is programmed for paving, helping the City of Oakland to ameliorate its paving deficit while building forward-looking transportation projects. Not all grant sources allow paving as an eligible expense, and the ones that do like AHSC and ATP are particularly advantageous to the

City of Oakland. To the extent that paving is an eligible expense, OakDOT will continue to request funds for paving as part of transportation grants.

(5) Communicate to the public the inherent risks (and benefits) of bicycling, particularly in the Oakland Hills, and the structural deficit in funding for paving.

This strategy acknowledges that the City of Oakland is committed to promoting bicycling; that bicycling is an inherently risky activity; and that a decades-old structural deficit in paving funding means that uneven roadway surfaces should be expected when using Oakland's streets. The communications strategy has the following components:

- (a) Include information in the "We [bike] Oakland" annual free bikeways map that OakDOT prints and then distributes through local bike shops, the Oakland Public Library, and Bike to Work Day. The 2020 map added language on the prevalence of potholes to the map's introductory text. The 2021 map added a cautionary note to each side of the map: "Biking in the Hills? Expect steep grades and sharp curves. Watch for potholes, debris, and wildlife." The map has 180,000 copies in print with 15,000 of those copies in the past two years.
- (b) Install bicycle warning signs along designated bikeways in the Oakland Hills to advise bicyclists to be aware of pavement conditions and topography that could contribute to bicyclists losing control of their bicycles. Twenty-one signs were installed in early 2022 (Attachment C).
- (c) Publish and maintain a web page that communicates risks and benefits of bicycling in the Oakland Hills: <https://www.oaklandca.gov/topics/bicycling-in-the-oakland-hills>.

Respectfully submitted,



RYAN RUSSO

Director

Oakland Department of Transportation

For questions, please contact Jason Patton, Bicycle & Pedestrian Program Supervisor, at 510-238-7049.

Attachments

- A. Analysis of Lawsuits and Claims for Transportation and Public Works, 2011-2016 (OakDOT, 2017)
- B. Bicycle-related Claims and Lawsuits, 1990-2015 (OakDOT, 2017)
- C. Bicycle Surface Condition Warning Sign

Analysis of Lawsuits and Claims for Transportation and Public Works

This report analyzes lawsuits and claims against the City of Oakland between 2011 and 2016 that were within the work areas of the Departments of Transportation and Public Works. It includes all lawsuits with a payout plus those claims with a payout of \$10,000 or more. The dataset includes:

- 131 lawsuits with payouts totaling \$15,339,649; and
- 31 claims with payouts totaling \$2,033,068.

Between 2011 and 2016, there were an additional 309 claims with payouts totaling \$484,965. The City Attorney's Office provided the data which was checked against records from the Public Works Department. This included matching incidents to CityWorks service requests.

Results

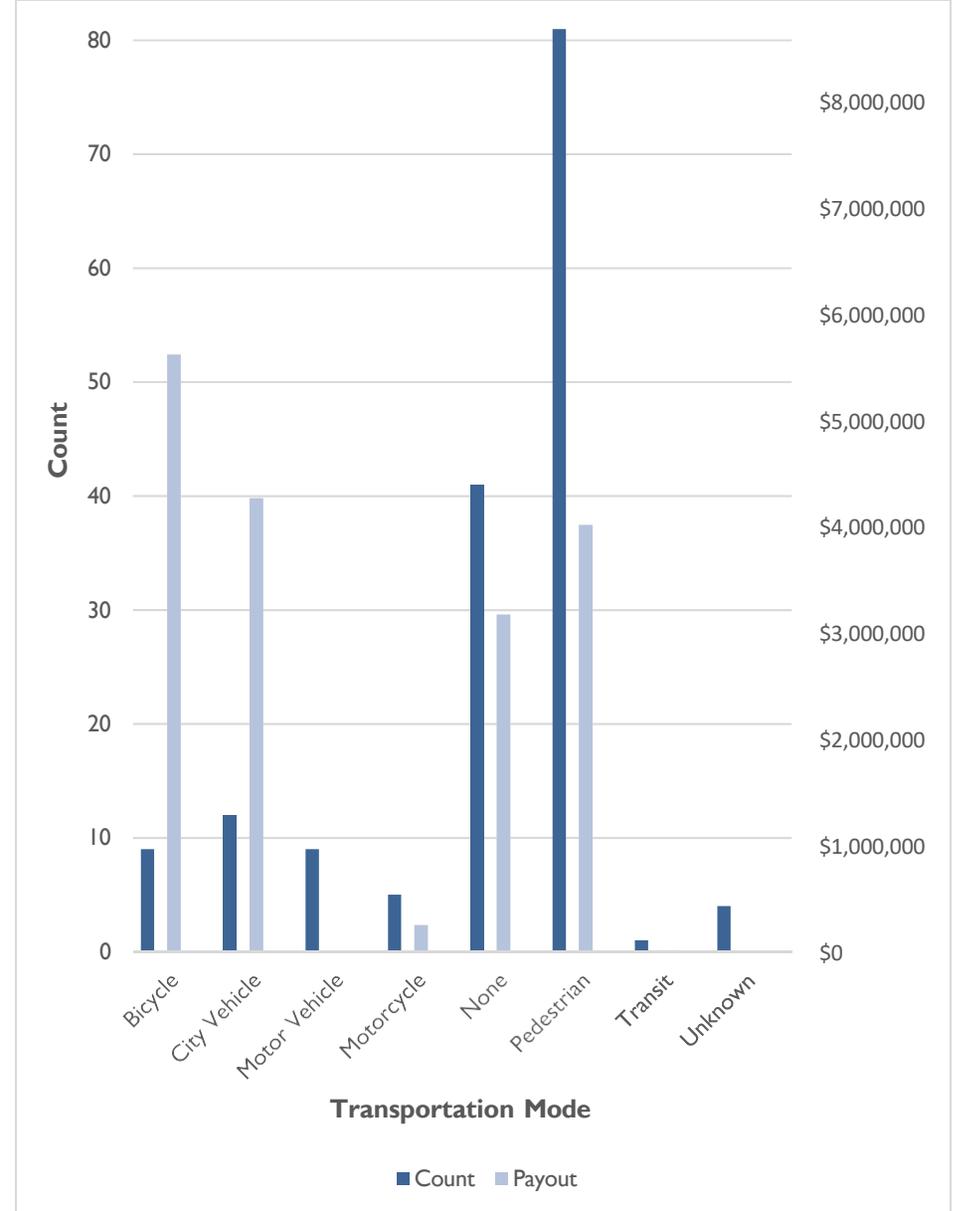
- 90% of the total payout is attributable to 11% of all incidents.
- 50% of the analyzed incidents are pedestrian-related (e.g., trip-and-fall).
- \$5.6 million in payouts are associated with nine bicyclist-related incidents.
- The most frequent CityWorks service request categories are:
 - Sidewalk – Damage: 39 incidents, \$1.9 million in payouts
 - Streets – Potholes/Depression: 28 incidents, \$6.1 million in payouts
 - Sewers -Blockage: 23 incidents, \$2.0 million in payouts

Claims and Lawsuits by Mode

Transportation Mode	Count	Percent	Payout	Percent
Bicyclist	9	6%	\$5,622,500	32%
City Vehicle	12	7%	\$4,271,964	25%
Motor Vehicle	9	6%	\$10,311	0%
Motorcyclist	5	3%	\$252,500	1%
None	41	25%	\$3,175,497	18%
Pedestrian	81	50%	\$4,018,917	23%
Transit	1	1%	\$15,000	0%
Unknown	4	2%	\$6,027	0%
Total	162	100%	\$17,372,716	100%

Notes

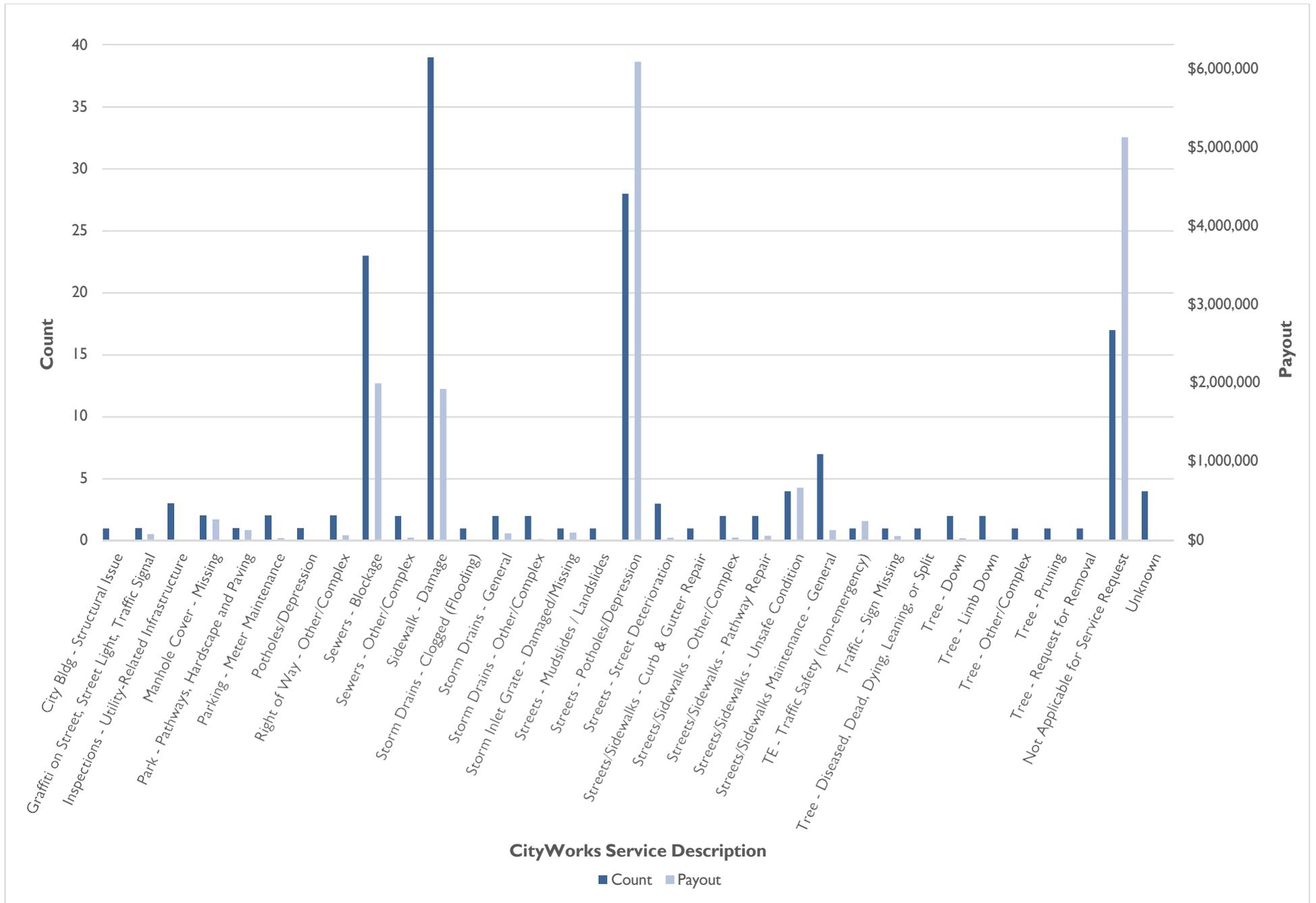
- “Transportation Mode” was determined from the lawsuit and claim descriptions.
- The “Motorcyclist” category includes motorized scooters.
- The “Pedestrian” category includes one Segway user.
- The “Motor Vehicle” category is for privately owned cars and trucks.
- The “City Vehicle” category is for crashes involving vehicles owned by the City.
- The “None” category is for lawsuits and claims unrelated to transportation (e.g., sewers, trees).



Claims and Lawsuits by CityWorks Service Request Description

CityWorks Service Request Description	Count	Percent	Payout	Percent
City Bldg - Structural Issue	1	1%	\$7,500	0%
Graffiti on Street, Street Light, Traffic Signal	1	1%	\$80,000	0%
Inspections - Utility-Related Infrastructure	3	2%	\$13,500	0%
Manhole Cover - Missing	2	1%	\$265,281	2%
Park - Pathways, Hardscape and Paving	1	1%	\$135,000	1%
Parking - Meter Maintenance	2	1%	\$33,000	0%
Potholes/Depression	1	1%	\$10,000	0%
Right of Way - Other/Complex	2	1%	\$71,875	0%
Sewers - Blockage	23	14%	\$2,001,566	12%
Sewers - Other/Complex	2	1%	\$39,918	0%
Sidewalk - Damage	39	24%	\$1,929,278	11%
Storm Drains - Clogged (Flooding)	1	1%	\$15,000	0%
Storm Drains - General	2	1%	\$94,219	1%
Storm Drains - Other/Complex	2	1%	\$21,150	0%
Storm Inlet Grate - Damaged/Missing	1	1%	\$105,000	1%
Streets - Mudslides / Landslides	1	1%	\$15,336	0%
Streets - Potholes/Depression	28	17%	\$6,086,520	35%
Streets - Street Deterioration	3	2%	\$38,500	0%
Streets/Sidewalks - Curb & Gutter Repair	1	1%	\$2,000	0%
Streets/Sidewalks - Other/Complex	2	1%	\$41,835	0%
Streets/Sidewalks - Pathway Repair	2	1%	\$64,500	0%
Streets/Sidewalks - Unsafe Condition	4	2%	\$675,000	4%
Streets/Sidewalks Maintenance - General	7	4%	\$134,999	1%
TE - Traffic Safety (non-emergency)	1	1%	\$250,000	1%
Traffic - Sign Missing	1	1%	\$60,000	0%
Tree - Diseased, Dead, Dying, Leaning, or Split	1	1%	\$2,000	0%
Tree - Down	2	1%	\$32,658	0%
Tree - Limb Down	2	1%	\$940	0%
Tree - Other/Complex	1	1%	\$6,000	0%
Tree - Pruning	1	1%	\$2,750	0%
Tree - Request for Removal	1	1%	\$5,000	0%
Not Applicable for Service Request	17	10%	\$5,126,363	30%
Unknown	4	2%	\$6,027	0%
Total	162	100%	\$17,372,716	100%

Note: The "Not Applicable" category is for incidents without service requests (e.g., employee discrimination, city vehicle crash).



Bicycle-related Claims and Lawsuits, 1990-2015

City of Oakland, Department of Transportation
Bicycle & Pedestrian Program (June 2017)

This report analyzes City data on claims and lawsuits to understand the City's exposure to claims and lawsuits involving bicyclists. The City Attorney's Office provided the data by querying their claims/lawsuits database for all records containing the keywords "bike," "bicycle," or "bicyclist." The data output included a variety of information on the claims and lawsuits including date, case number, incident location, settlement amount, and incident notes.

This query produced 373 records dating from 1990 to 2015. The data were then cleaned to eliminate records that did not involve a bicyclist. For example, some records containing "bike" actually involved a motorcycle, or a bicycle may have been present at the scene but not involved in the incident. After reviewing the 373 records received, 266 records were determined to be bicycle-related.

After this initial cleaning, the relevant records were coded into categories based on the nature of each incident. Additional subcategories were developed to classify various types of roadway surface issue – the most prevalent category of bicycle-related claims and lawsuits. The following categories and subcategories were created for this analysis:

- Roadway Surface Issue
 - Construction
 - Debris
 - Pothole
 - Railroad Tracks
 - Sidewalk
 - Storm Drain Grate
 - Utility Lid
 - Other or unknown
- City Vehicle Collision
- Design Issues
- Police Altercation
- Stolen Bike
- Other

Using this coding scheme, this report shows trends on the number of occurrences and payouts related to each category. This analysis can help inform efforts to reduce the City's exposure to claims and lawsuits involving bicyclists.

Analysis of Claims and Lawsuits by Category

Of the 266 records, 194 records were claims and 72 records were lawsuits (**Figure 1**). There is some double counting as some incidents that began as a claim went on to be a lawsuit. In other instances an incident may have been filed only as a claim or filed directly as a lawsuit.

Figure 1: Number of Claims versus Lawsuits

Bicycle-Related Records	Count	Percentage	Notes
Total claims	194	72.9%	Percent of all records (266)
Total lawsuits	72	27.1%	Percent of all records (266)
Claims without a lawsuit	153	78.9%	Percent of all claims (194)
Lawsuits without a claim	31	43.1%	Percent of all lawsuits (72)

The 266 bicycle-related records were grouped into six categories based on details contained in the incident notes from the database (**Figure 2**). Some of the incidents are double counted, as the same incident was filed as both a claim and a lawsuit.

Figure 2: Number of Claims and Lawsuits by Category

Category	Count	Percentage
City vehicle collision	29	10.9%
Design issues	11	4.1%
Stolen bike	35	13.2%
Police altercation	16	6.0%
Roadway surface issues	152	57.1%
Other	23	8.6%
Total	266	100.0%

The breakdown of claims and lawsuits by category shows that a majority of bicycle-related claims and lawsuits filed against the City are caused by roadway surface issues. In order to assess what types of roadway surface issues were the cause of the claims and lawsuits, these records were further analyzed through the following subcategories (**Figure 3**).

Figure 3: Number of Claims and Lawsuits by Type of Roadway Surface Issue

Subcategory	Count	Percentage
Construction	11	7.2%
Debris	6	3.9%
Pothole	56	36.8%
Railroad tracks	2	1.3%
Storm drain grate	23	15.1%
Utility lid	8	5.3%
Sidewalk	6	3.9%
Other or unknown	40	26.3%
Total	152	100.0%

Figures 4 through 11 are bar charts that show the incident dates and payout amounts for all categories and for just the roadway surface issues. Following the charts, there are three maps that show the locations of claims/lawsuits by settlement amount, by category, and by roadway surface subcategory.

Discussion

Twenty-five years of data show that the City's greatest exposure to bicyclist-related claims and lawsuits is caused by roadway surface issues, and specifically by potholes and other pavement defects. This liability can be expensive, with the three largest payouts amounting to \$5.5 million between 2010 and 2015. Yet because there are only three large payouts, it is unclear whether there is a pattern to these incidents.

While the total number of bicycle-related claims and lawsuits is erratic through time, the number of claims/lawsuits is decreasing with respect to the number of commuter bicyclists. This trend is driven by significant increases in the number of commuter bicyclists. This trend may be surprising in that one might expect new bicyclists to be more prone to incidents, with an increase in bicyclists resulting in an increase in claims and lawsuits. In fact, the opposite is true: the number of claims/lawsuits per 1,000 bicycle commuters is decreasing through time.

The total number of bicycle-related claims and lawsuits peaked in the late 1990s and in the early 2010s. The data do not provide an explanation for these peaks. The data from the early 1990s show very few claims and lawsuits. This may be an artifact of the recordkeeping: all incidents from 1990 through 1992 were settled in 1993 or later. Thus it appears that the dataset is not complete for the early 1990s.

The geographical distribution of claims and lawsuits tends to follow the available data for bicyclist volumes and bicyclist-involved crashes.¹ Downtown and North Oakland have the greatest number of claims/lawsuits as well as the greatest number of bicyclists and bicyclist-involved crashes. The Oakland Hills south of Redwood Rd has the fewest. However, the Oakland Hills north of Redwood Rd had the two most expensive payouts, both due to roadway surface issues. This may be explained by the topography: steeper roads allow for higher downhill speeds that would result in more severe crashes. There are not obvious spatial trends to the location of claims/lawsuits by category or roadway surface issue subcategory.

To address the City's exposure associated with roadway surface issues, the City coordinates its Pavement Prioritization Plan with its Bicycle Master Plan. In a number of instances, a designated bikeway will be the tie-breaker for streets of otherwise equal priority for paving. The situation is more challenging for what are known as "worst streets": where the deterioration is so severe that it is more cost-effective to keep other streets in good repair. City Council policy directs twenty percent of paving funds to these worst streets. For worst streets that may be hazardous to bicyclists, City staff work with City Councilmembers to prioritize the paving of particular worst streets that would reduce the City's exposure to bicyclist-related claims and lawsuits.

¹ Bicyclist volume data are available from the US Census, American Community Survey, and the City of Oakland's annual bicyclist/pedestrian counts program. Bicyclist-involved crash data are available from police reports compiled by the California Highway Patrol in the Statewide Integrated Traffic Records System (SWITRS).

Figures 4 and 5 show the number of claims and lawsuits per year for all records, and for just the roadway surface issues. Both charts compare the number of claims/lawsuits to the number of bicycle commuters. As the number of Oakland bicycle commuters has increased – especially since the mid-2000s – the number of incidents per 1,000 bicycle commuters has decreased.

Figure 4: Total Claims and Lawsuits by Year of Incident

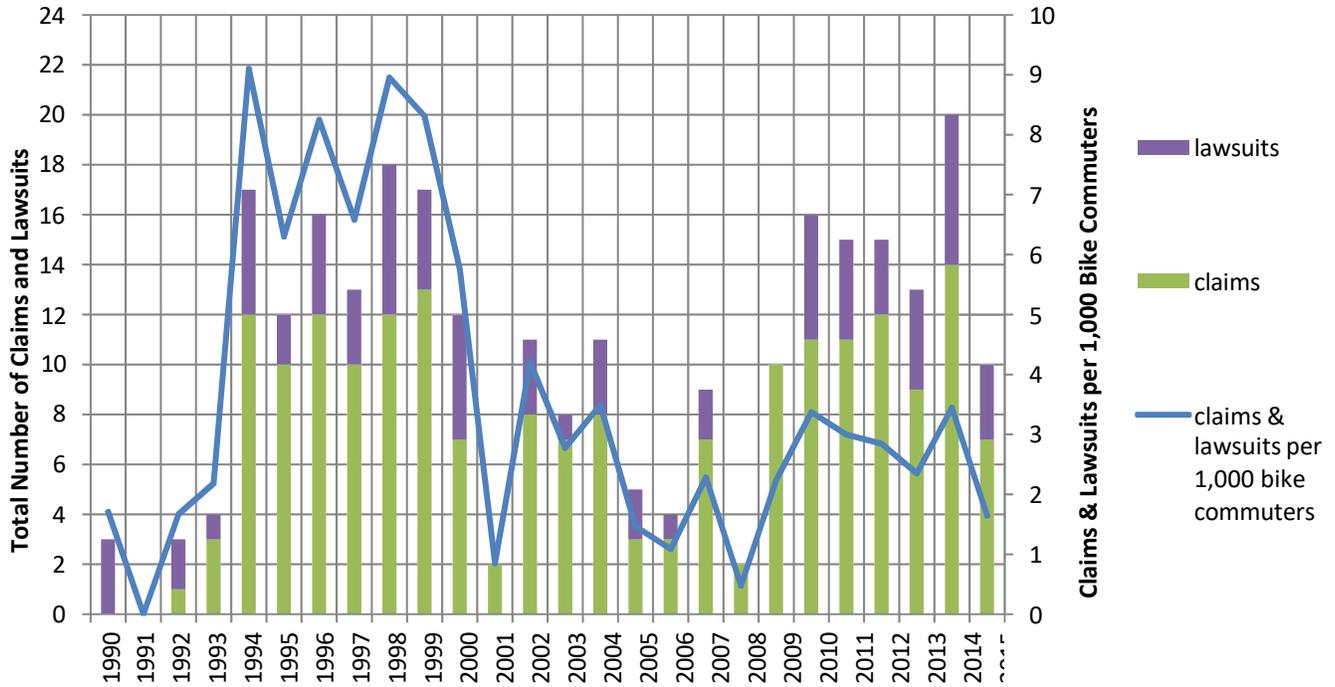
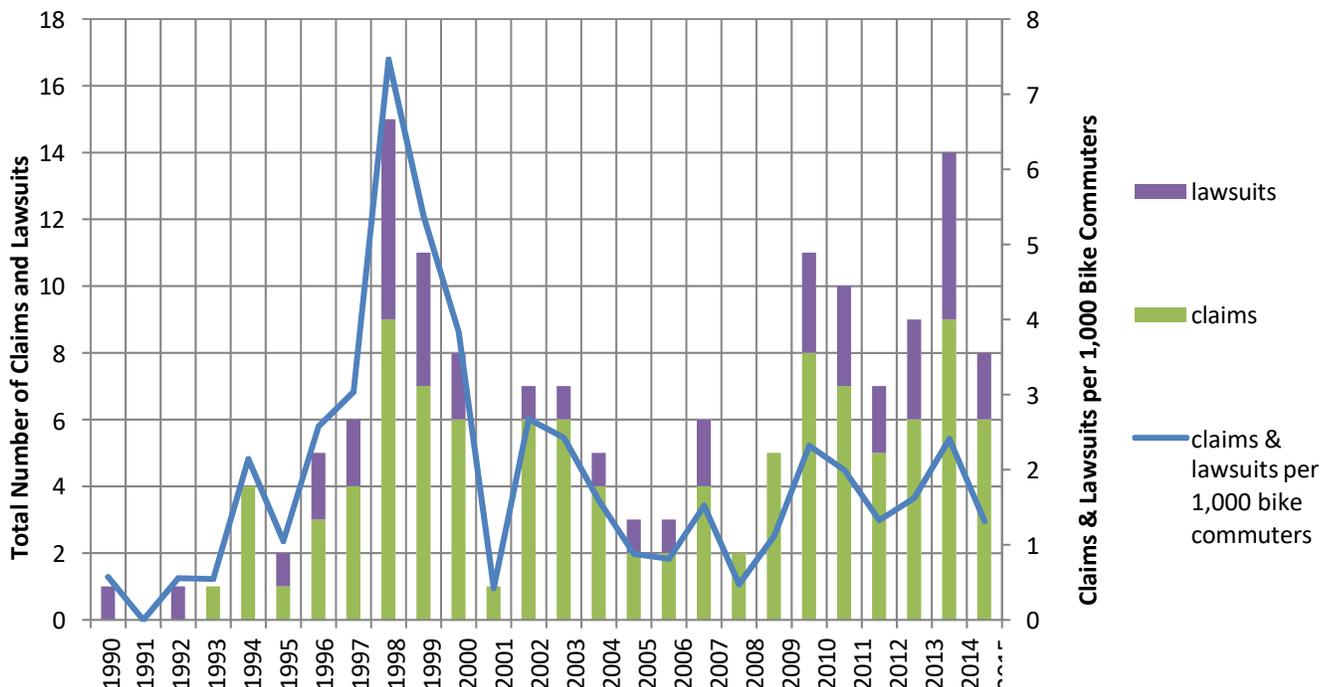


Figure 5: Roadway Surface Issue Claims and Lawsuits by Year of Incident



Figures 6 and 7 show the total payouts per year for all records, and for just the roadway surface issues. The charts are dominated by three large payouts related to deteriorated pavement and categorized here as roadway surface issues: \$500,000 in 2010, \$3 million in 2014, and \$2 million in 2015.

Figure 6: Total Payouts by Year

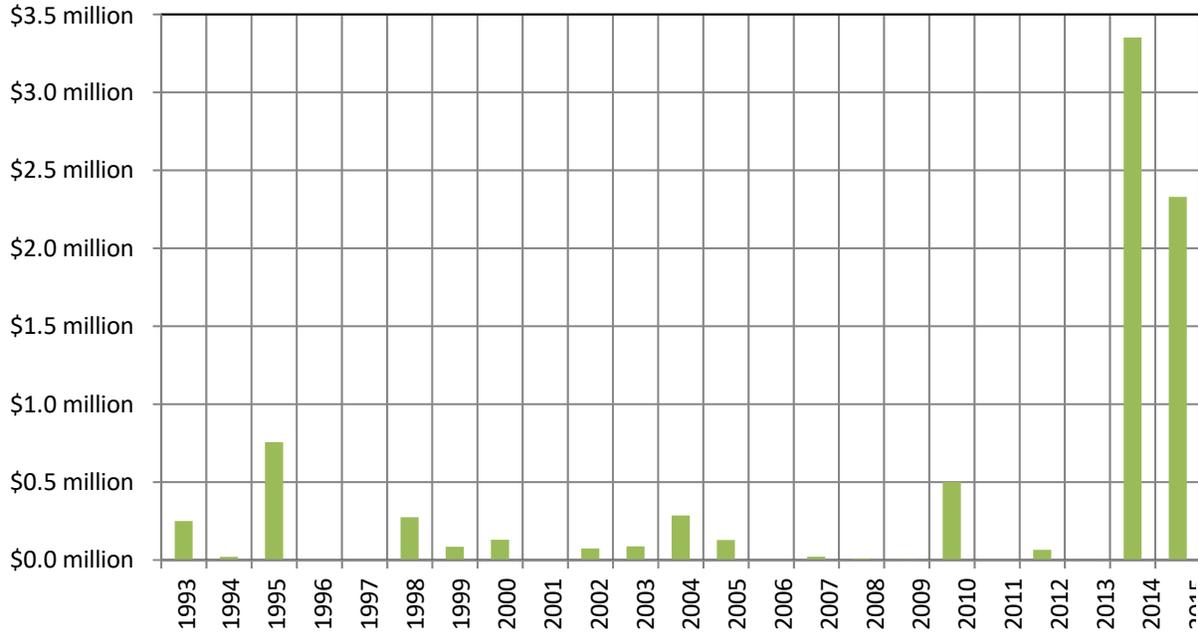
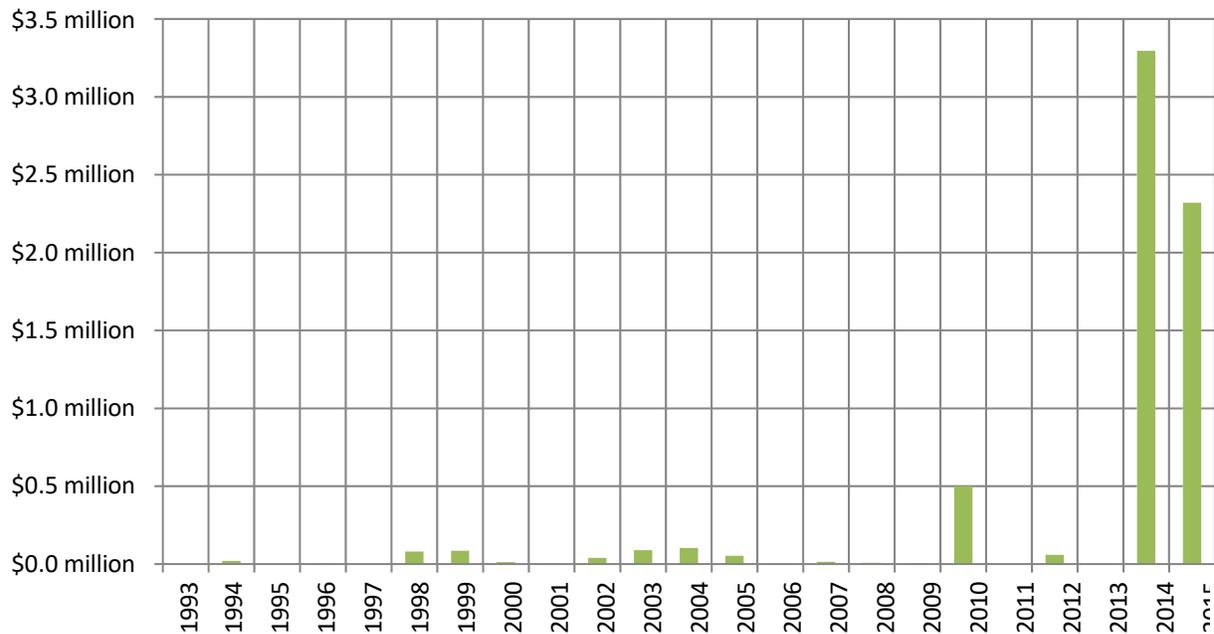
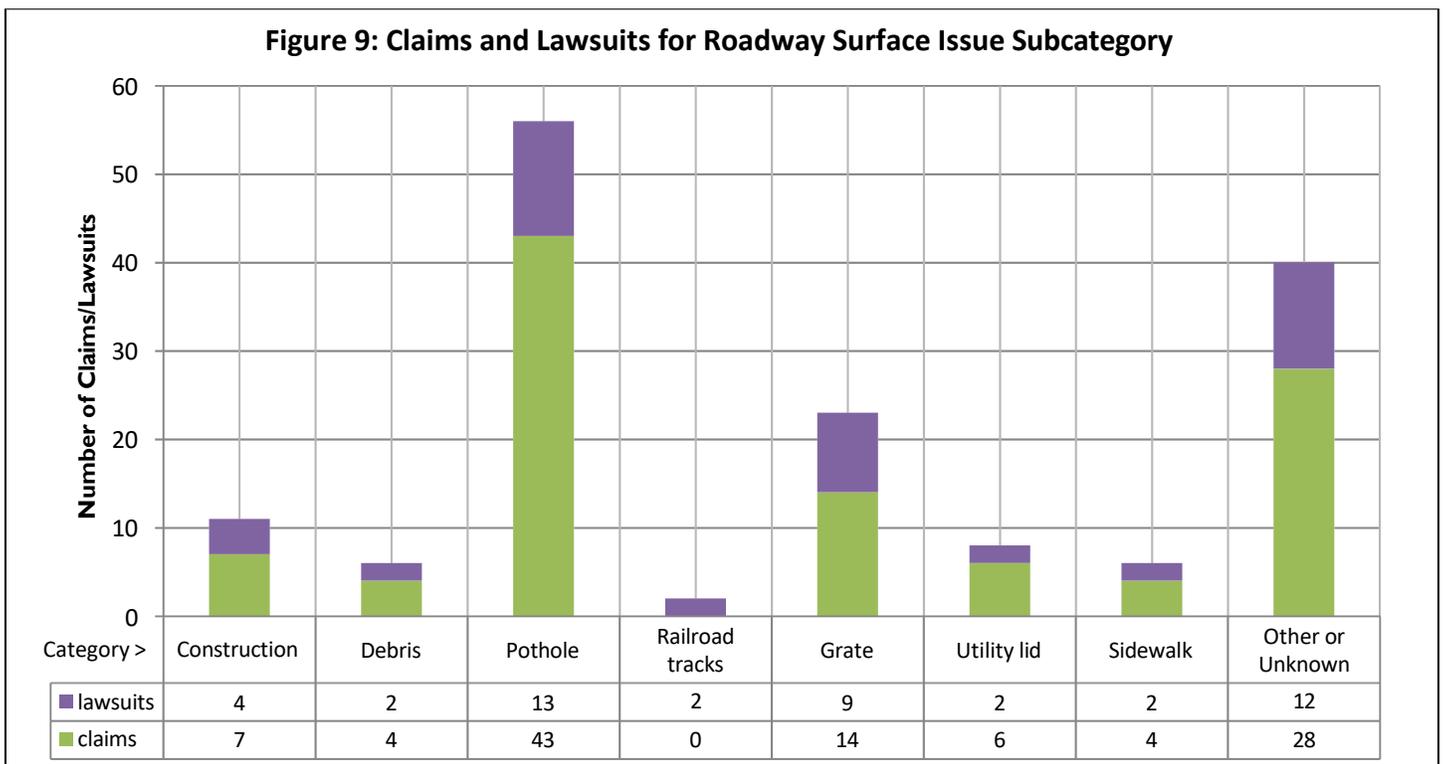
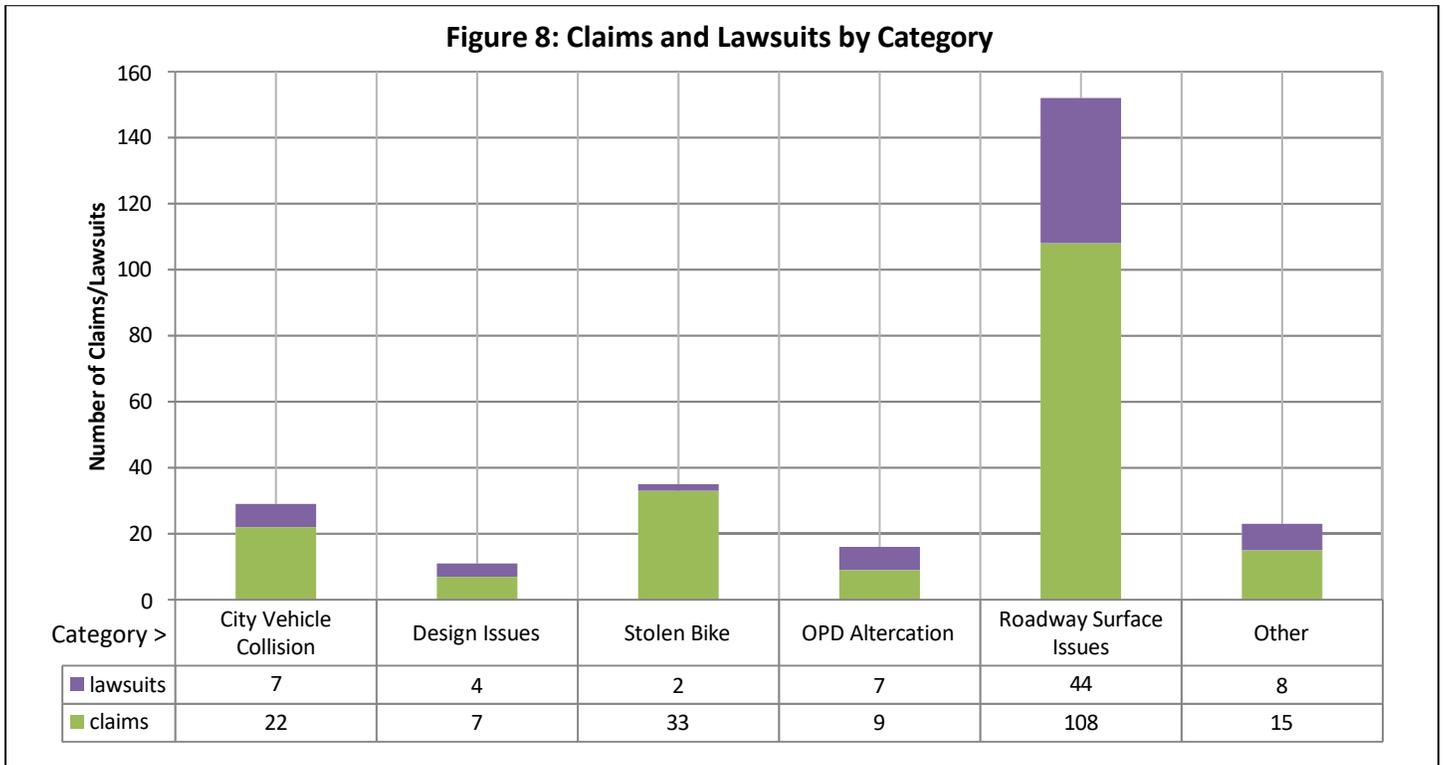


Figure 7: Payouts by Year for Roadway Surface Issues



Figures 8 and 9 show the number of claims and lawsuits by category and subcategory. The most common instances were “Roadway Surface Issues,” and “Potholes,” respectively. The roadway surface issue subcategory “Other or unknown” contains a number of incidents describing an uneven surface or an imperfection in the roadway, but without sufficient detail to assign it to another subcategory.



Figures 10 and 11 show total payouts by category and subcategory with roadway surface issues – and specifically potholes – accounting for the majority of payouts. Of the three large payouts noted in Figures 6 and 7, two are categorized as “Potholes” and the third as “Other or unknown”.

Figure 10: Payouts by Category

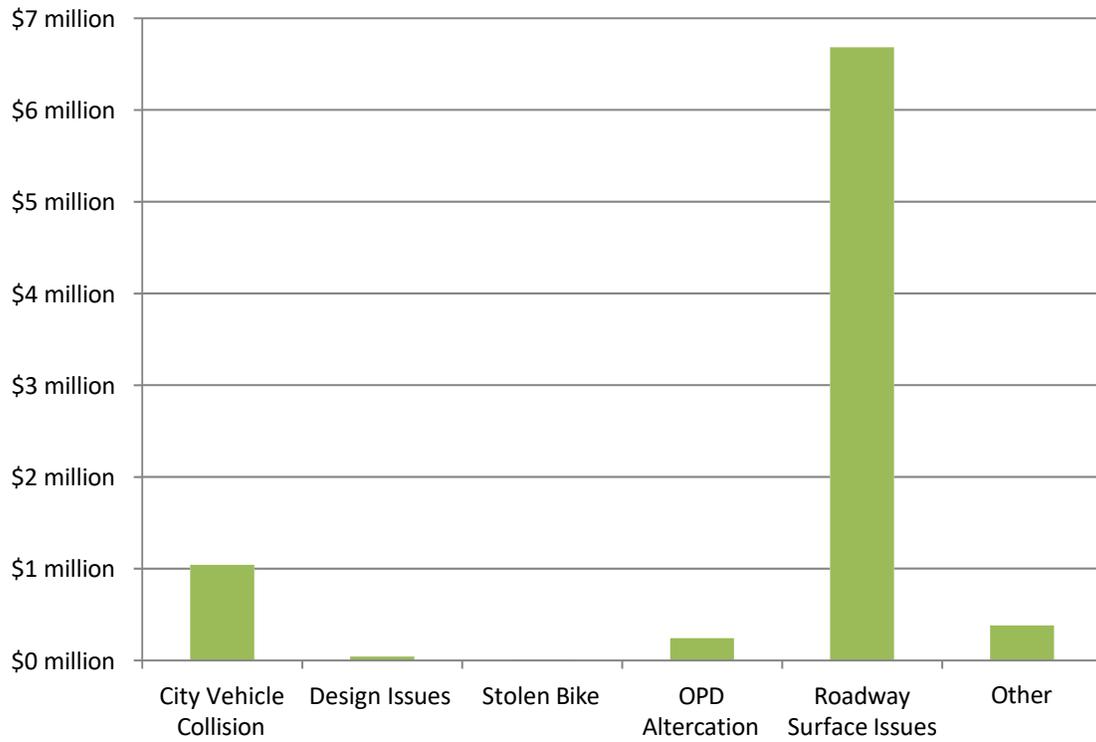
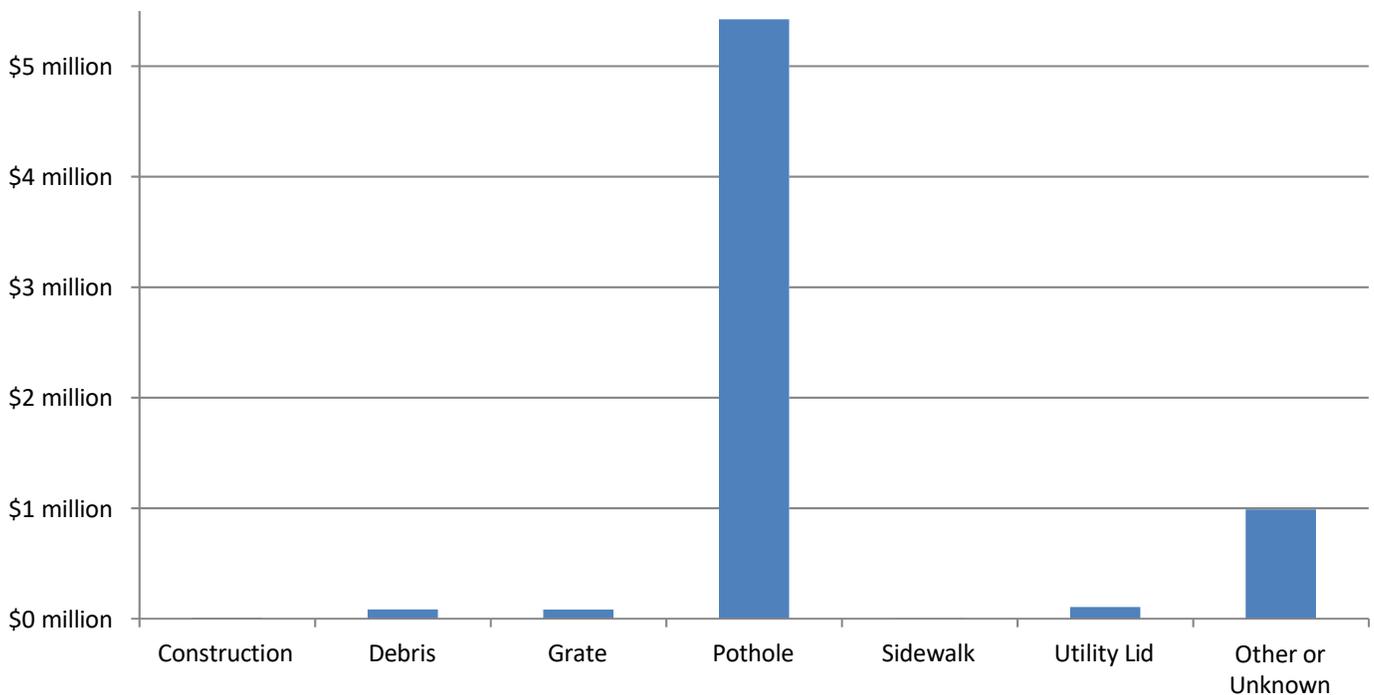
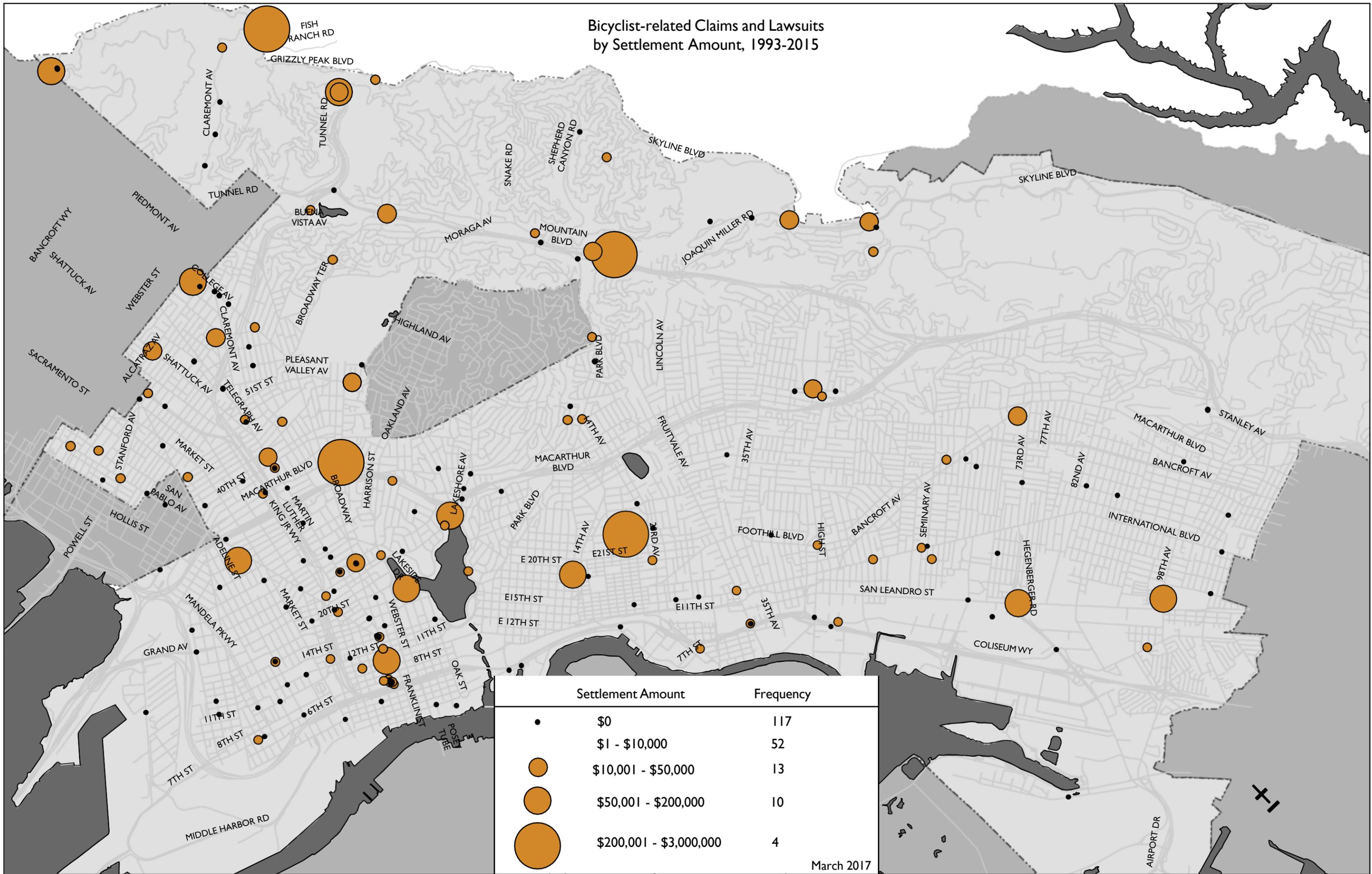


Figure 11: Payouts by Roadway Surface Issue Subcategory



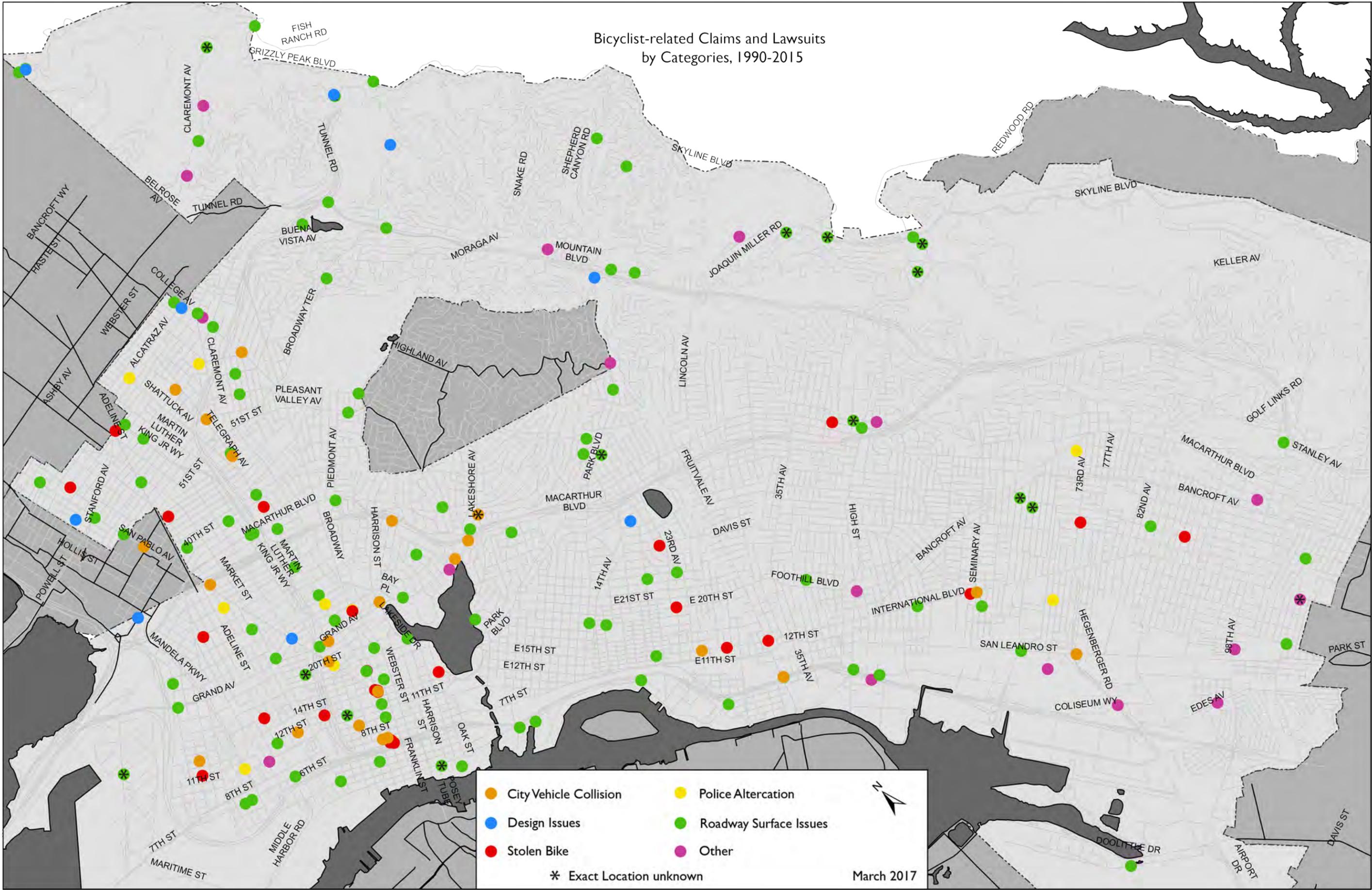
Bicyclist-related Claims and Lawsuits by Settlement Amount, 1993-2015



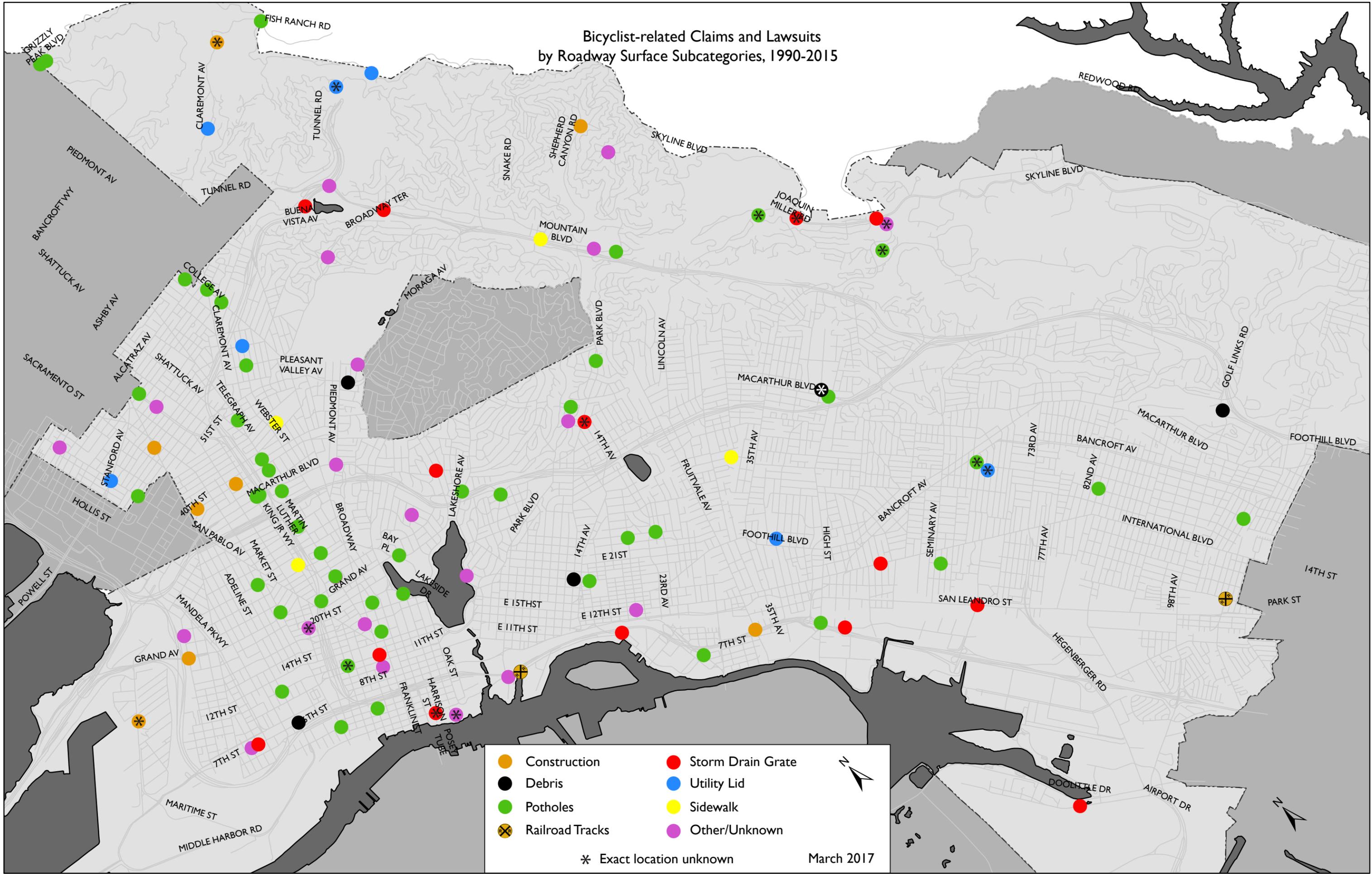
Settlement Amount	Frequency
\$0	117
\$1 - \$10,000	52
\$10,001 - \$50,000	13
\$50,001 - \$200,000	10
\$200,001 - \$3,000,000	4

March 2017

Bicyclist-related Claims and Lawsuits by Categories, 1990-2015



Bicyclist-related Claims and Lawsuits by Roadway Surface Subcategories, 1990-2015





Bicycle Surface Condition Warning Sign