



CITY OF OAKLAND

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2019 MAY 30 PM 5:29

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Ryan Russo  
Director, OakDOT

**SUBJECT:** Supporting Property Owners in  
Repairing Sidewalks

**DATE:** May 3, 2019

City Administrator Approval

Date:

5/30/19

## RECOMMENDATION

**Staff Recommends That the City Council Adopt:**

**1) An Ordinance Revising Oakland Municipal Code Title 12, Chapter 12.04 To Add Oakland Municipal Code Title 12, Chapter 12.22 To Establish Property Owner Responsibility And Liability For Sidewalk Safety And Maintenance; And**

**2 An Ordinance Revising Oakland Municipal Code Title 12, Chapter 12.04 To Add New Regulations Requiring Oakland Property Owners To Inspect And Certify Sidewalks In The Public Right-Of-Way At The Time Of Property Transfer; And**

**3) Resolution To Authorize The Department Of Transportation To Complete Private Property Sidewalk Repairs Of Low-Income Property Owners At No Cost To Qualifying Property Owners; And**

**4) Resolution To Authorize A Three-Month Period In Which Sidewalk Repair Permit Fees Would Be Waived To Encourage Private Property Sidewalk Damage Repairs Beginning July 1, 2019 And Ending September 30, 2019.**

## EXECUTIVE SUMMARY

The proposed ordinances and resolutions address the backlog of private sidewalk repairs in the City of Oakland and reduce City liability related to private sidewalk damage. The ordinances would require sidewalk repairs upon title transfer of real property and would establish joint liability for injuries resulting from sidewalk damage. The resolutions would authorize a new program to support low-income property owners in performing sidewalk repairs and authorize a three-month period in which fees to repair sidewalks would be waived for all property owners to encourage the repair of private sidewalk damage.

Item: \_\_\_\_\_  
Public Works Committee  
June 11, 2019

**BACKGROUND / LEGISLATIVE HISTORY**

Currently, the Department of Transportation (OakDOT) has more than 3700 open sidewalk repair tickets. Approximately 25% of all sidewalk damage service requests were made more than 5 years ago. Each service request represents a potential accessibility challenge for Oaklanders in wheelchairs, with strollers, and who use a mobility device, such as a walker. Each of these open sidewalk damage reports also represents constructive notice of potential trip hazards. Sidewalk cracks, lifts, and upheavals can lead to injuries. These injuries result in dozens of claims and lawsuits every year. Finally, each of these open tickets can be understood as a proxy for additional areas of damage that have gone unreported. Sidewalk damage presents barriers, potential injuries, and potential liabilities for both the City and Oakland property owners.

Per California law<sup>1</sup>, the responsibility to repair areas of sidewalk damage is the responsibility of the adjacent property owner. Approximately 85% of sidewalk damage in the City of Oakland is "private damage," or damage that is by statute the responsibility of the private property owner adjacent to the sidewalk. Around 15% of sidewalk damage in the City is "public damage," or sidewalk damage at or within a public facility, or sidewalk damage that is caused by an official City tree. Public damage is the responsibility of the City to repair. As directed in the 2017-2019 Capital Improvement Plan, the City's \$1M annual sidewalk repair program is dedicated to repairing public damage.

Although by state law private property owners are responsible for private sidewalk repairs and may be liable for any injuries resulting from sidewalk defects, California courts have held that the City is and can be held liable for injuries as a result of private sidewalk damage if the City has not adopted a sidewalk liability ordinance. Between 2001-2010, the City paid out an average of \$370,000 annually in sidewalk trip-and-fall claims and lawsuits. Since 2010, the average annual payout has increased to \$485,000, a 30% increase. In 2018, the City paid out more than \$1.1M, exceeding the funds dedicated to the annual sidewalk repair program.

The majority of trip-and-fall claims stem from private damage. The City Attorney's Office analysis of nearly 1000 claims in the past ten years identified that 61% of claims stemmed from private damage, with the City identified as a co-defendant to a private property owner. Trip-and-fall claims and lawsuits are paid out of Fund 1100 (Self-Insured Liability), a subset of Fund 1010 (General Fund).

Following the California Court of Appeal decision in *Gonzales v San Jose*, California cities have reduced trip-and-fall liability by adopting municipal ordinances that clearly and unambiguously

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<sup>1</sup> California Streets and Highways Code § 5610: The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

confirm private responsibility for injuries resulting from private sidewalk damage. (*Gonzales v San Jose* (2004) 125 Cal App.4<sup>th</sup> 1127.) The ordinances do not change what is already vested in state law, but expressly establish that the property owner has the primary and exclusive responsibility for maintaining safe sidewalks whether or not the City has notified the owner of their maintenance obligations. Many jurisdictions in California have incorporated such language within municipal ordinances, including San Francisco, Emeryville, Concord, Larkspur, Albany, Lodi, Sacramento, Vacaville, Richmond, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo, and Pleasant Hill.

The Oakland Department of Transportation receives approximately 180 permit applications each year for curb, gutter, and sidewalk repair on private property. Permits are required for any repair larger than 25 square feet.

### **ANALYSIS AND POLICY ALTERNATIVES**

Improving sidewalks would improve accessibility for people with disabilities, contribute to neighborhood walkability, and reduce liability for both the City and private property owners. Given that the majority of sidewalk damage is the responsibility of private property owners, staff recommend reducing City liability for private damage and increasing the breadth of options that help facilitate private sidewalk damage repair.

#### *Updating the Oakland Municipal Code to require sidewalk improvements at title transfer*

In 2011, City Council passed an ordinance requiring upgrades to private sewer laterals before a property title can be transferred. Following this change, the number of sewer lateral repair permit applications increased from an average of 650 per year to an average of 3000 per year. Staff is proposing a similar ordinance for sidewalks. Like the private sewer lateral requirement, the sidewalk improvement ordinance would require either a property buyer or seller complete necessary repairs and upgrades to bring a sidewalk to compliance before a title transfer is completed. A compliance certificate for the adjacent sidewalks would need to be completed prior to the first close of escrow on the property.

Currently, staff see an average of 180 permit applications for sidewalk repairs every year. Based on the increase in sewer lateral permit applications following the 2008 ordinance, staff estimate that the City could see up to 700 permits each year through the sidewalk improvement ordinance and approximately 84,000 square feet in private sidewalk damage repairs.

Staff recommended one change in precedent from the private sewer lateral ordinance: the proposed sidewalk ordinance would enable self-certification of the sidewalk improvement. Under this option, a buyer or seller would not need to coordinate with City of Oakland staff to schedule an inspection. Instead, the buyer or seller would hire a licensed contractor permitted by the City to complete the repairs and the contractor or a professional engineer or licensed architect would submit a self-certification of the sidewalk compliance under penalty of perjury. City of Oakland construction inspectors would then perform random inspections of all completed work at a later date. This addresses a key concern of real estate agents, buyers, and sellers under the current sewer lateral ordinance.

*Updating the Oakland Municipal Code to establish property owner responsibility and liability for sidewalk safety and maintenance*

Adjacent property owners are often in the best position to quickly identify and address potentially dangerous sidewalk conditions. The effect of the proposed ordinance on adjacent property owners is to establish a measure of legal responsibility for the maintenance of safe sidewalks. Without the ordinance, abutting property owners have little incentive to maintain sidewalks or to report or eliminate tripping hazards, even though they are currently responsible for repairs pursuant to state law.

Sidewalk liability ordinances such as the one recommended by staff serve as an effective risk management tool, enabling the City to more fully defend against sidewalk trip and fall cases by providing the legal means to tender sidewalk related injury claims to the responsible property owner's insurance carriers. For these reasons, sidewalk liability ordinances are strongly recommended by ABAG (Association of Bay Area Governments), as well as MPA (Municipal Pooling Authority), and CSAC EIA (Excess Insurance Authority), which are public entity insurance authorities that provide Cities with excess liability coverage.

*Establishing a sidewalk repair hardship program*

The City of San Jose currently provides a Sidewalk Repair Financial Hardship Program in which the city performs subject repairs at no cost to qualifying low income property owners. In order to qualify, low-income property owners must have an annual household income of less than three times the national poverty level based on household size, as well as provide a copy of current federal income tax return and other documentation. In addition, financial hardship approval is subject to available funding and may not be awarded to all qualified applications.

Approximately 8% of Oakland households in owner-occupied units earn an annual household income less than \$35,000. To encourage and enable low-income property owners to repair damaged sidewalks, staff have proposed a sidewalk repair hardship program similar to the City of San Jose. This program would perform sidewalk repairs at no cost to qualifying low-income property owners, to a maximum expenditure of \$50,000 annually. To receive the waiver, a property owner would present proof of participation in another means-tested program, such as CalFresh or PG&E CARE (California Alternate Rates for Energy). (For a complete list of qualifying programs, see **Attachment A**.) With Council authorization, this program would be funded by Measure BB.

*Creating a temporary waiver for sidewalk repair permit fees*

To encourage all Oakland property owners to repair damaged sidewalks, staff have also proposed a temporary fee moratorium. For a period of three months, beginning July 1, 2019 and ending September 20, 2019, all administrative fees assessed for the repair of sidewalk damage would be waived for all Oakland property owners. With Council authorization, the waivers would be funded by Measure BB.

### **FISCAL IMPACT**

In 2018, the City paid out more than \$1.1M, exceeding the funds dedicated to the annual sidewalk repair program. The proposed Sidewalk Liability Ordinance will likely reduce the City's pay-outs for sidewalk related injuries based on historical information because (1) property owners will be more likely to maintain sidewalks in a safe condition if they are jointly liable for injuries due to damaged and neglected sidewalks adjacent to their property; and (2) the City would have the right to recover from property owners and their insurance companies a portion of the claims for injuries resulting from unsafe sidewalk conditions. Requiring sidewalk compliance at property title transfer would have a net neutral impact, given that inspection costs would be recovered by administrative fees.

The two proposed programs that would perform sidewalk repairs at no cost to qualifying low-income property owners and temporarily waive all administrative fees for sidewalk repairs for all property owners would have a short-term negative fiscal impact, covered by existing funds programmed through the citywide sidewalk repair program. Overall, however, reducing citywide sidewalk damage could reduce trip-and-fall claims, ADA (Americans with Disabilities Act) grievances, and other unplanned City expenditures.

### **PUBLIC OUTREACH / INTEREST**

The subject matter of this report was presented to the Mayors Commission on Persons with Disabilities and the Bicyclist and Pedestrian Advisory Commission. An informational presentation was also presented to the Local Government Affairs Committee of the Oakland-Berkeley Association of Realtors.

Upon passage of the recommended ordinances and resolutions, staff will prepare a mailed announcement targeted to Oakland property owners providing information about sidewalk repair liability and opportunities for property owners to receive City support in repairing their sidewalks.

### **COORDINATION**

The Office of the City Attorney and Budget Bureau were consulted in the preparation of this report.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Encouraging property owners to repair their sidewalks may increase business for small, local construction contractors.

**Environmental:** Clear, accessible paths of travel contribute to walkable neighborhoods, reducing environmental impacts associated with transportation.

**Social Equity:** Creating clear, accessible paths of travel is a key component of the City's ADA Transition Plan. Supporting low-income property owners in repairing damaged sidewalks may reduce property owner liability for vulnerable households and support accessible paths of travel in all neighborhoods. Sidewalk repairs could help also reduce trip and fall incidents which generally impact older Oaklanders and visitors.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That the City Council Adopt

1) An Ordinance Revising Oakland Municipal Code Title 12, Chapter 12.04 To Add Oakland Municipal Code Title 12, Chapter 12.22 To Establish Property Owner Responsibility And Liability For Sidewalk Safety And Maintenance

2 An Ordinance Revising Oakland Municipal Code Title 12, Chapter 12.04 To Add New Regulations Requiring Oakland Property Owners To Inspect And Certify Sidewalks In The Public Right-Of-Way At The Time Of Property Transfer

3) Resolution To Authorize The Department Of Transportation To Complete Private Property Sidewalk Repairs Of Low-Income Property Owners At No Cost To Qualifying Property Owners

4) Resolution To Authorize A Three-Month Period In Which Sidewalk Repair Permit Fees Would Be Waived To Encourage Private Property Sidewalk Damage Repairs Beginning July 1, 2019 And Ending September 30, 2019

For questions regarding this report, please contact Sarah Fine, Complete Streets Paving & Sidewalks Program Manager at (510) 238-6241.

Respectfully submitted,



RYAN RUSSO  
Director  
Oakland Department of Transportation

Reviewed by:  
Wladimir Wlassowsky, P.E., Assistant Director  
Oakland Department of Transportation

Mohamed Alaoui, P.E., Division Manager  
Oakland Department of Transportation

Prepared by:  
Sarah Fine, M.C.P., Program Manager  
Complete Streets Paving & Sidewalks

*Attachments:*

*A: List of Qualifying Programs for Low-Income Property Owners*



# ATTACHMENT A

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**SUBJECT:** Applicable programs for low-income home owner waiver

To receive a waiver of administrative fees for sidewalk damage repairs, homeowners may present proof of participation in any of the following programs:

- Low Income Home Energy Assistance Program (LIHEAP)
- Women, Infants, and Children (WIC)
- CalFresh/SNAP (Food Stamps)
- CalWORKs (TANF) or Tribal TANF
- Head Start Income Eligible (Tribal Only)
- Supplemental Security Income (SSI)
- Medi-Cal for Families (Healthy Families A & B)
- National School Lunch Program (NSLP)
- Bureau of Indian Affairs General Assistance
- Medicaid/Medi-Cal
- PG&E CARE



**DRAFT**  
City Attorney

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**OAKLAND CITY COUNCIL**

019 MAY 30 PM 5: 30

**ORDINANCE No. \_\_\_\_\_ C.M.S.**

**ORDINANCE REVISING OAKLAND MUNICIPAL CODE TITLE 12,  
CHAPTER 12.04 TO ADD OAKLAND MUNICIPAL CODE TITLE 12,  
CHAPTER 12.22 TO ESTABLISH PROPERTY OWNER  
RESPONSIBILITY AND LIABILITY FOR SIDEWALK SAFETY AND  
MAINTENANCE**

**WHEREAS**, the timely maintenance and repair of damaged sidewalks is essential to protect the health, welfare and safety of Oakland residents, workers, and visitors; and

**WHEREAS**, an owner of property abutting a sidewalk is often in the best position to know of unsafe conditions in the sidewalk and to initiate repairs or notify the City of Oakland of the conditions; and

**WHEREAS**, the state Streets and Highways Code provides that owners of property abutting sidewalks have a duty to maintain those sidewalks; and

**WHEREAS**, the City of Oakland wishes to limit the City's liability exposure for injuries resulting from sidewalk defects; and

**WHEREAS**, the City of Oakland desires to establish a uniform practice consistent with the state Streets and Highways Code for maintenance and repair of sidewalks;

**WHEREAS**, the City of Oakland already requires the inspection of lower building sewer laterals at the time of property transfer, and desires to inspect and certify sidewalks in the public right-of-way at the time of property transfer; now, therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.**

Purpose and Intent. The purpose and intent of this Ordinance is to protect the health, welfare and safety of City of Oakland residents and guest to the City of Oakland by establishing regulations for the maintenance and repair of sidewalks consistent with the State Streets and Highways Code, and establishing joint liability for sidewalk related damages or injuries.

**Section 2.**

**Add Chapter 12.22 to Title 12 of the Oakland Municipal Code.** Chapter 12.22 is hereby added to the Oakland Municipal Code, and such Chapter shall read as follows:

12.22.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, the words and phrases used in this chapter are defined as follows:

A. "City" shall mean the City of Oakland.

B. "Owner" and "Property Owner" shall be deemed in accordance with Chapter 22 of Division 7, Part 1 of the California Streets and Highways Code, as the same is now in effect or may hereafter be amended.

C. "Sidewalk" shall be deemed to include sidewalks, walkways, driveways, curbs, bulkheads, retaining walls, gutters, such areas maintained as a park or parking strip in the area between the property line and the street line, and other works for the protection of any sidewalk or of such park or parking strip and any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians.

#### 12.22.020 Maintenance and repair of sidewalks.

A. Anything in this chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair maybe done and the proceedings therefore may be had and taken in accordance with this chapter and chapter 12.04 of this Code, which adopt the procedures provided for pursuant to Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state as the same is now in effect or may hereafter be amended.

B. The owners of lots or portions of lots adjacent to, abutting or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, pursuant to the process provided for in chapter 12.04 of this Code, including a charge for the City of Oakland's costs of inspection, administration and abatement whenever the city awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair or handling of any lien placed on the property due to failure of the property owner to promptly pay such assessments.

C. For the purposes of this chapter and chapter 12.04, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs allowed, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk area.

D. Notwithstanding the provisions of Section 5614 of the state Streets and Highways Code and chapter 12.04 of this Code, the Director of Public Works, or such other City

Official as may be designated by the City Administrator, may in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed ninety days from the time the notice referred to in said Section 5614 is given.

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#### 12.22.040 Liability for injuries to public.

The property owner required by Section 12.22.020 and Chapter 22 of Division 7, Part 3, of the state Streets and Highways Code to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury. Any person who suffers injury or property damage as a result of the failure of the property owner to so maintain the sidewalks and sidewalk areas shall have a cause of action for such injury or property damage against such property owner. The City of Oakland, shall have a cause of action for indemnity against such property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from such injury to persons or property as a legal result of the failure of the owner to maintain the sidewalks and-sidewalk areas in accordance with this Chapter.

#### 12.22.060 Advancement of costs of work.

The Director of Transportation, or such other City Official as may be designated by the City Administrator, pursuant to this chapter and chapter 12.04 of this Code, is authorized and empowered to and may advance from a revolving fund specifically created for such purpose, any sum or sums necessary to pay the cost of the work of repairing or constructing any sidewalk by a contractor awarded a contract to perform said work under the procedures set forth by the City Administrator, and may reimburse said revolving fund for the sum or sums so advanced from any assessment thereafter levied and collected.

#### 12.22.080 Notice of cost and hearing by council.

Upon the completion of the repairs or construction, the Director of Transportation, or such other City Official as may be designated by the City Administrator, shall cause notice of the cost of the repairs or construction to be given in the manner specified in chapter 12.04 of this Code, as the same is now in effect or may hereafter be amended, for the giving of notice to repair or construct. The notice shall specify the day, hour and place when the city council will hear and pass on the report of the costs of the repair, together with any written objections or protests which may be raised by any property owner liable to be assessed for the cost of such repair or construction and any other interested persons. The notice shall also describe the procedure to be followed for such written objections or protests. In no case, shall the hearing provided for in this section be sooner than ten days after giving of notice.

12.22.120 Hearing by City Council.

The City Council, on the day and hour fixed for hearing, shall hear and pass upon the report of the designated City Official, together with any written protests or objections, which have not been withdrawn prior to the hearing, from property owners liable to be assessed for the work of making such repair in accord with the procedure provided in chapter 12.04 of this Code and Chapter 22 of Division 7, Part 3 of the state Streets and Highways Code.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO  
AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California