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## MEMORANDUM

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**TO:** HONORABLE MAYOR & CITY COUNCIL      **FROM:** Ryan Russo  
Director, OakDOT

**SUBJECT:** Annual Sidewalks Program Update      **DATE:** October 19, 2020  
(July 2019 to June 2020)

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City Administrator   
Approval

Date: Oct 19, 2020

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### INFORMATION

This memo provides the Oakland City Council, the Mayor's Office, City staff and the community with a report on sidewalk repair activity between July 1, 2019 to June 30, 2020.

### GENERAL OVERVIEW

Sidewalks are where Oaklanders get exercise, walk to daily needs, wait for the bus, and talk with neighbors. They are one of the most important pieces of Oakland's transportation network. Well-maintained sidewalks enable full access and participation in daily life and are critical for the City to meet its safety, mobility, and equity goals.

Under its responsibility to ensure well-maintained sidewalks, the Oakland Department of Transportation (OakDOT) receives and investigates sidewalk repair requests through OAK311, performs temporary make-safe repairs, completes permanent sidewalk replacement, facilitates and permits private owner repairs, issues sidewalk compliance certifications, and maintains citywide sidewalk data.

During Fiscal Year 2019-2020 (FY20), 103,743 square feet of sidewalk repairs were performed by City staff, City contractors, or private property owners. The City received 560 service requests for sidewalk damage and closed the fiscal year with a backlog of 3,867 open sidewalk service requests.

### BACKGROUND

Sidewalks require repair when there is a defect, like a crack, depression, or vertical offset, of more than ¼ inch. In Oakland, as is the case also statewide per state law, adjacent property owners are responsible for repairing damaged sidewalks.<sup>1</sup> This means that while the City is responsible to maintain sidewalks adjacent to City properties and City street trees, private property owners are responsible to maintain all other sidewalks in Oakland. Past citywide sidewalk surveys have estimated that approximately 85% of sidewalk damage in Oakland is

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<sup>1</sup> California Streets and Highways Code § 5610; Oakland Municipal Code Chapter 12.22

**HONORABLE MAYOR & CITY COUNCIL**

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“private damage,” or damage that is the responsibility of the private property owner adjacent to the sidewalk. An estimated 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.

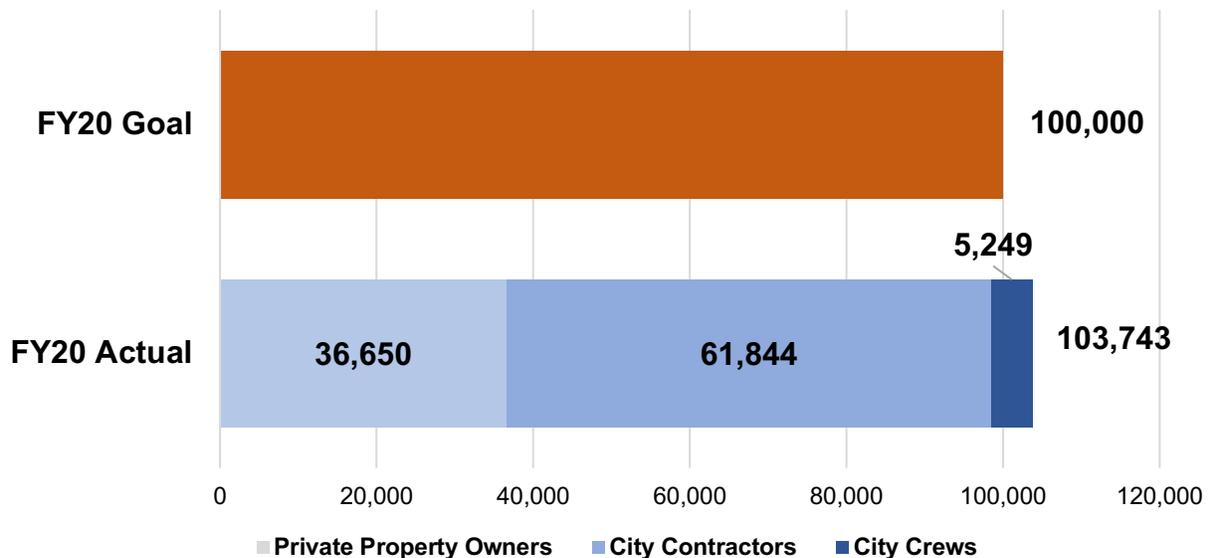
As directed in the adopted 2019-21 Capital Improvement Plan, the City’s \$1M annual sidewalk repair program is dedicated to repairing public damage. The program is funded by Measure KK and is limited to repairing City-tree damaged sidewalks, addressing sidewalk damage at City facilities such as parks and libraries, and facilitating private property sidewalk repairs.

The majority of trip-and-fall claims in the City of Oakland stem from private damage. The City Attorney’s Office analysis of nearly 1,000 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). 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 \$518,000, a 40% increase. In 2018, the City paid out more than \$1.1M, exceeding the \$1M in funds dedicated to the annual sidewalk repair program.

**SUMMARY**

This report summarizes the amount and types of sidewalk repairs recorded in FY2020. This includes repairs by City staff, City contractors, and private property owners. This summary also provides the number of sidewalk inspections and Notices to Repair issued by sidewalk inspectors performed in the past year. Finally, staff have prepared analysis of the implementation of City’s 2019 title transfer ordinance also known as the Buy-Sell-Repair ordinance (OMC 12.04.380).

**Figure 1: Sidewalks Repaired in FY2020 (Square Feet)**

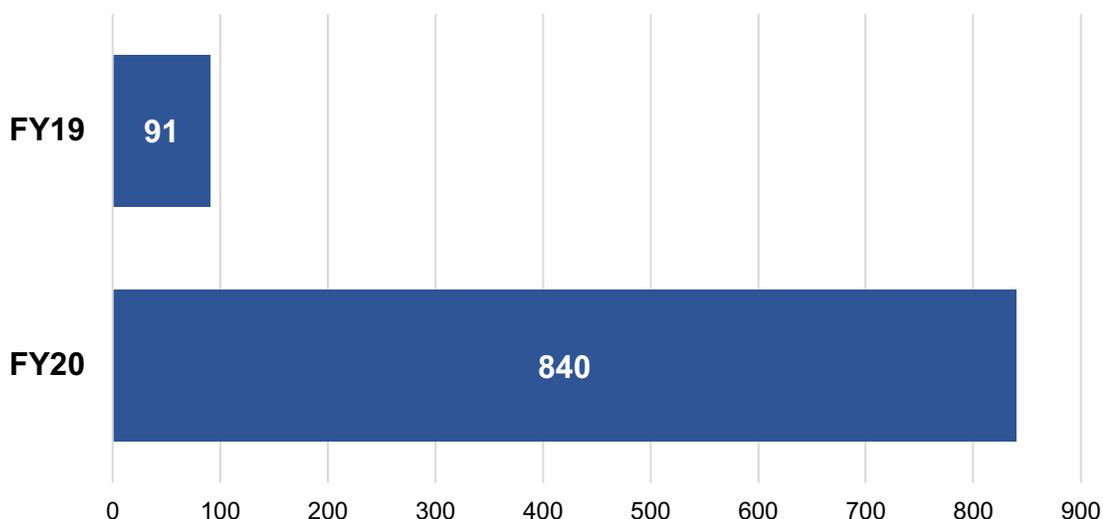


In FY2020, a total of 103,743 square feet of sidewalk was repaired, including repairs by City staff City contractors, and private property owners. This exceeded OakDOT’s goal of achieving 100,000 square feet of repairs across the three categories in FY20. In the past year, the City received 560 service requests for sidewalk damage and closed the fiscal year with a backlog of 3,867 open sidewalk service requests. OakDOT’s goals for FY21 include reducing the backlog of open service requests by half.

**Repairs by City Staff**

OakDOT staff complete both temporary and permanent repairs. Temporary repairs, or “make-safe” repairs, typically involve placing hot asphalt on a section of sidewalk to create a temporary ramp over an uplifted section, or to otherwise reduce a tripping hazard. Permanent repairs include full removal of damaged concrete sidewalk sections, trimming of tree roots and replacement with new concrete. In the past fiscal year, City staff addressed 840 locations of sidewalk damage, performing 602 temporary repairs and 238 permanent repairs on sidewalks in Oakland (Figure 2) for a total of 5,249 square feet of sidewalk repairs. This represents an increase of 823% in the number of locations repaired from the prior fiscal year.

**Figure 2: Locations Repaired by City Crews (FY2019 – FY2020)**



**Repairs by Contractors**

OakDOT staff also maintain sidewalk repair contracts to perform sidewalk replacement. In the past year, OakDOT-managed contractors repaired 61,844 square feet of sidewalk in Oakland. This represents an increase in the ten-year rolling average.

**Repairs by Private Property Owners**

The majority of sidewalks abut private property and the responsibility to maintain these sidewalks falls to the adjacent property owner. Therefore, the largest number of sidewalk repairs are those performed by or on behalf of private property owners. In the past year, OakDOT issued 274<sup>2</sup> permits for sidewalk repair, totaling 36,650 square feet. Prior to this year, OakDOT

<sup>2</sup> This total number of permits does not include sidewalk certifications under the 2019 Buy-Sell-Repair Ordinance.

issued an average of 130 permits a year. Figure 3 below provides the number of sidewalk repair permits and associated square feet of sidewalk repair over the past 10 years.

**Figure 3: Private Sidewalk Repairs**

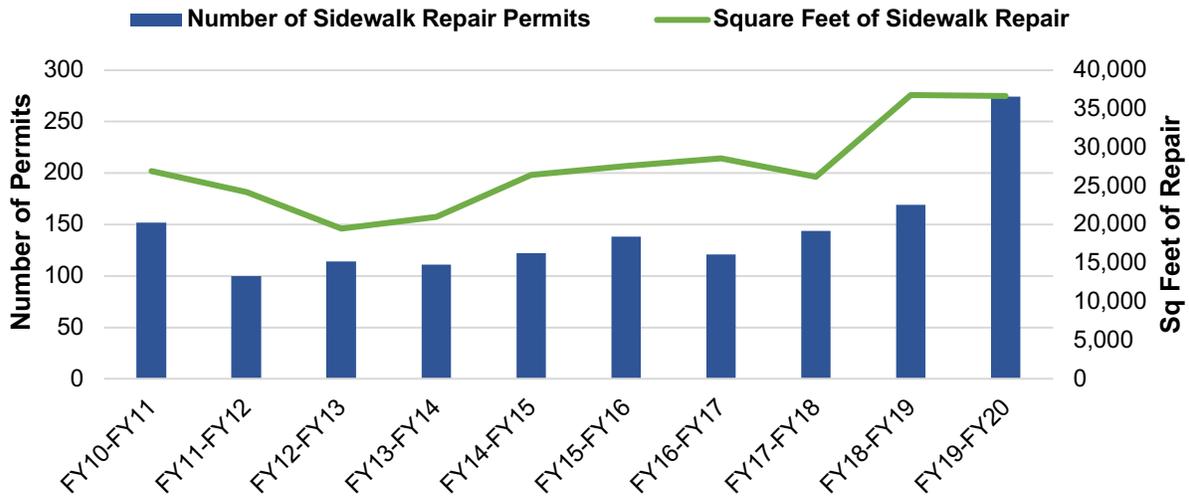
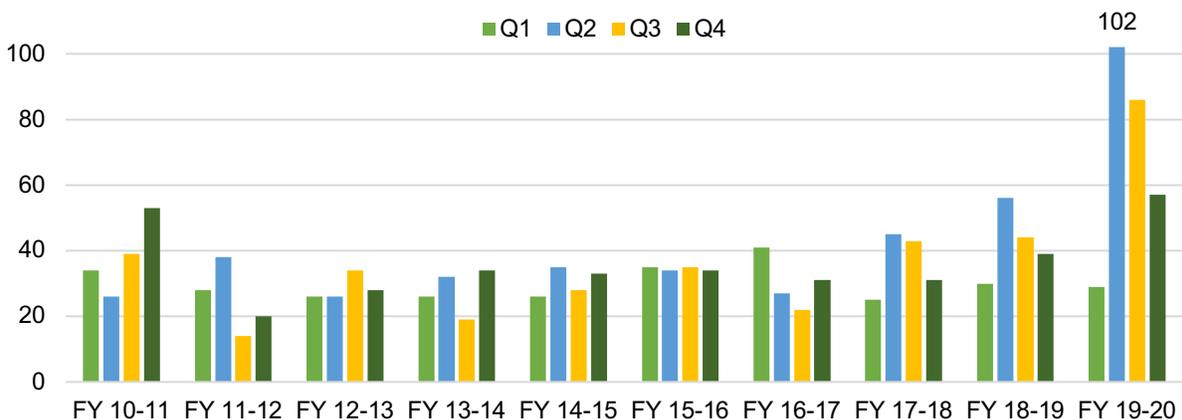


Figure 4 identifies the number of sidewalk repair permits by quarter over the past 10 years. The strongest activity for sidewalk permits in the past year occurred in the second quarter of the fiscal year (October 1, 2019 through December 31, 2019). During these three months, OakDOT processed 102 sidewalk repair permits which was almost two-thirds of the total sidewalk repair permits issued in the prior year (FY19; 169 permits). Staff attribute this increase in permit activity to the “fee holiday” authorized by City Council (C.M.S. 87747). Under this resolution, all administrative fees for sidewalk repairs were waived between July 1, 2019 and September 30, 2019. This discount was publicized on social media and in a postcard that was mailed at random to 10,000 Oakland property owners. The total sidewalk repair permits issued in the past year represents an increase of 62% from the prior fiscal year, and an increase in the ten-year rolling average.

**Figure 4: Number of Sidewalk Repair Permits by Fiscal Year Quarter**



***Service Requests for Sidewalk Damage & Notices to Repair***

OakDOT processes requests for sidewalk repairs that are received by OAK311, Oakland’s call center for city services. OakDOT responds to each sidewalk repair service request by first determining whether the damage is a City responsibility or property owner responsibility. If the damage is a City responsibility, the service request is placed in queue with OakDOT’s sidewalks maintenance team. If the damage is property owner responsibility, the inspector issues a Notice to Repair to inform the property owner about the damage and potential liability.

In the past fiscal year, OakDOT received 560 new service requests for sidewalk repair. A backlog of 3,867 sidewalk damage service requests remain. The average age of these outstanding service requests is 4 years. Over the past 10 years, the City of Oakland has received the most sidewalk damage service requests per 1,000 residents in the Downtown, North Oakland/Adams Point, and Glenview/Redwood Heights planning areas (Table 1).

**Table 1: Sidewalk Service Requests by Planning Area (2010-2020)**

Planning Area	Total Service Requests	Requests Per 1000 Residents
Central East Oakland	839	8.4
Coliseum/Airport	35	9.3
Downtown	477	23.3
East Oakland Hills	216	6.7
Eastlake/Fruitvale	954	9.6
Glenview/Redwood Heights	523	16.4
North Oakland Hills	117	4.9
North Oakland/Adams Point	1,454	18.1
West Oakland	346	13.3

**Attachment A** includes a map of all service requests for sidewalk repair received between July 2019 and June 2020 (last 1 year) as well as between July 2015 and June 2019 (last 5 years).

In the past year, OakDOT issued 189 Notices to Repair (NTR) to private parties covering a total of 22,347 square feet of damage. Some of these NTRs were initiated from service requests and some were issued proactively along paving projects

***Sidewalk Certifications Issued***

In July 2019, the Oakland City Council adopted a Buy-Sell-Repair Ordinance (OMC 12.04.380) which requires that sidewalks must be in compliant condition<sup>3</sup> upon title transfer of real property. Under the ordinance, property owners must repair their sidewalks and/or certify it is compliant when buying or selling a property, and when performing a renovation valued at more than \$100,000.

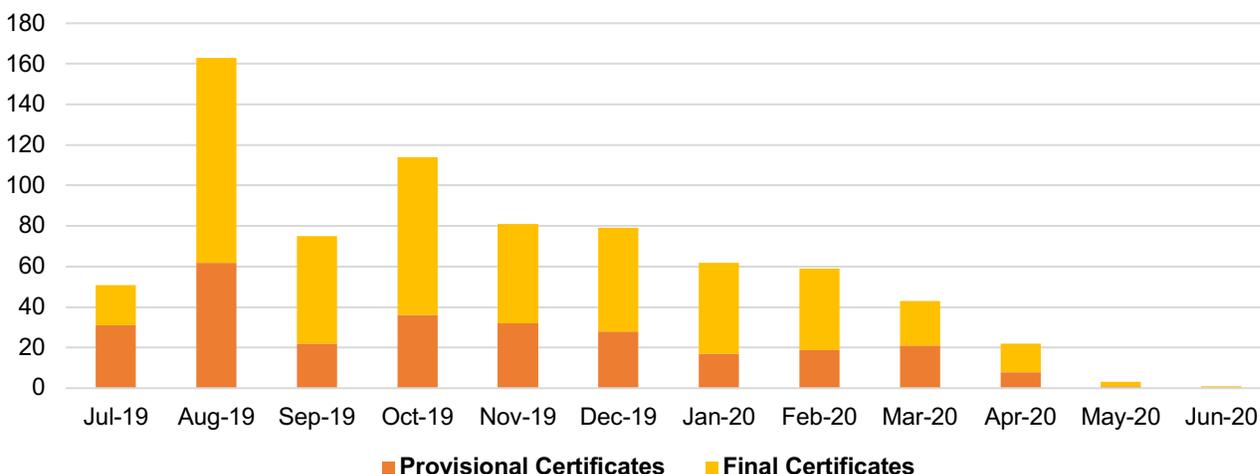
To implement this ordinance, OakDOT developed a sidewalk compliance certificate. A compliance certificate certifies that the sidewalk adjacent to a property is compliant with the ordinance and is obtained from the OakDOT permit counter. For property owners who cannot repair and/or certify their sidewalk before title transfer, OakDOT created a provisional certificate

<sup>3</sup> Compliant sidewalks must be free from any crack or vertical offset of more than ¼ inch, according to the Federal Americans with Disabilities Act (ADA) Guidelines.

category. The provisional certificate is valid for a period of 90 days, beginning the date the provisional certificate is issued. Within those 90 days, the property owner must repair and then certify their sidewalk.

During the first year of the ordinance, OakDOT issued 753 compliance certificates (Figure 5), with significant drop-off in monthly certification volume after the Alameda County Shelter-In-Place order was initiated in March 2020. Following the order, real estate transactions decreased but were still occurring as permitted activities under the County order. Additionally, between March 2020 and June 2020, OakDOT's sidewalk construction permitting shifted from in-person to online-only operations, which may also account for the drop in certification volume.

**Figure 5: Number of Sidewalk Compliance Certificates Issued by Month (FY 2019-20)**



***Low-Income Property Owner Repair Program Implementation***

In July 2019, City Council approved a resolution (Resolution No. 87746 C.M.S.) authorizing the Department of Transportation to perform sidewalk repairs at no cost on behalf of low-income property owners, with an initial fund of \$50,000. Subsequently, OakDOT began including information about this option when issuing Notices to Repair. To receive this waiver, a property owner residing in Oakland must present proof of participation in a means-tested program, such as Cal Fresh or PG&E Cares. This program has received 21 applications in FY19-20, and 9 application locations have been assessed and/or had repairs completed. The online application<sup>4</sup> form is available in English, Spanish, and Chinese.

***ADA Sidewalk Repair Request Program***

The ADA Sidewalk Repair Program expedites necessary repairs of sidewalks damaged by City street trees upon request for qualified individuals with disabilities as defined by the Americans with Disabilities Act of 1990 and as amended. The program is not intended to address community concerns other than access for people with disabilities and does not make repairs that are the responsibility of private property owners. In FY2019-20, OakDOT received 28 applications through the ADA Sidewalk Repair Program and 7 application locations have been assessed and/or had repairs completed. This is an increase over the past ten-year history of the program.

<sup>4</sup> "City of Oakland | Sidewalks" <http://www.oaklandca.gov/topics/sidewalks>

**ANALYSIS**

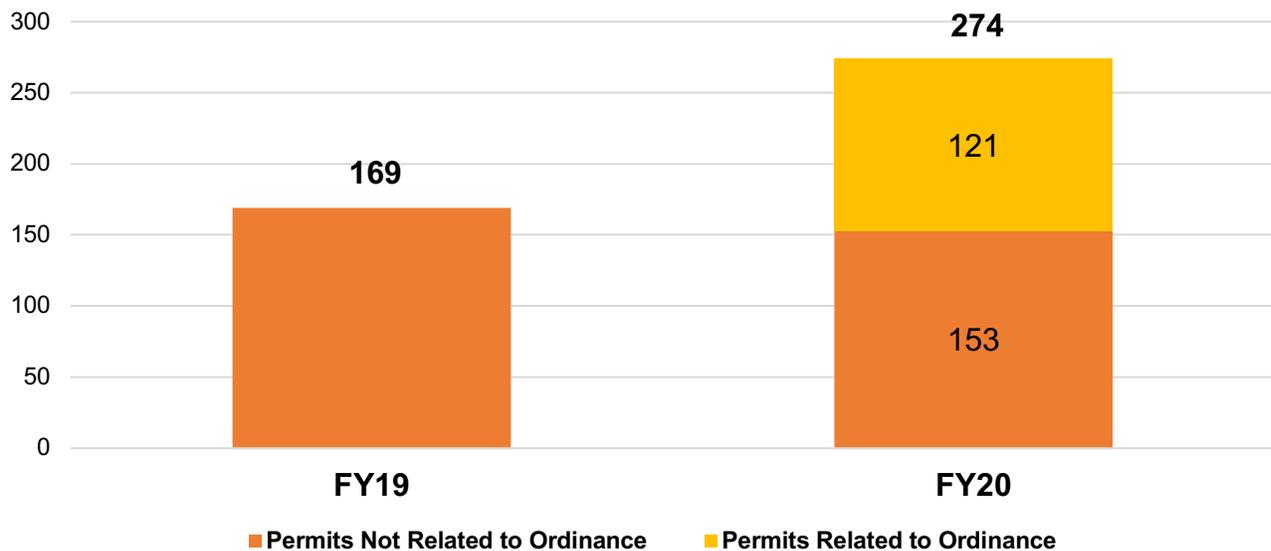
This section provides analysis of key topics within the sidewalks program, including the implementation of the 2019 Buy-Sell-Repair Ordinance and staff’s efforts to reduce the backlog of sidewalk repair service requests.

***Buy-Sell-Repair Ordinance Implementation***

The goal of the 2019 Buy-Sell-Repair ordinance was to increase the number of private sidewalks repaired in Oakland, and thereby reducing the number of associated trip-and-fall injuries and their associated impacts. Key questions for the new title transfer ordinance are whether private sidewalk damage is being repaired as a result of the ordinance, and whether property owners are sufficiently informed and complying with the ordinance.

In the first year of the ordinance, staff attribute 121 additional locations of sidewalk repair as a result of the Buy-Sell-Repair ordinance (Figure 6) amounting to more than 40% of all private sidewalk repairs citywide during FY19-20. With these repairs, the total number of private sidewalk repairs increased by 62% from the prior year.

**Figure 6: Estimated Number of Locations Repaired With and Without Buy-Sell-Repair Ordinance in Effect**



In order to assess how many sidewalks were repaired as a result of the ordinance, staff compared property records to sidewalk repair permits (Curb-Gutter-Sidewalk Permits) (CGS). Staff identified that in the past year (July 1, 2019 to June 30, 2020), 3,571 properties were sold in Oakland. These property records matched 606 properties that had a final or provisional sidewalk compliance certificate on file certifying that the sidewalk was compliant. Of those properties, 485 sidewalks were certified by an inspector as complaint without repairs. Finally, at 121 locations had a final permit for sidewalk repair performed totaling 12,893 square feet of sidewalk repair (Table 2).

**Table 2: Properties Sold in Oakland During FY2020 with Sidewalk Certificates, CGS Permits, and SF of Repair**

Number of Properties Sold in Oakland During FY20	3,571
Properties Sold With Final or Provisional Compliance Certificate on File	606
Properties Sold With Sidewalks Certified and Not Needing Repair	485
Properties Sold With Final CGS Permit for Sidewalk Repair	121
Total SF Repaired Through Buy-Sell-Repair Ordinance	12,893

In addition, staff reviewed renovation permits from the Department of Planning & Building for properties where renovations greater than \$100,000 were completed. Under the Buy-Sell-Repair Ordinance, renovations valued at greater than \$100,000 also trigger sidewalk certification. Staff found 263 properties in Oakland that completed renovations greater than \$100,000. Of these, 13 locations have a valid sidewalk certification.

Staff also reviewed the performance of the provisional certification option. Over the course of the first year of the ordinance implementation, 39 provisional certificates transitioned to final certificates. The average time between a provisional and final certificate was 54.5 days, indicating that the 90-day provisional window may be an appropriate time frame. In order to increase compliance with the ordinance, OakDOT has identified the following actions for staff to perform in the next year:

- Randomly inspect locations within the 485 compliant locations that do not have a sidewalk repair permit on file.
- Send courtesy notices to the addresses where a provisional certification has been filed but no final certificate is on file.
- Send courtesy notice to addresses which completed repairs greater than \$100,000 but did not also complete compliance certificates for their sidewalks.
- Send courtesy notices to the 2,965 addresses where title transfers occurred in the past fiscal year but no compliance certificate is on file.
- Send courtesy notices to title agencies in Oakland reminding them of their obligations to review the compliance certificate on all title transfers.
- Send courtesy notices to realtors in the Bay Area to advise clients of their obligations to comply with the ordinance.
- Improve coordination with the Department of Planning & Building's Building Bureau which permits renovations.
- Improve awareness within the title industry of Oakland's sidewalk certification policies
- Improve awareness of the sidewalk certification policy at the Alameda County Clerk-Recorder

***Sidewalk Damage Backlog***

Backlogs of service requests are frustrating for members of the public and staff alike. Significant backlogs create prioritization challenges for staff wrestling with addressing new issues as they arise but needing to simultaneously make progress on requests that are several years old. Oaklanders are likewise frustrated by slow responses times as a result of the backlog.

In the past year, OakDOT Sidewalks Program staff began an effort to work through the 3,867 open sidewalk repair service requests. First, staff reviewed all open service requests to identify whether the caller had identified if a tree was potentially causing the sidewalk damage. For each

location where a tree was potentially causing sidewalk damage, staff then reviewed City records to determine whether the tree was an “official tree,” which would mean the repair was City responsibility, or an “unofficial tree,” which would mean the repair was private responsibility.

From this analysis, the Sidewalks Program developed two projects. The first project aims to address the approximately 1,600 locations within the backlog that did not have a tree associated with the damage. These locations are presumably candidates for a Notice to Repair, but an in-person inspection must be performed before a notice is sent. Staff assigned these locations to a supplemental team of consultant inspectors to perform field inspections. These inspections were completed in May-July 2020. More than 700 locations were inspected and warrant a Notice to Repair. Notices to Repair are in the process of being sent to these 700 locations.

The second project addresses locations where an official City tree is causing sidewalk damage and is therefore is the responsibility of the City to repair. Tree-related sidewalk damage means an otherwise simple repair can become a very complicated effort. Staff estimate that there are more than 1,400 reported locations citywide where a City tree has caused sidewalk damage, and each of these 1,400 locations presents a unique problem: at each location, the sidewalk will need to be demolished and the tree roots exposed. Then the tree roots must be evaluated to determine whether any can be pruned in order to provide a compliant sidewalk, or whether the sidewalk should be re-routed around or ramped up over the roots. At times, there are easy choices; in other instances, there are no good options. Then, the sidewalk section is replaced.

Horizontal concrete shaving can provide an immediate fix to some tree-damaged sidewalks without damaging the sidewalk as with traditional concrete grinding and in a fraction of the time compared to the traditional remove and replace effort described above. In late spring 2020, OakDOT issued a request for proposals for on-call concrete shaving. Once this project is awarded, staff will assign all 1,400 locations of sidewalk damage caused by City trees. The horizontal shaving contractor will evaluate each location for horizontal shaving; if the location is a candidate, the shaving will be performed. If it is not, the contractor will measure the area for a future remove and replace operation and provide the City with estimated quantities. This effort is an important first step toward addressing the backlog of City-tree damaged sidewalks.

### ***Impacts of COVID-19***

Local shelter-in-place orders and a switch to remote work in March 2020 impacted both the City’s inspections and engineering design program. Staff estimate that approximately 2 months’ progress on administering construction contracts was lost due to COVID-19 during the past year. Staff remain dedicated to advancing the goals of the sidewalks program amid the global health and economic crises related to COVID-19.

**PUBLIC INFORMATION**

Information and reports related to the sidewalks program are maintained on the City's website.<sup>5</sup> These include frequently asked questions regarding sidewalk damage, sidewalk certificates, and hiring a contractor.

Respectfully submitted,



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Attachments (2)

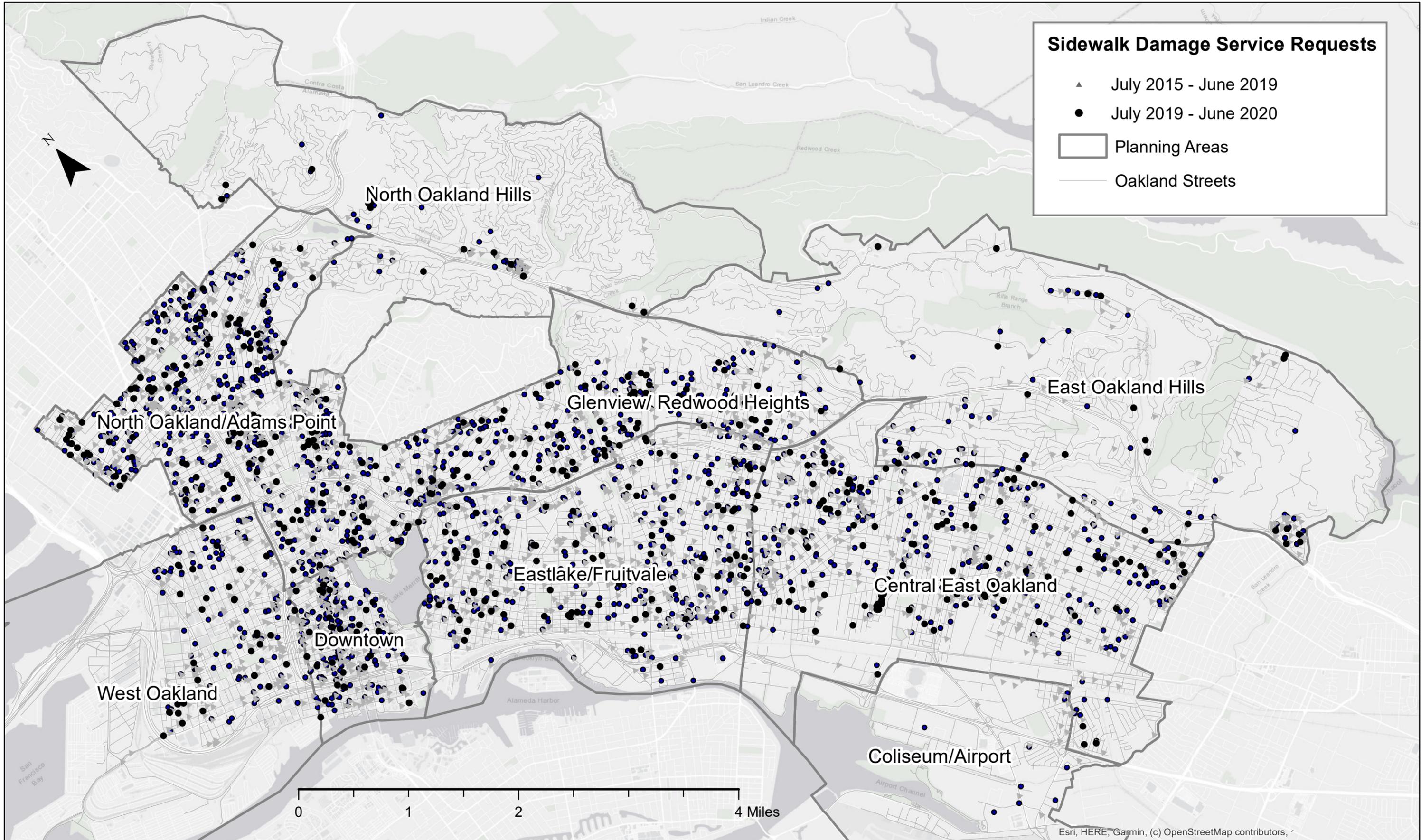
Attachment A: Map of Service Requests for Sidewalk Repair from Past 5 Years

Attachment B: Table of Values for Figures

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<sup>5</sup> "City of Oakland | Sidewalks" <http://www.oaklandca.gov/topics/sidewalks>

# Attachment A: Map of Service Requests for Sidewalk Repair from Past 5 Years



**Figure 3: Private Sidewalk Repairs (2010-2020)**

Fiscal Year	Sidewalk Repair Permits Issued	Square Feet of Sidewalk Repair
July 2010 - June 2011	152	26,912
July 2011 - June 2012	100	24,206
July 2012 - June 2013	114	19,464
July 2013 - June 2014	111	20,968
July 2014 - June 2015	122	26,424
July 2015 - June 2016	138	27,564
July 2016 - June 2017	121	28,561
July 2017 - June 2018	144	26,191
July 2018 - June 2019	169	36,779
July 2019 - June 2020	274	36,650
<b>Total</b>	<b>1445</b>	<b>273,719</b>

**Figure 4: Number of Sidewalk Repair Permits by Fiscal Year Quarter**

Fiscal Year	Sidewalk Repair Permits Issued by Quarter				Total Permits	Total Square Feet of Sidewalk Repair
	Q1	Q2	Q3	Q4		
FY10-11	34	26	39	53	152	26,912
FY11-12	28	38	14	20	100	24,206
FY12-13	26	26	34	28	114	19,464
FY13-14	26	32	19	34	111	20,968
FY14-15	26	35	28	33	122	26,424
FY15-16	35	34	35	34	138	27,564
FY16-17	41	27	22	31	121	28,561
FY17-18	25	45	43	31	144	26,191
FY18-19	30	56	44	39	169	36,779
FY19-20	29	102	86	57	274	36,650

**Figure 5: Provisional and Final Certificates Issued By Month (FY20)**

Month (FY20)	Provisional Certificates	Final Certificates
Jul 2019	31	20
Aug 2019	62	101
Sep 2019	22	53
Oct 2019	36	78
Nov 2019	32	49
Dec 2019	28	51
Jan 2020	17	45
Feb 2020	19	40
Mar 2020	21	22
Apr 2020	8	14
May 2020	1	2
Jun 2020	0	1
<b>Total</b>	<b>277</b>	<b>476</b>