



# AGENDA REPORT

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

**FROM:** Ryan Russo  
Director

**SUBJECT:** Status Report on Sidewalk Ordinance  
No. 13549 C.M.S.

**DATE:** January 9, 2020

---

City Administrator Approval

Date: 1/30/20

---

## **RECOMMENDATION**

**Staff Recommends That the City Council Receive An Informational Report On The Status Of: 1) The Implementation Of Sidewalk Ordinance 13549 To Include The Process On How To Obtain The Sidewalk Ordinance Compliance Certificate, Including The Process For Exemptions 2) The Process To Obtain Information If A Tree Causing Sidewalk Damage Is A Certified City Tree And The Documentation That Would Be Provided To The Property Owner 3) Consideration Of A 90-Day Moratorium On The Ordinance.**

## **EXECUTIVE SUMMARY**

This report summarizes the status of Sidewalk Ordinance No. 13549 C.M.S, which is known colloquially as the Sidewalk Certification Program, and the processes and permits that implement the policies set out in the Ordinance. The report includes discussion of:

- 1) the Process for obtaining a Sidewalk Compliance Certificate;
- 2) Sidewalk Certification exemptions and the process for substantiating such exemptions;
- 3) growing the pool of contractors eligible to certify sidewalks;
- 4) the process for verifying claims of sidewalk damage due to Official City trees; and
- 5) the potential impact of the proposed 90-day moratorium on the Ordinance.

## **BACKGROUND / LEGISLATIVE HISTORY**

Oakland is in the early stages of an infrastructure renaissance. The era started in November of 2016, when 82% of voters supported passage of Measure KK, which made \$350M available for transportation infrastructure investment.

In May 2019, the Oakland Department of Transportation (OakDOT) proposed—and the Council approved—a three-year, \$100M Paving Plan that prioritized local streets and used equity factors to allocate funds among nine Planning Areas. OakDOT's equity-based capital allocation drew national attention as it ensured that the largest share of funding would go to traditionally underserved communities.

While OakDOT is responsible for the maintenance of Oakland's roadways, per the California Streets and Highways Code, private property owners are responsible for maintaining their abutting sidewalks. This means that the City must work through property owners to get the safety and access benefits of sidewalks that are in a state of good repair.

To create a Sidewalk Repair Program to accompany the Paving Plan, OakDOT presented a May 2019 Agenda Report that proposed four pieces of legislation:

- 1) The Sidewalk Ordinance required sidewalk inspection and repair upon title transfer for real property. OakDOT was assigned responsibility for its administration.
- 2) A second ordinance established joint liability for injuries—and reduced City liability—related to private sidewalk damage.
- 3) The third piece of legislation was a resolution authorizing OakDOT to complete sidewalk repairs on behalf of low-income property owners.
- 4) The final resolution authorized a 90-day suspension of sidewalk repair permit fees. July 1, 2019 to September 30, 2019.

### **ANALYSIS AND POLICY ALTERNATIVES**

The Sidewalk Certification program has generated a dramatic increase in the number of permitted sidewalk repairs in the City of Oakland. Prior to passage of the Ordinance, few Oakland property owners—fewer than 10 a month—chose to perform sidewalk repairs, and the level achieved in a single year, FY19, was 128. The July 9, 2019 launch of the Sidewalk Certification Program had a dramatic impact on repair permit activity. The 142 sidewalk repair permits issued in the first three months of FY20 established a new *annual* record for the sidewalk category. See Figure 1 below.

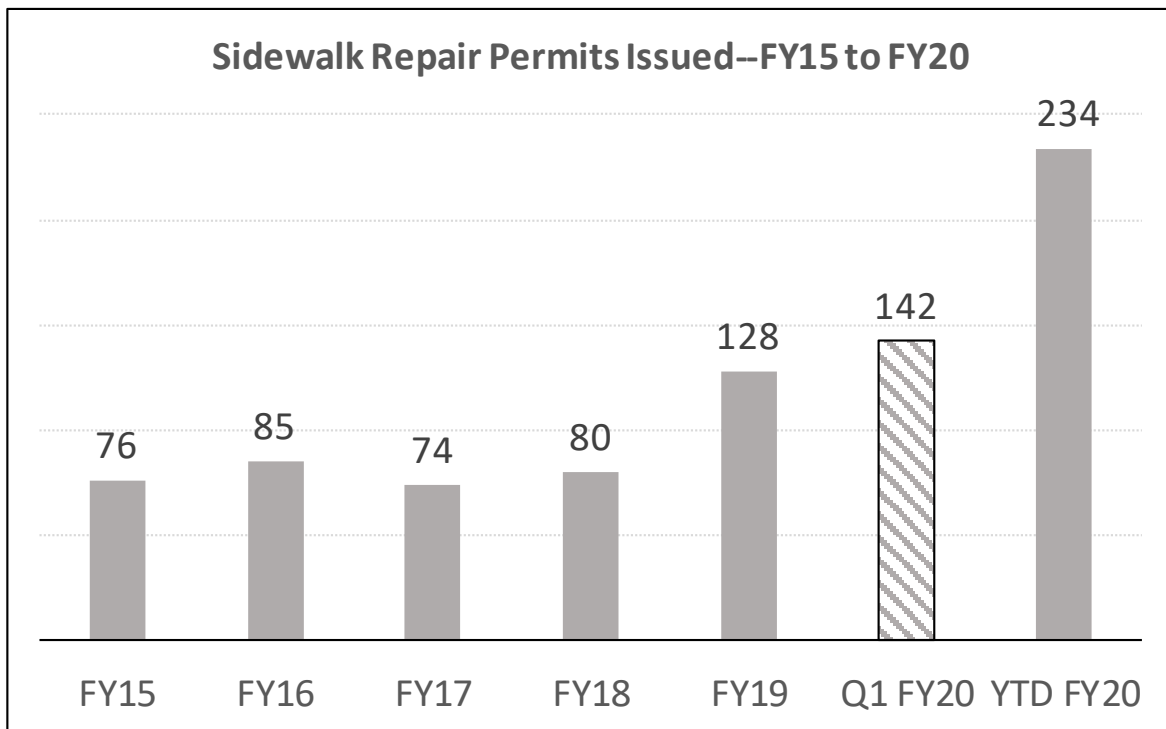


Figure 1 - Q1FY20 set a new *annual* record for sidewalk repair permits. YTD = December.

The growth in sidewalk repairs has been fueled by the successful implementation of the Sidewalk Certification program. Compliance certificate activity was low in the first weeks of program implementation. However, just five weeks into implementation, Sidewalk Certification surpassed Sewer Laterals (SL) to become the largest category of permits issued by OakDOT (Figure 2 below).

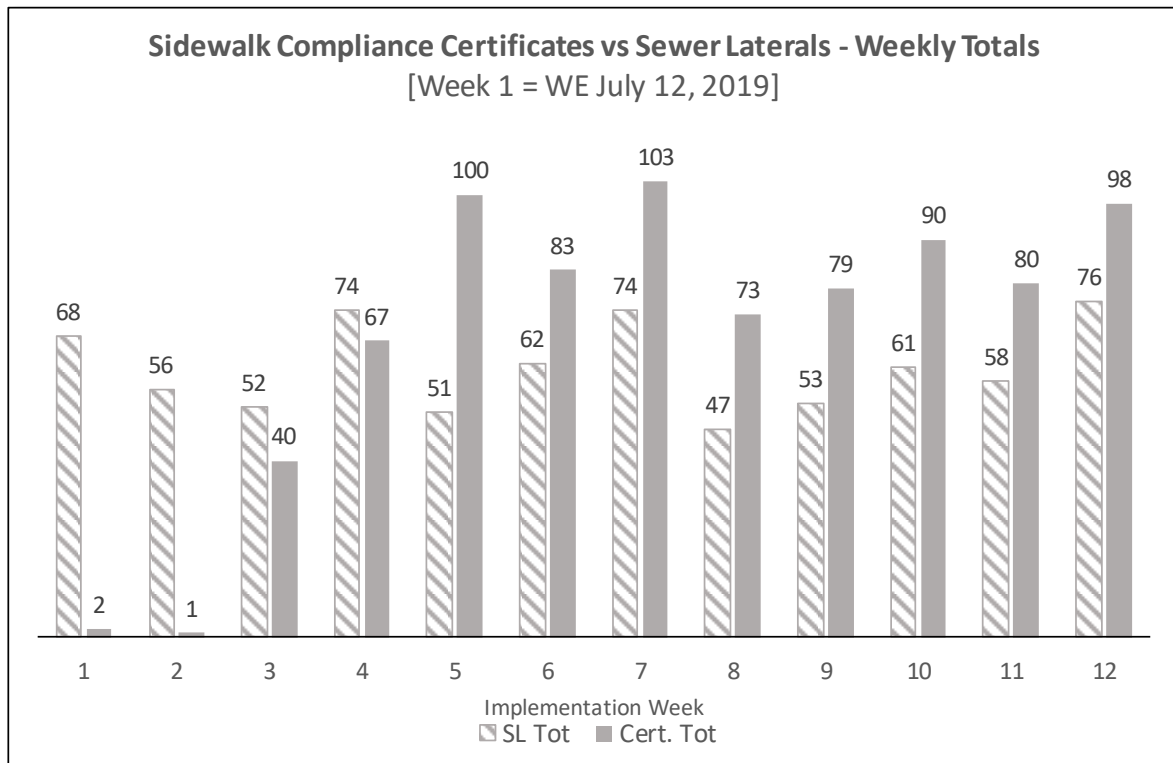


Figure 2 - Compliance Certificates passed SL to become OakDOT's largest permit category.

***How to obtain a sidewalk compliance certificate:***

To administer the Sidewalk Certification program, OakDOT defined an application process, created a compliance certificate, and established a permanent archive for photographs and other items submitted as evidence of sidewalk condition.

OakDOT's permitting branch issues approximately 8,000 permits per year. OakDOT leveraged existing permitting processes and tools to launch the Sidewalk Certification program.

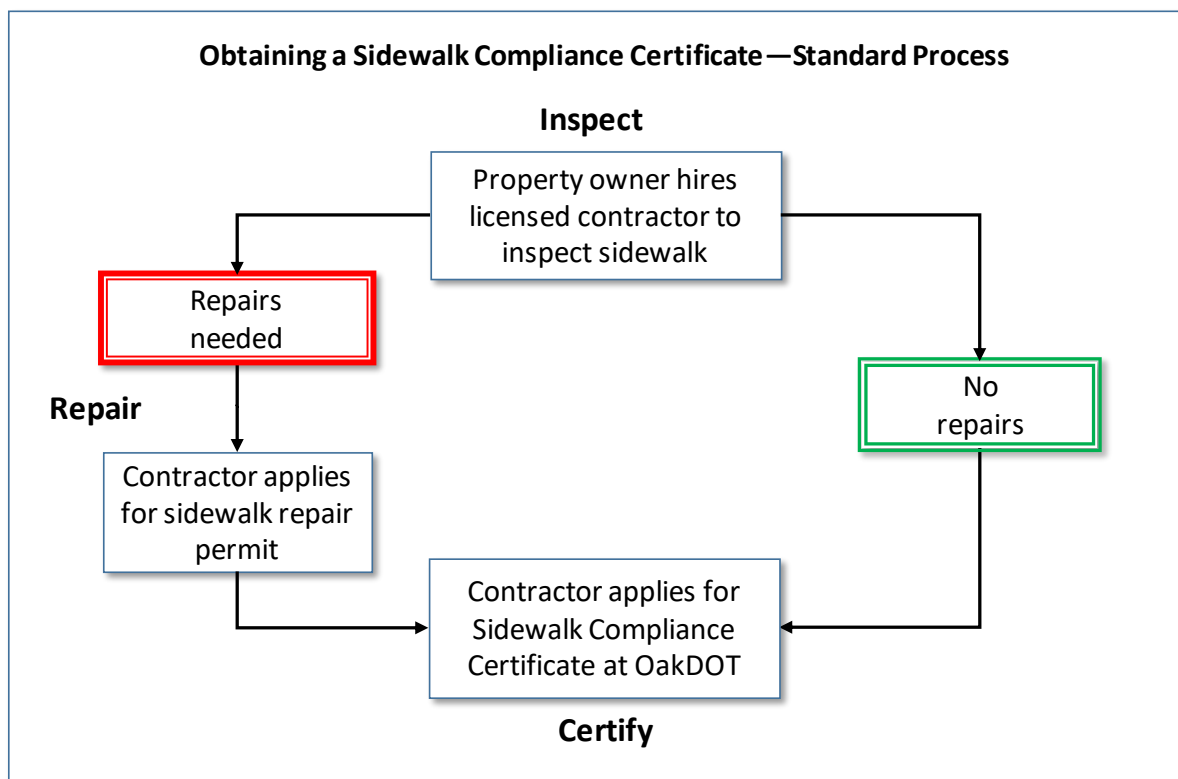


Figure 3 - Sidewalk Certification begins with an inspection

For property owners with an abutting sidewalk, the process begins with hiring a licensed contractor to inspect the sidewalk. If the sidewalk is in good condition, the contractor takes photographs and visits the OakDOT Permit Office to apply for a compliance certificate. If the sidewalk needs repairs, the contractor visits OakDOT and applies for a normal sidewalk repair permit. The contractor takes before and after photos of the sidewalk and returns to OakDOT to apply for a compliance certificate.

As is the case with many new initiatives, there were challenges at the launch of the Certification program, and OakDOT addressed those challenges while administration of the program continued. Indeed, in the six-month life of the program, many process improvements have been made to increase overall efficiency and effectiveness. Among the most notable changes are the following:

- In a departure from standard permitting policy, licensed contractors were allowed to inspect and approve sidewalk repairs in place of OakDOT inspectors, thus, avoiding potentially costly scheduling delays.
- Within one week of program launch, OakDOT published a Frequently Asked Questions (FAQ) document to the OakDOT website. This continuously updated document is the definitive public-facing statement of policy regarding Sidewalk Certification.
- Within two weeks of program launch, staff introduced a Provisional Sidewalk Compliance certificate that allowed transactions in escrow to postpone compliance and progress to closing.

- Staff added sewer lateral contractors—C-42 & C-57 licenses—to the list of contractors eligible to inspect and certify sidewalks, in order to expand the pool of possible contractors.
- OakDOT created a Sidewalk Compliance Handbook to ensure that Permit Counter staff have an up-to-date process resource available to guide their work with applicants.

### ***Properties without sidewalks***

In the early weeks of implementation, OakDOT received a legal opinion confirming the status of certain properties as exempt from the ordinance. This included properties with no fronting paved sidewalk at all.

The exempt status of properties with no sidewalks is evident in the title of the Ordinance, which specifies that the new regulations apply to properties with “Sidewalks In the Public Right-of-Way” at the time of property transfer. Nevertheless, many property owners with no sidewalks called or visited the Permit Office with concerns regarding the Ordinance, particularly in the early days of implementation.

Some of the concerned property owners had transactions in escrow or close to escrow. As a customer service, OakDOT issued many of them a Provisional Sidewalk Compliance Certificate. The provisional certificates grant property owners a 90-day grace period during which they are not subject to the Ordinance. Concerned no-sidewalk property owners were advised to bring the provisional document to their closing meeting, in case questions were to arise regarding compliance with the Ordinance.

In recent months, realtors have informed OakDOT that extending provisional certifications to owners who are not subject to the Ordinance was confusing. In response, OakDOT has taken the following steps:

1. Adjusting office policy in a manner that removes provisional certificates as the first choice when no-sidewalk customers call or visit the Permit Office;
2. Adding statements to the OakDOT website that make it clear that properties without improved public sidewalks are exempt from the inspection and repair ordinance.

Owners who insist on a certificate would be issued a provisional certificate with the following unique text applied:

“Pursuant to Oakland Municipal Code Title 12, Chapter 12.04, Section 12.04.380: Sidewalk inspection, replacement, and compliance certificates.

There is no improved sidewalk at the above address, and such properties are not subject to Sidewalk Certification. This provisional certificate is not required. It is issued as a courtesy to the property owner, and it will be valid for a period of 90 days from the date of issue.”

### ***Sidewalk damage due to trees***

OakDOT has developed a streamlined process for assisting property owners who have questions about sidewalk damage caused by street trees. Repairs to damage due to city trees is the responsibility of the City, not the property owner. In the City of Oakland, this issue is complicated by two factors.

- 1) Not all trees at curbside are Official City Trees.
- 2) Even when city trees are present, other sidewalk damage may still be owner responsibility.

When a property owner calls or visits the OakDOT permit office regarding City tree-related sidewalk damage this triggers a process that will address each of these important issues.

- 1) First, a research effort will determine if there is a City tree(s) at the subject address.
  - a) Takes one to two days
  - b) Owner will be notified by email
  - c) A note will be added to the permit database (Accela)
- 2) An OakDOT inspector will visit the property to assess city tree damage and determine other, owner responsibility damage
  - i) Takes one to three days
  - ii) Owner will be notified by email
  - iii) A note will be added to the permit database (Accela)

Answering the City vs non-City tree question can be accomplished in one to two business days. The resident is informed via email and a note is added to the address record in the permitting

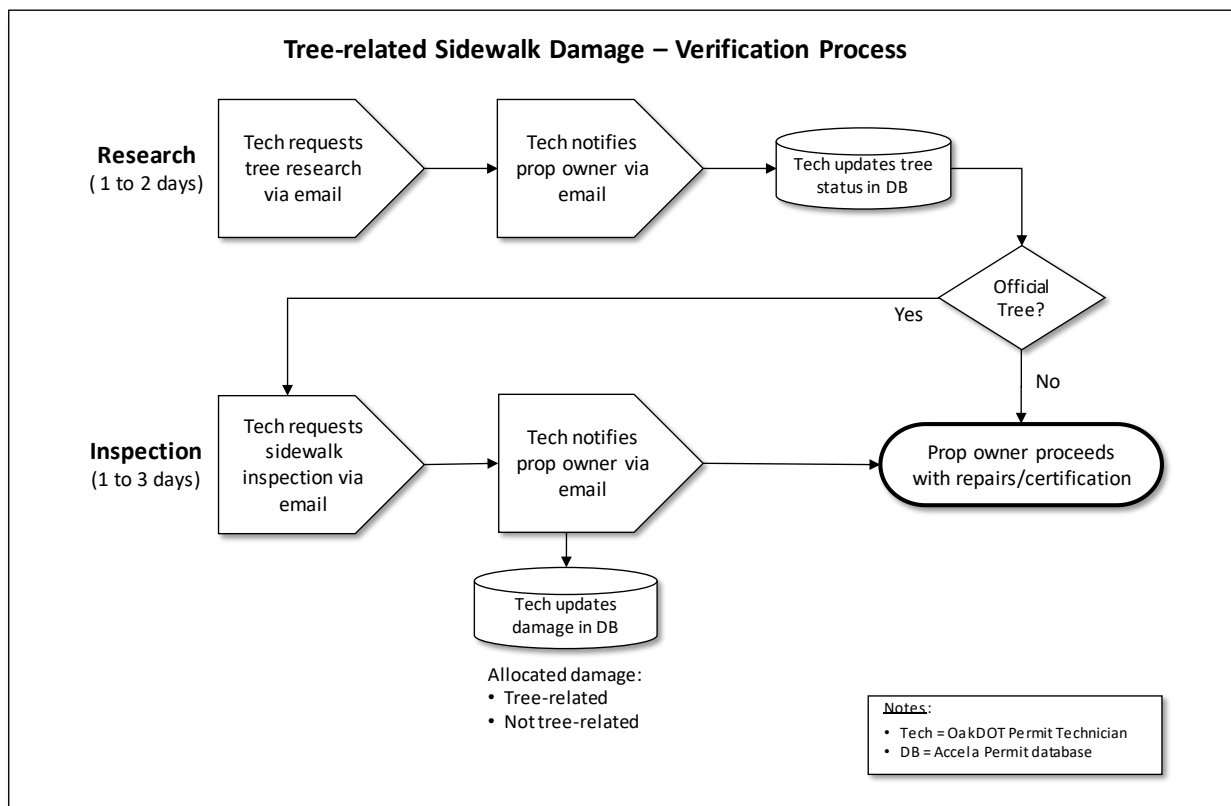


Figure 4 - Streamlined tree damage assessment

Once the presence of a City tree is confirmed, the OakDOT Permit Office staff will request an inspection by a staff member. The inspector will confirm, and photograph, damage due to City trees and non-City tree damage that would-be property owner responsibility. The results of the inspection will be shared with the homeowner for use in their work with a licensed contractor.

The City has a significant backlog of service requests regarding tree removals and tree-related sidewalk damage. However, the tree-related damage need not be repaired for the property owner to have their sidewalk certified.

The City of Oakland published a Comprehensive Sidewalk Survey in 2006. That publication indicated that:

- 84% of all City sidewalks were in good condition;
- 16% of sidewalks are non-compliant
- 5% of sidewalks (one third of the non-compliant) have damage due to City trees

OakDOT has issued 1,603 Sidewalk Certifications in the six months ended December 31, 2019. If the proportions outlined above are accurate, we would expect 80 properties with damage due to city trees. This works out to less than one case per day—a manageable amount for addressing in the process OakDOT has designed.

### ***Expanding the pool of eligible contractors***

At the launch of the Sidewalk Certification program, California State Licensing Board (CSLB) licensees A, B, and C-8 were eligible to inspect, repair, and certify sidewalks. Soon, several stakeholders became concerned that the pool of eligible contractors was too small. The shortage, they claimed, was creating delays and inflated prices.

OakDOT was sensitive to the concerns raised regarding the contractor pool, and the agency added C-42 and C-57 licensees as eligible contractors. Our effort to increase the number of ready and eligible contractors is ongoing. The following are examples of promising opportunities OakDOT are pursuing.

- Cultivate minority and independent contractors: Implementation of the Sidewalk Compliance program and the inspection and repair market it creates, should be an opportunity for small businesses in Oakland. That said, OakDOT will work with trade groups and labor organizers to grow awareness of certification and attract more contractors into the Oakland market. The new entrants may include independent contractors who find that they can justify licensing and other costs based on the revenue potential represented by Sidewalk Certification. Contractors who abandoned the city due to a lack of business might similarly be encouraged to return to Oakland. OakDOT's efforts in this area include a January 16, 2020 meeting with labor advocate Mr. Eddie Dillard.
- Promoting contractor services to customers: Oakland residents sometimes call or visit the OakDOT Permit Office for advice on hiring a contractor, and contractors have been known to linger in 4<sup>th</sup> floor elevator lobby on the off chance of meeting a potential customer. OakDOT is barred from advertising or recommending commercial services. However, we are working to develop a creative and legal solution that would allow contractors to display their business cards in a public area near OakDOT offices, and OakDOT will provide links on its website to lists of Oakland contractors who hold the required licenses as well as providing outreach to those contractors to ensure they are aware of the new City laws.



- Inspection and certification by OakDOT: OakDOT has recently hired one new inspector, and we expect to add three more within the next year. As new staff members come onboard, OakDOT priorities will be the safety and quality inspection duties, which are challenging today, given the inspector corps in understaffed status. However, with additional staff and technology, staff hope to offer a portion of OakDOT inspector time to support Sidewalk Certification. Staff have already designed the process for how OakDOT inspection and certification will work, and will move forward when staffing levels are such that a block of time can be made available on a consistent basis.
- Realtor/Contractor Partnerships: Realtors are important stakeholders in Sidewalk Certification, and they have a role to play in helping their clients understand and become compliant with the law. Serving as an informed information conduit and connecting clients with contractors are ways that realtors can ensure efficient and effective compliance.

***Proposal For 90-day Moratorium of Sidewalk Certification Program***

Some of the City's realtor stakeholders are advocating suspension of the Sidewalk Certification Program. The Berkeley-based Association of Realtors (AOR) points to process problems, that add time and expense to the compliance process, as justification for the suspension. They claim that suspension is the only way for OakDOT to address the remaining problems with implementation of the Ordinance.

Suspension is an unusual and extreme proposal. In order to evaluate a possible moratorium objectively, within the context of the Certification Program and the legitimate status of realtors as important stakeholders, staff evaluated the following conditions:

- 1) Is the Oakland real estate market in crisis?
- 2) Would imposing a moratorium be equitable?
- 3) Are we comfortable with the precedent we would set with this suspension?

***The Oakland real estate market is not in crisis.***

Sidewalk Certification has not had a negative impact on the real estate market. A review of Multiple Listing Service (MLS) data shows that, for July to November, total transaction closings were virtually unchanged year-over-year; 1,481 in FY2019 vs 1,474 in FY2020, down 0.5%. The month-to-month pattern shows closings rising and falling consistent with the well-established seasonal pattern, see Figure 5 below.

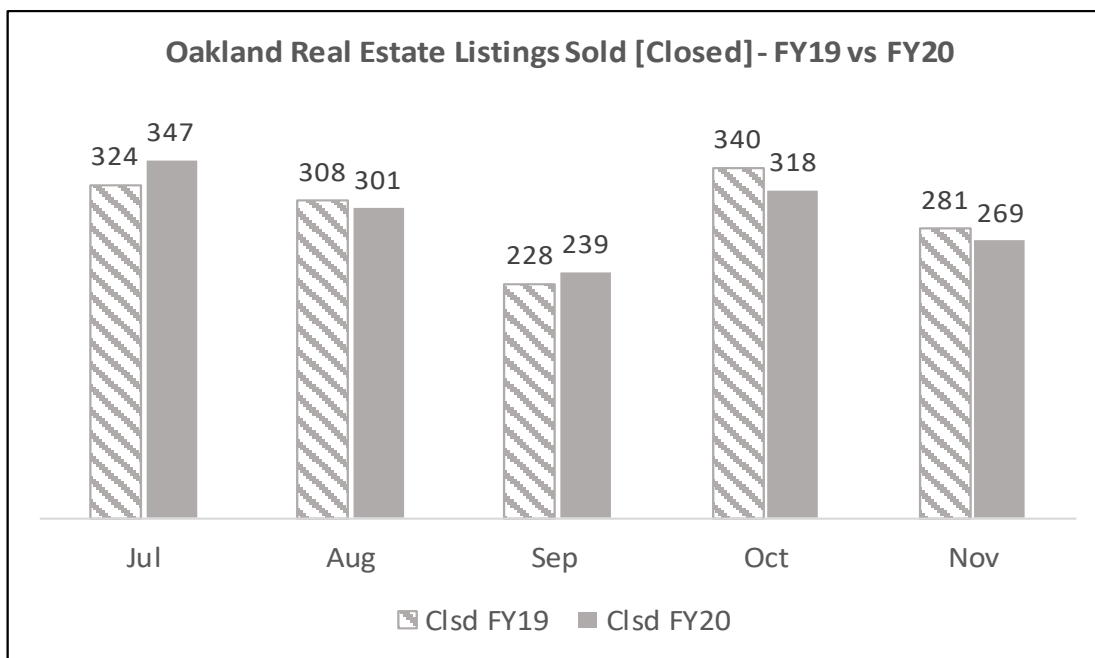


Figure 5 - Source: Bridge MLS

***Suspending the Ordinance may have inequitable outcomes***

Suspension of certification for 90 days would put close to 90 sidewalk repairs at risk. Those repairs are important to other stakeholders—including American Disabilities Act (ADA) advocates, the bike/pedestrian community, and Oakland residents, which is why Council enacted the ordinance in the first place.

***Suspension of the program would set a dangerous precedent.***

The important and valid reasons behind the City’s enactment of this new policy and program remain unchanged. While there were some challenges with respect to initial implementation, staff has worked effectively to address those challenges. The resulting unprecedented amount of sidewalk repair demonstrates in stark terms that the policy is working as intended. Pausing a new, effective City program based on valid public policy due to legitimate but manageable concerns would be a poor precedent for the Council to establish. Better would be direction from Council to City staff to continue working with stakeholders to address legitimate concerns and most importantly, ensure the program continues to meet its intended policy goals.

**FISCAL IMPACT**

Since this is an informational report, no fiscal impacts have been identified.

---

## **PUBLIC OUTREACH / INTEREST**

### ***Direct mail***

Informational postcards were mailed to a random selection of ten thousand Oakland addresses. The cards described the certification program and the planned July 1 launch date.

### ***OakDOT website***

Information on the Sidewalk Compliance Program was posted to the OakDOT website. This includes a Frequently Asked Questions (FAQ) document, which was first posted on July 16, 2019, and has been continuously updated since that time.

### ***The Bridge Association of Realtors***

Per their website, the BRIDGE Association of Realtors (AOR) is “dedicated to serving our members by providing programs and services to enhance their ability to conduct business with integrity and competence”. In addition to many phone calls and emails, OakDOT has had three formal meetings with AOR members and representatives.

- 1) 10/18/2019: OakDOT presented to a large group of AOR members at their Berkeley, CA headquarters. That presentation was followed by 90 minutes of Q&A and one-on-one consultation.
- 2) 11/18/2019: OakDOT met with four AOR representatives at City Hall.
- 3) 12/19/2019: Finally, OakDOT met with four AOR representatives in the offices of Mayor Libby Schaaf.

### ***Mayor’s Commission on Persons with Disabilities***

12/16/2019: OakDOT made a presentation on the Ordinance at the Mayor’s Commission on Persons with Disabilities (MCPWD). We presented a comprehensive PowerPoint that covered the legislative background, implementation, and program performance. During Q&A, each of the commissioners indicated their support for the program and urged the agency to push even further; e.g., requiring properties without sidewalks to install paved walkways at title transfer. The Commission subsequently sent a letter (attached) formally indicating its support.

## **COORDINATION**

Oakland Public Works Department [OPW]: OakDOT coordinates with OPW, as needed, to research tree-related sidewalk damage. Planning & Building [P&B]: P&B partners with OakDOT in administering a portion of the Sidewalk Compliance Program. One of the triggers for sidewalk inspection and repair is the permitting of a property renovation valued at \$100,000 or more. When permittees apply for a renovation permit that breaks the \$100,000 level, P&B directs them to OakDOT to initiate certification of their sidewalks.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Repair of damaged sidewalks by the responsible parties improves the overall value of properties in Oakland, as well as reducing the risk of injuries and associated costs.

**Environmental:** A robust sidewalk repair program supports walking as a desirable and preferred mode of transportation, exercise and public health.

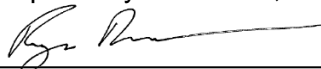
**Race & Equity:** Requiring repairs of sidewalks at the time of transfer of a property ensures that all neighborhoods, including those that have been historically underinvested and those who use wheelchairs for mobility, is good public policy and furthers the City's equity goals.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That the City Council Receive An Informational Report On The Status Of: 1) The Implementation Of Sidewalk Ordinance 13549 To Include The Process On How To Obtain The Sidewalk Ordinance Compliance Certificate, Including The Process For Exemptions 2) The Process To Obtain Information If A Tree Causing Sidewalk Damage Is A Certified City Tree And The Documentation That Would Be Provided To The Property Owner 3) Consideration Of A 90-Day Moratorium On The Ordinance.

For questions regarding this report, please contact Reginald Bazile, Assistant to the Director, at (510) 507-6752.

Respectfully submitted,



---

Ryan Russo  
Director  
Oakland Department of Transportation

Reviewed by:  
Wladimir Wlassowsky,  
Assistant Director

Prepared by:  
Reginald Bazile, Assistant to the Director  
Strategic Planning & Administration