



DATE: October 7, 2025

TO: Mayor and City council

FROM: Director of Maintenance Services

SUBJECT: Proposed Amendments to the Maintenance and Repair of Sidewalks
Ordinance: Introduce an Ordinance Amending Hayward Municipal Code
Chapter 7, Article 2 (Streets) Clarifying the Duty to Maintain and Repair
Sidewalks

RECOMMENDATION

That the City Council introduce an Ordinance (Attachment II) amending the Hayward Municipal Code to update the Ordinance clarifying the duty of property owners regarding the maintenance and repair of sidewalks.

SUMMARY

Hayward Municipal Code Chapter 7, Article 2 (Streets) contains the Ordinance regarding Maintenance and Repair of Sidewalks, which, along with State law, imposes an obligation upon property owners to maintain abutting sidewalks. The Ordinance was originally adopted in 2001; however, through subsequent litigation, the courts have imposed the need for cities to use clear and unambiguous language if they intend to hold property owners liable for failing to comply with those obligations. This amendment seeks to provide such clear and unambiguous language to clarify the duty of property owners and to subsequently hold property owners liable should they fail to remedy dangerous sidewalk conditions.

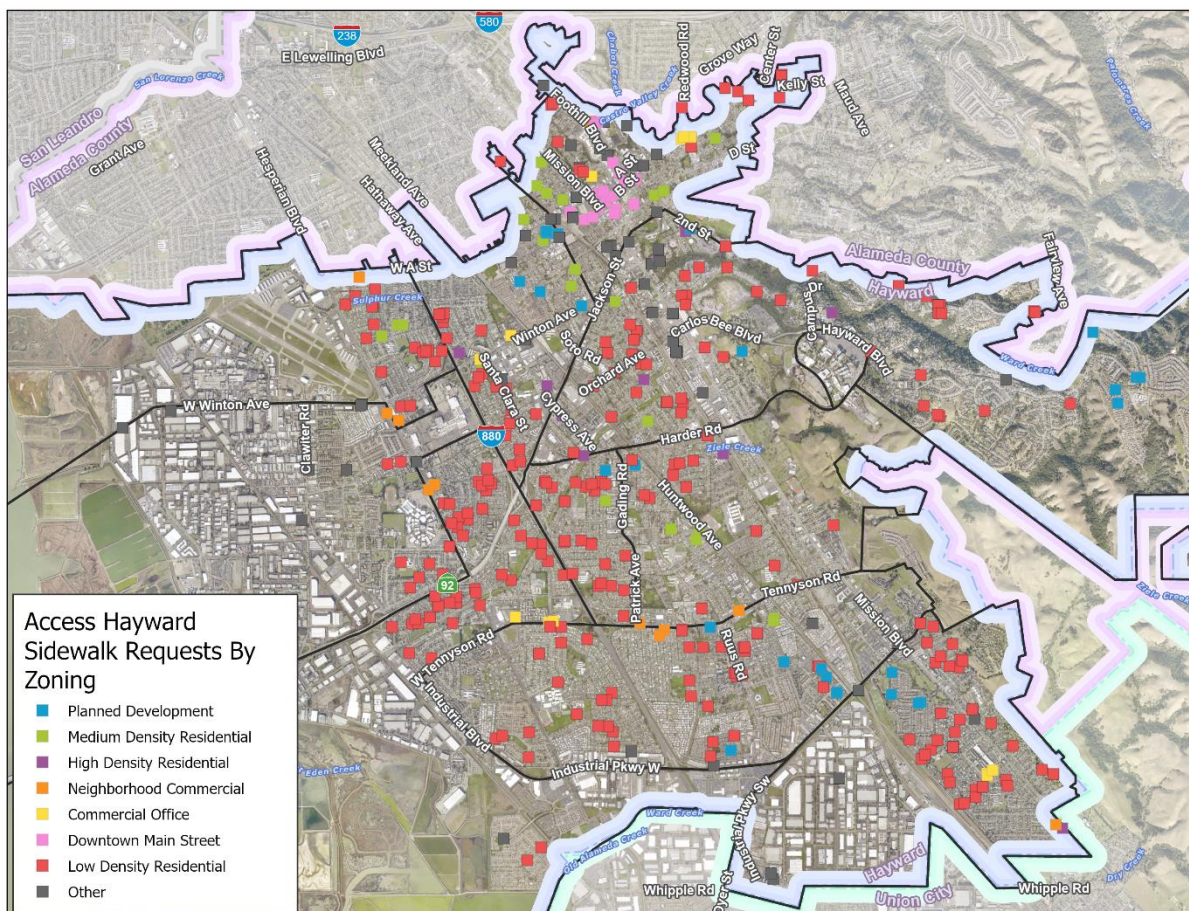
BACKGROUND AND EXISTING ORDINANCE

The City of Hayward has approximately 430 miles of sidewalks. These sidewalks are maintained in three different ways. First, the Maintenance Services Department provides regular maintenance of conditions affecting public health and safety upon receiving notification through Access Hayward. Second, owners of properties adjacent to sidewalks perform maintenance of conditions affecting public health and safety per requirements of California State Law. Finally, the Public Works & Utilities Department conducts semi-regular repairs of all of the City's sidewalks through the City's Capital Improvement Program.

Per California law, the responsibility to repair sidewalks rests with the owners of private properties adjacent to those sidewalks.¹ The City's existing Sidewalk Maintenance and Repair Ordinance, Hayward Municipal Code Section 7-2.70 et seq., incorporates these requirements of State Law. Furthermore, per the existing ordinance and upon notification through Access Hayward or otherwise, the City's Maintenance Services Department regularly sends notices to property owners advising them of their responsibilities and the need to repair sidewalk conditions posing a danger to public health and safety.

Repairs in Response to Complaints

The City's Maintenance Services Department works diligently to address any public health and safety concerns in a timely manner. In the last five years, the City has received over 450 sidewalk-related repair requests, with an average of 93 requests per year. These requests are widespread throughout the entire City and are not isolated to a specific district or neighborhood. (See Map below).



¹ "The owners of lots or portions of lots fronting on any portion of a public street . . . 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...." California Street and Highways Code, Section 5610.

The City's Maintenance Services Department evaluates each of those requests and typically addresses them within a 48-hour period. These repairs focus on alleviating the immediate threat to public health and safety. However, a need for a permanent repair may remain necessary. For these reasons, such repairs are often accompanied by a letter to the property owner, notifying them of their responsibility and obligation to remove and replace certain portions of the sidewalk adjacent to their property.

The letter the City issues to the property owners informs them of the requirement to obtain an encroachment permit and the use of a licensed contractor for the sidewalk repair work. Pursuant to the City's Master Fee Schedule, a sidewalk-related encroachment permit ordinarily costs \$823. However, in an effort to facilitate these repairs, the City completely waives encroachment permit fees for sidewalk-related repairs which are being done in response to such a letter. Over the last three years, the City has received and approved approximately two such encroachment permits per year.

Repairs as Part of the Capital Improvement Program

In addition to the sidewalk repairs performed by the City's Maintenance Services Department in response to complaints, the City's Public Works & Utilities Department also performs sidewalk maintenance through the Capital Improvement Program.

Every year staff evaluate each of the ten sidewalk districts and select two to be repaired as part of the program. The selection process involves evaluating each district for public health and safety hazards. If a hazard is identified, residential property owners are given a choice of having the City perform the work at a cost of \$550 per property or hiring their own contractor to perform the work. For commercial and multi-family properties, the owners are given the choice of either reimbursing the City for actual cost of construction or performing the work themselves.

Responsibility for Injuries Resulting from Hazardous Sidewalk Conditions

Although State law places responsibility for sidewalk repairs on private property owners, California courts have held that cities can be held liable for injuries resulting from dangerous sidewalk conditions unless a city has adopted an ordinance to the contrary. See Gonzales v. San Jose (2004) 125 Cal App.4th 1127.

Following the Court's decision in Gonzales v. San Jose, California cities have reduced general fund impact in trip-and-fall liability cases by adopting municipal ordinances that clearly and unambiguously confirm responsibility of fronting property owners for injuries and damages resulting from sidewalk-related accidents. (Gonzales v. San Jose (2004) 125 Cal App.4th 1127.) Such ordinances do not change what is already vested in state law but expressly establish that the property owner has the primary responsibility for maintaining safe sidewalks, as set forth by the State legislation, whether or not the City has notified the owner of their maintenance obligations. Many of our neighboring jurisdictions have incorporated such language into their sidewalk ordinances, including: Oakland, Berkeley, San Leandro, Union City, Dublin, Antioch, Richmond, Concord, Daly City, San Mateo, and others.

DISCUSSION

Updating the Current Ordinance to Clarify Property Owner Responsibility

Adjacent property owners are often in the best position to quickly identify and address potentially dangerous sidewalk conditions. The proposed updates to the current ordinance do not change this. Instead, 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 when they are responsible for these types of repairs pursuant to State and local law.

Furthermore, sidewalk ordinances that clarify the duty for maintenance such as the one being proposed here serve as an effective risk management tool, enabling the City to mitigate the risk of trip and fall cases by incentivizing sidewalk repairs, as well as allowing the City to more fully defend against sidewalk trip and fall cases.

Impact on Property Owners

Staff understand that sidewalk repairs can be costly. For this reason, the City has initiated a policy of waiving encroachment permit costs for sidewalk repair work necessary as a result of a notice from Maintenance Services requiring such repairs.

Furthermore, as set forth above, this ordinance sets forth certain consequences for property owners who fail to remedy dangerous sidewalk conditions. One of these consequences is bearing the legal responsibility for any injuries that result from such a failure. Ordinarily, if a property owner has insurance coverage, their insurer will cover the liability and any additional risk resulting from such injuries. Finally, it is important to note that staff have consulted with the City's insurance partners and do not believe that the passage of this ordinance, in itself, will result in increases of insurance rates.

Council Infrastructure and Airport Committee Support

On June 25, 2025, the Council Infrastructure and Airport Committee evaluated this proposed ordinance amendment. The Committee was supportive of the item and requested additional information about fiscal impacts of a potential Hardship Program for the discussion with the full City Council.

Hardship Program

Approximately 9% of Hayward households in owner-occupied units earn an annual household income of less than \$35,000.² Additionally, at least 23% of the owner-occupied

² U.S. Census Bureau, Tenure by Household Income in the Past 12 Months (in 2023 Inflation-Adjusted Dollars). American Community Survey, ACS 1-Year Estimates Detailed Tables, Table B25118, 2023, [https://data.census.gov/table/ACSDT1Y2023.B25118?t=Income+\(Households,+Families,+Individuals\):Owner/Renter+\(Tenure\)&g=160XX00US0633000](https://data.census.gov/table/ACSDT1Y2023.B25118?t=Income+(Households,+Families,+Individuals):Owner/Renter+(Tenure)&g=160XX00US0633000) . Accessed on May 28, 2025.

units would be considered low-income households.³ To encourage and enable low-income property owners to repair damaged sidewalks, the City Council could establish a Sidewalk Repair Financial Hardship Program.

As an example, the City of Oakland and San Jose both have a hardship program that offers sidewalk repairs at no cost to income-qualified property owners; San Francisco offers a hardship-based deferred payment plan up to \$5,000. Finally, the City of Fremont has created a program whereby the City reimburses 50 percent of the repair costs up to a maximum of \$7,500 per property.⁴

If City Council was inclined to create such a hardship program, eligibility could be based on proof of participation in another means-tested program, such as CalFresh or PG&E CARE (California Alternate Rates for Energy), or other. Funding for such a program could be capped at a certain amount, such as \$20,000 - \$50,000 annually and be provided on a first come first served basis.

FISCAL IMPACT

The proposed amendments to the Sidewalk Maintenance Ordinance focus on clarifying the duties of property owners regarding sidewalk maintenance as set forth in California State Law and legal precedent.

Maintaining the status quo will result in significant and continued impacts to the General Fund. Without the ordinance amendment, the City will continue to be primarily liable for damages resulting from trip and fall incidents where those incidents occurred due to property owners' unwillingness to fix sidewalks for which they are legally responsible. Furthermore, given the recent changes to the City's insurance, General Fund impacts may further increase. Such impacts may amount to hundreds of thousands of dollars per case unless the Council moves forward with some mitigation measures.

This ordinance amendment is one such mitigation measure. Amending the ordinance provides clarity regarding the consequences where property owners refuse to follow state and local law. Specifically, this ordinance amendment ensures that property owners remain responsible and liable to members of the public for failing to remedy dangerous conditions. It is important to note, however, that the City may not completely absolve itself of liability in all sidewalk-related cases.

Finally, should the City Council wish to establish a hardship-based program, there will be additional fiscal impacts to the General Fund based on the amount of the established hardship fund.

³ Please note, the data regarding affordability levels doesn't perfectly match census data because the affordability levels are based on income and household size, whereas Census data is solely focused on income.

⁴ Please note, the Fremont 50-50 Sidewalk Repair Program is open to all residents, regardless of hardship.

STRATEGIC ROADMAP

This agenda item supports the Strategic Roadmap priorities to Invest in Infrastructure. It aligns with the implementation of the Invest in Multi-Modal Transportation goal by improving pedestrian mobility, which is a key component of a multi-modal network.

PUBLIC CONTACT

This proposed ordinance was discussed at the June 25, 2025 meeting of the Council Infrastructure and Airport Committee where the public did not offer any comments. This item was also set forth in the agenda, which was published in the regular course of the City's business practice.

NEXT STEPS

If approved, the Ordinance will return to the City Council for a second reading on the consent calendar on October 21, 2025. If adopted at that meeting, the Ordinance will take effect 30 days thereafter.

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Recommended by: Michael S. Lawson, City Attorney
Todd Rullman, Director of Maintenance Services

Approved by:



Jayanti Addleman, Interim City Manager