



DATE: June 25, 2025

TO: Council Infrastructure and Airport Committee

FROM: Director of Maintenance Services
Acting City Attorney

SUBJECT: Proposed Updates to the Sidewalk Maintenance and Repair Ordinance

RECOMMENDATION

That the Council Infrastructure and Airport Committee (CIAC) review and provide comments regarding the proposed amendments to the Sidewalk Maintenance Ordinance (Attachment II).

SUMMARY

Due to potential and significant impacts to the General Fund and recent discussions regarding budget deficits, City staff propose to amend the Sidewalk Maintenance and Repair Ordinance to clarify duties of homeowners regarding sidewalk maintenance as set forth in California State Law.

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.

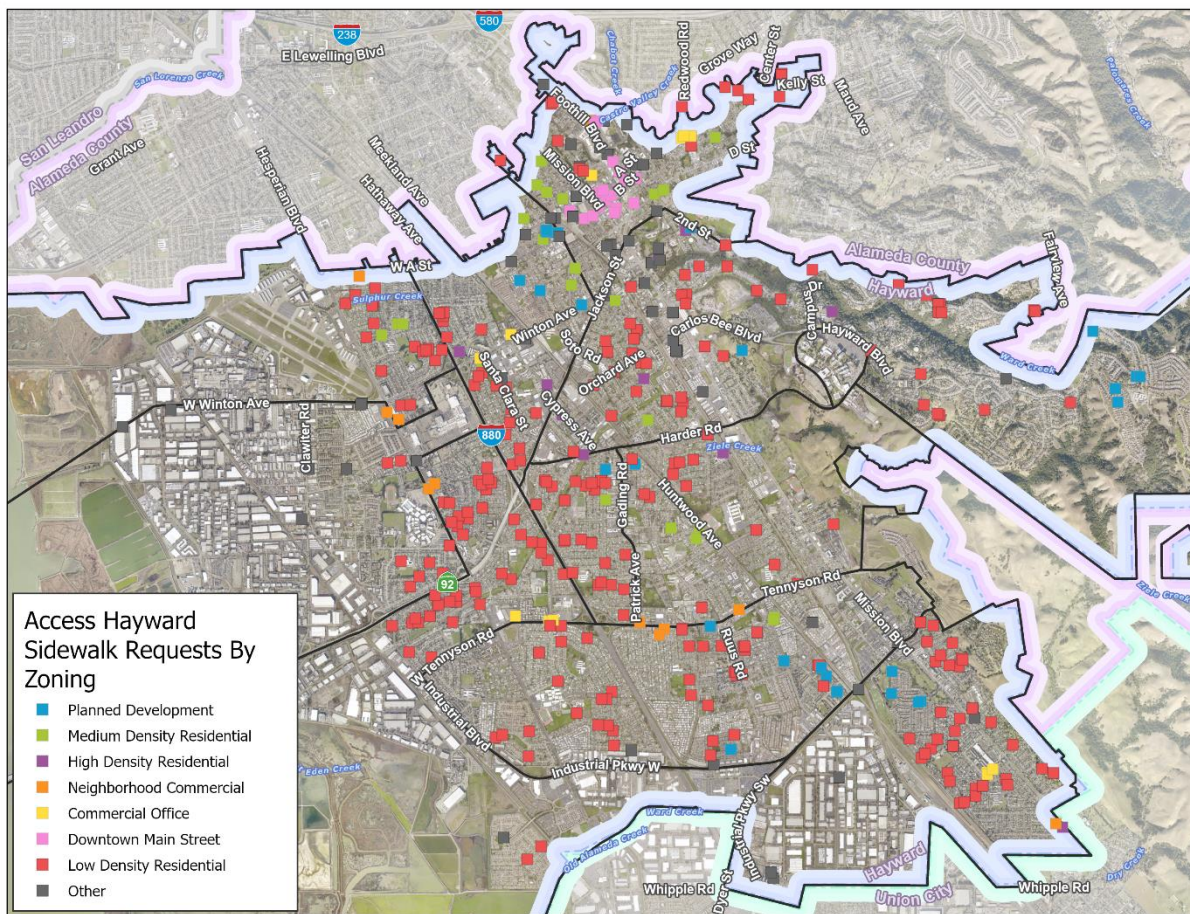
Per California law, the responsibility to repair sidewalks rests with the owners of private properties adjacent to the sidewalks.¹ The City's existing Sidewalk Maintenance and Repair

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

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).



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.

In the event the adjacent property owner fails to repair the sidewalk to completely remedy the hazard, the City's existing ordinance allows City staff to repair the area of concern and recover the costs associated with such repair through an assessment against the property.

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. These hazards are then removed by either 1) cutting or grinding each uplifted sidewalk panel across the width of the sidewalk or 2) removing and replacing the hazardous sidewalk sections. If the hazard requires removal and replacement, 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 trip-and-fall liability by adopting municipal ordinances that clearly and unambiguously confirm responsibility of fronting property owners for injuries and damages resulting from sidewalk damage. (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 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, Berkely, San Leandro, Union City, Dublin, Antioch, Richmond, Concord, Daly City, San Mateo, and others.

DISCUSSION

Updating the Current Ordinance to Clarify Property Owner Responsibility

Sidewalk liability ordinances 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 it to more fully defend against sidewalk trip and fall cases.

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 currently responsible for these types of repairs pursuant to State law.

For these reasons, Staff recommend that the Sidewalk Maintenance Ordinance be amended as set forth in Attachment II, specifically identifying the private property owner's duty to the public to maintain sidewalks.

Waiver of Sidewalk Repair Permit Fees

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. The City Council could direct staff to expand this waiver policy to any fees associated with repair of sidewalk damage, regardless of a notification from Maintenance Services. Such a program could be temporary or permanent.

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 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

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.

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.

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 \$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 owner responsibility. As such, these amendments have no fiscal impacts. However, should the City Council wish to establish a hardship-based program, there may be fiscal impacts based on the amount of the established fund.

NEXT STEPS

Upon consideration and approval by CIAC, staff will bring the ordinance amendment to the City Council for adoption.

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Recommended by: Michael G. Vigilia, Acting City Attorney
Todd Rullman, Director of Maintenance Services

Approved by:

Michael S. Lawson, Acting City Manager

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