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MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Josh Rowan
Director, Oakland Department
of Transportation

SUBJECT: Bi-Annual Sidewalks Program
Update (July 2021 to June 2022
and July 2022 to June 2023)

DATE: June 11, 2024

City Administrator
Approval

Date:

INFORMATION

This memo provides the Oakland City Council, the Mayor's Office, City staff and the community with a report on sidewalk repair activity in the last two fiscal years: July 1, 2021 to June 30, 2022 (FY22) and July 1, 2022 to June 30, 2023 (FY23).

GENERAL OVERVIEW

The Oakland Department of Transportation (OakDOT) receives and investigates sidewalk repair requests through OAK311; performs temporary make-safe repairs; performs permanent sidewalk replacement; facilitates private owner sidewalk replacement; issues sidewalk compliance certifications; enforces federal, state, and local sidewalk maintenance policies; and maintains citywide sidewalk data.

Overall during each of the past two fiscal years, sidewalk construction increased compared to Fiscal Year 2019-2020 (FY20) and Fiscal Year 2020-2021 (FY21). Respectively, a total of 450,825 and 245,825 square feet of permanent sidewalk construction was performed in FY22 and FY23. These totals comprise work performed by OakDOT crews, City contractors, and private property owners.

A report is forthcoming in Fall 2024 on key program activities for Fiscal Year 2023-2024 (FY24) include review and analysis of the first citywide comprehensive sidewalk damage inventory completed since 2007, development of a citywide strategic multi-year sidewalk repair prioritization plan, initiating small construction contract opportunities for small businesses, policy development to strengthen the City's sidewalk ordinances, and proactive communication to support property owners in advancing sidewalk construction.

BACKGROUND

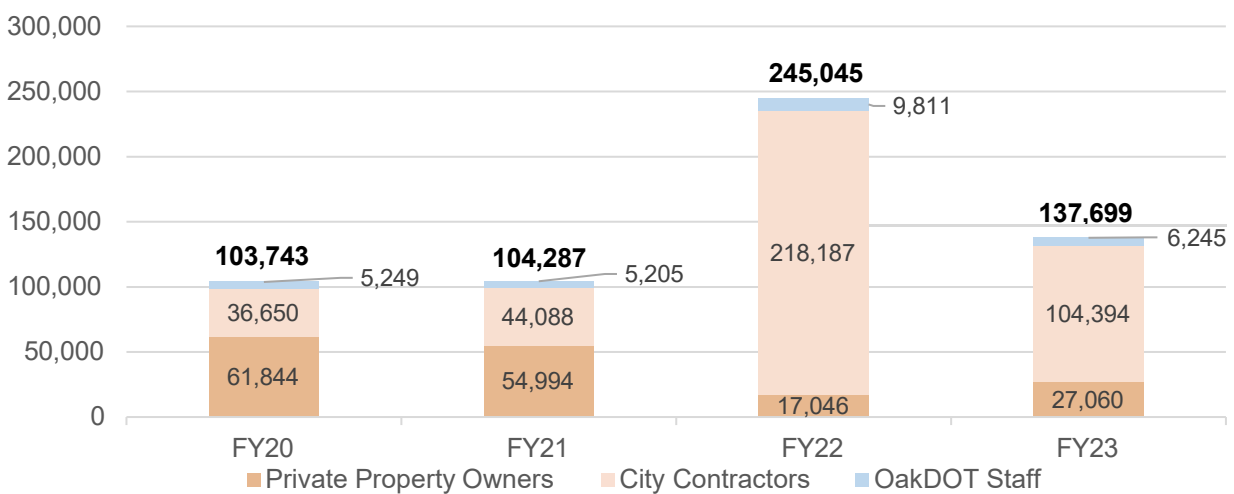
Sidewalks require repair when there is a defect, such as a crack, depression, or vertical offset, of more than ¼ inch. Per state law, adjacent property owners are responsible for repairing damaged sidewalks.¹ This means that while the City is responsible to maintain sidewalks adjacent to City properties, private property owners are responsible to maintain all other sidewalks in Oakland. Additionally, the City has maintained a practice of taking responsibility to repair sidewalk damage caused by official street trees. Past citywide sidewalk surveys have estimated that approximately 85% of sidewalk damage in Oakland is “private damage,” or damage that is the responsibility of the adjacent private property owner. The remaining 15% of sidewalk damage in Oakland is “public damage,” or sidewalk damage at or within a public facility, or sidewalk damage that is caused by an official street tree.

As directed in the adopted FY2019-21 and FY2021-23 Capital Improvement Plan, the City’s \$2M annual sidewalk program is dedicated to addressing public damage. The program is funded primarily by Measure KK and Measure U and prioritizes replacing official tree damaged sidewalks, addressing sidewalk damage at City facilities, and facilitating private property sidewalk replacement.

SUMMARY

This report summarizes the amount and types of sidewalk construction recorded in FY22 and FY23. This includes repairs and reconstruction performed by OakDOT crews, 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 years, and sidewalk repairs and certifications completed under the 2019 title transfer ordinance, also known as the Buy-Sell-Repair Ordinance (Oakland Municipal Code 12.04.380). Figure 1 below shows the amount of sidewalks replaced from FY20 to FY23.

Figure 1: Sidewalk Replacement FY20 to FY23 (Square Feet)



¹ California Streets and Highways Code § 5610; Oakland Municipal Code Chapter 12.22

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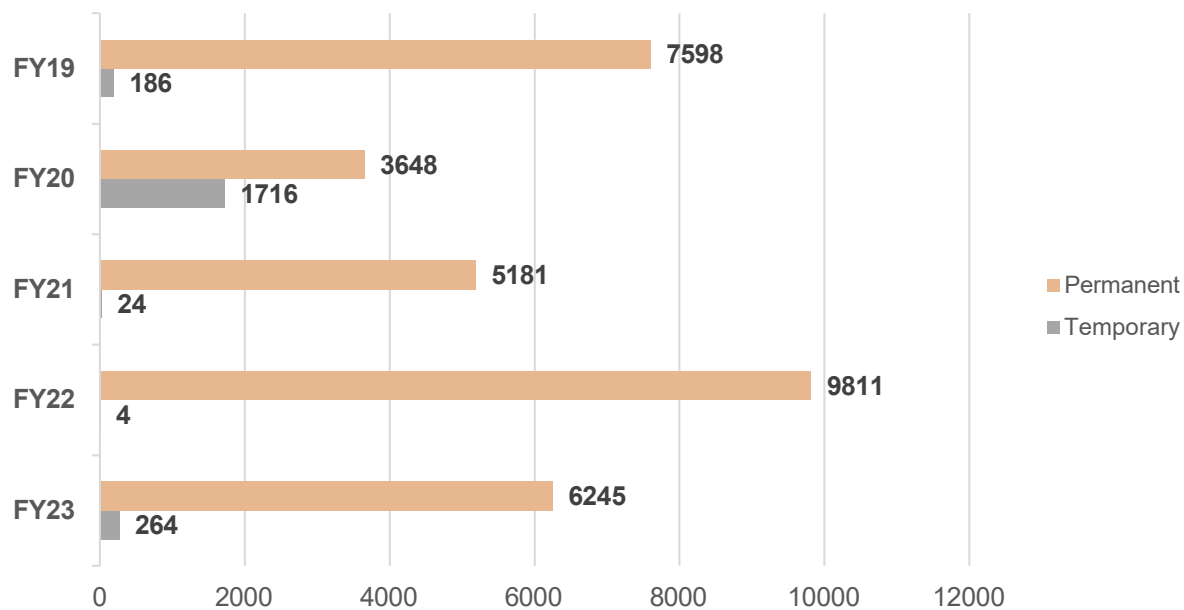
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The total square feet of sidewalk replacement performed by city staff, city contractors, and private property owners hit an all-time high in FY22 (more than 245,000 square feet replaced) and decreased slightly in FY23. OakDOT has set an internal target of at least 100,000 square feet of damaged sidewalk replacement each year. This annual target has been met each year for the past 4 years, with FY22 and FY23 far exceeding.

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. By distinction, permanent repairs include full removal of damaged concrete sidewalk sections through horizontal shaving or by replacement with new concrete. In FY22, OakDOT staff addressed a combined total of 9,815 square feet of temporary make-safes and permanent sidewalk repairs. In FY23, OakDOT staff addressed a combined total of 6509 square feet of temporary make-safes and permanent sidewalk repairs (Figure 2). The permanent repairs comprised a total of 16,056 square feet of sidewalk repaired, with 9,811 square feet repaired in FY22 and 6,245 square feet of sidewalk repaired in FY23. FY22 and FY23 showed a relative increase in permanent repairs compared to the previous two years. Current staffing levels include one concrete crew that includes one supervisor, three maintenance leaders, six maintenance workers, four concrete finishers, and a traffic and parking attendant.

Figure 2: Temporary and Permanent Sidewalk Repairs by OakDOT Crews (Square Feet)



Sidewalk Construction by City Contractor Through Capital Projects

City contractors perform a major portion of sidewalk replacement annually. Contracted sidewalk replacement occurs through OakDOT’s sidewalk capital program and other City of Oakland capital improvement programs, such as pavement rehabilitation, streetscape, and traffic safety capital projects. In FY22, City contractors performed 218,187 square feet of sidewalk

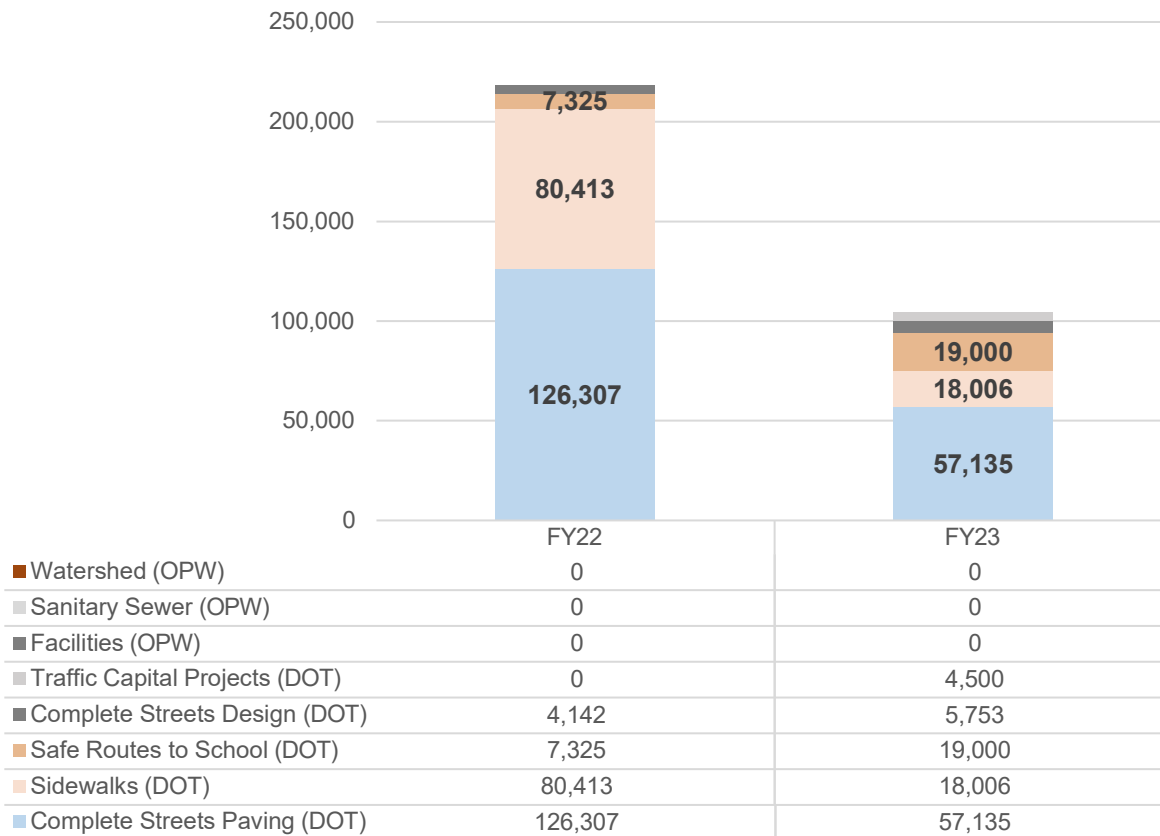
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replacement, and 104,394 square feet in FY23 (Figure 3). Figure 3 provides sidewalk construction performed through the different capital improvement programs within the City of Oakland, during FY22 and FY23. Impacts to annual totals of sidewalk construction due to contract processing issues can be seen in the FY23 decrease in square footage for the two primary drivers of sidewalk replacement: the sidewalk program and the paving program.

Figure 3: Sidewalk Construction by Capital Improvement Program (Square Feet)



In FY22, staff oversaw the closeout of a contract providing horizontal shaving services. Horizontal concrete shaving is a technique that provides an effective, environmentally-friendly alternative to full sidewalk replacement and typically costs half as much as full replacement. It smooths uplifts without damaging the rest of the sidewalk. If the damage is not a candidate for horizontal shaving, the damage is surveyed and queued for replacement. In FY21 and FY22, horizontal shaving addressed 12,197 and 4,255 locations of sidewalk damage and trip hazards. No horizontal shaving was completed during FY23 due to lack of contract. A bid book was prepared and finalized for a new horizontal shaving project in May 2023. Due to service backlog with OakDOT’s contract services unit, OPW Capital Contracts Division, the project was not bid until May 2024.

Construction by Private Property Owners

The majority of sidewalks abut private commercial and residential property, and the adjacent property owner is responsible to maintain these sidewalks. Accordingly, the largest number of

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sidewalk construction is performed by private property owners. This report provides information on the two main permit types administered by the City of Oakland that include sidewalk replacement: Curb, Gutter, and Sidewalk (CGS) and privately-constructed infrastructure (PX). A property owner or their contractor would apply for a CGS permit when replacing a limited section of existing damaged sidewalk adjacent to a property. A PX permit is part of an overall building permit and authorizes an applicant to construct required improvements in the public right of way. For a typical major land use development, this might entail full replacement of existing curb, gutter, and sidewalk installation, as well as curb ramps, storm inlets, utility connections, streetlights, pavement restoration, and pavement markings. OakDOT is the permitting authority for PX permits, and issues and inspects all construction in the public right of way.

In FY22, OakDOT issued 173 CGS permits for sidewalk repair, totaling 27,782 square feet. In FY23, OakDOT issued 135 CGS permits for sidewalk repair, totaling 23,999 square feet. Figure 4 provides the number of sidewalk construction permits and associated square feet of sidewalk replacement since 2011 through private property owners. The relative increase in permit activity and associated sidewalk replacement in FY20 is likely due to the adoption of the Buy-Sell-Repair ordinance in July 2019.

Figure 4: Private Sidewalk Replacement Through CGS Permits (2011-2023)

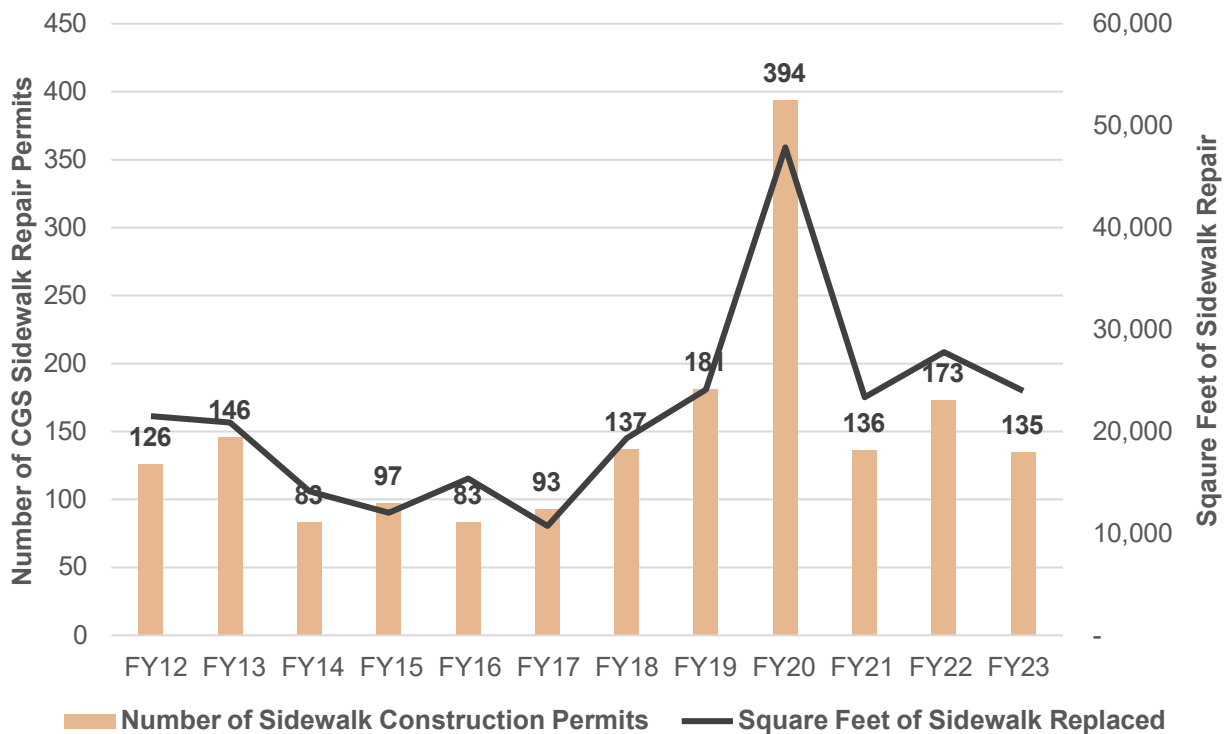
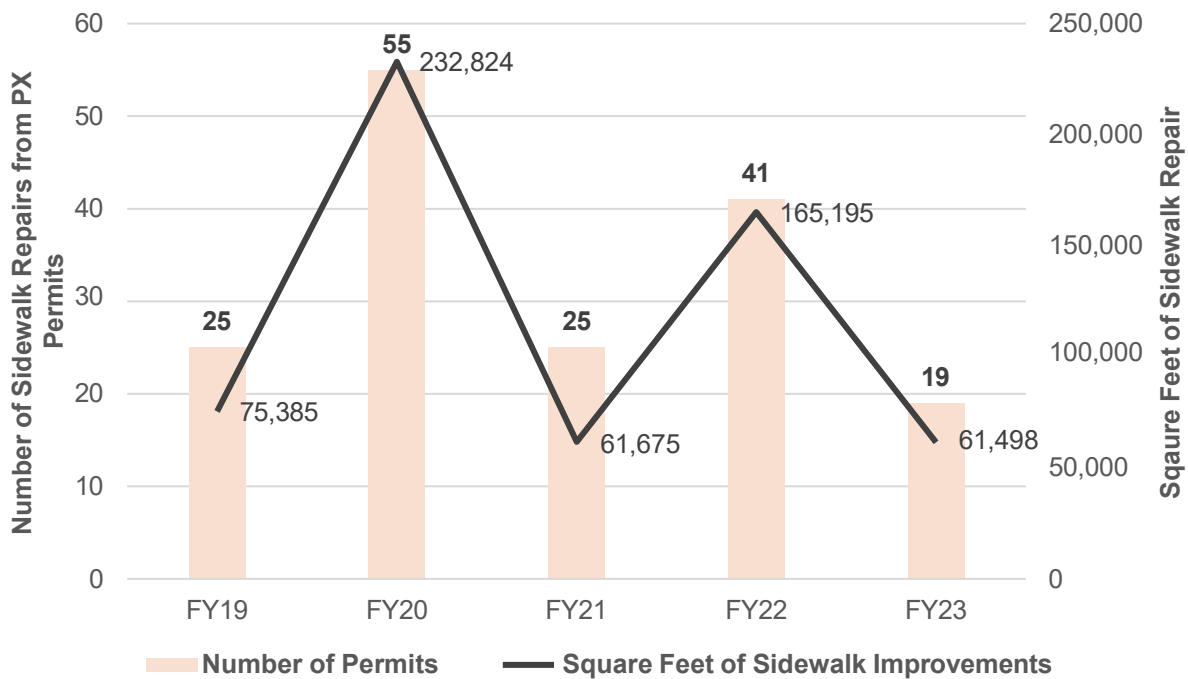


Figure 5: Private Development Sidewalk Construction through PX Permits (2018-2023)

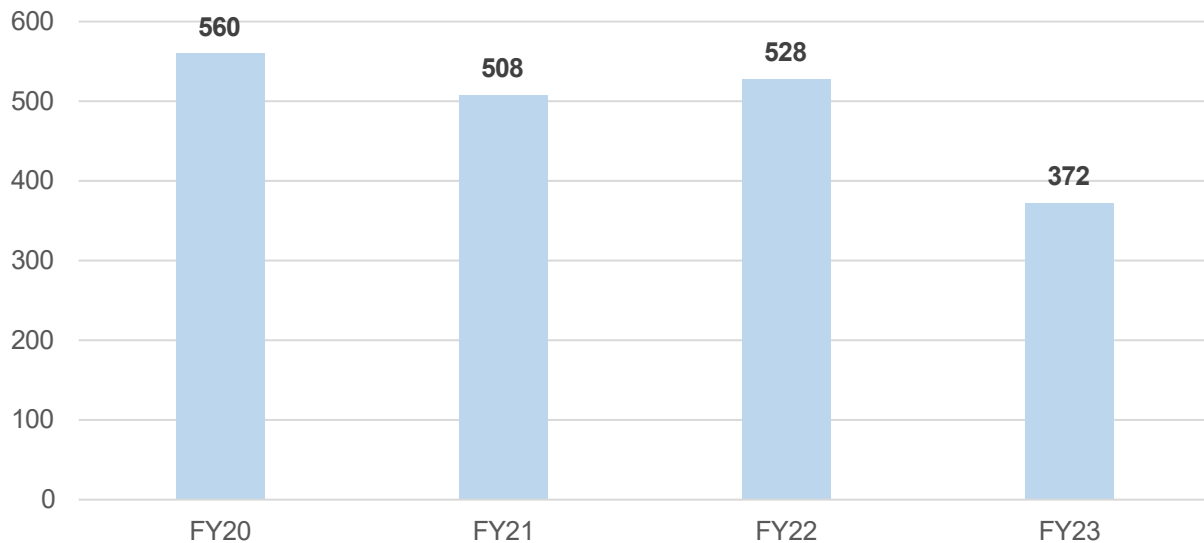


In addition to CGS Permits, sidewalks are also replaced and newly constructed through private land-use development projects. In FY22, there were 41 completed PX Permits totaling 165,195 square feet of new or reconstructed sidewalk. In FY23, there were 19 completed PX Permits totaling 61,498 square feet of new or reconstructed sidewalk. Figure 5 provides the number of sidewalk repair permits and associated square feet of sidewalk repair from 2018 through 2023 through private land-use developers.

Service Requests for Sidewalk Damage and 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 with an inspection and determination of whether the damage is City responsibility or property owner responsibility to repair. If the damage is a City responsibility, the service request is placed in queue with OakDOT’s sidewalks maintenance team for repair. If the damage is property owner responsibility, then the inspector issues a Notice to Repair directing the property owner to address the damage. During the past two years, service requests related to sidewalk damage decreased, from a 3-year average of 530 per year to 372 requests in FY23 (Figure 6). Much of OakDOT’s sidewalk maintenance queue is tree-related sidewalk damage. As of the report writing, there are 1691 open services requests for sidewalk damage related to a tree.

Figure 6: Service Requests Received (2019-2023)



In FY22, OakDOT issued 100 Notices to Repair Letters (NTRs) to private parties covering a total of 12,168 square feet of sidewalk damage (**Figure 7**). Significantly more NTRs were issued in FY23, a total of 645 NTRs sent, encompassing 50,397 square feet of damage (**Figure 7**). This increase can be attributed to a slowdown in paving-related sidewalk repair opportunities in FY22, and an uptick in FY23 as new paving contracts came online. Additionally, during FY23, one new construction inspector was onboarded, bringing the total number of sidewalk inspectors to 3.5 full-time equivalent (FTE) positions.

Figure 7: Number of Notices to Repair and Accompanying Sidewalk Damage (2011-2023)

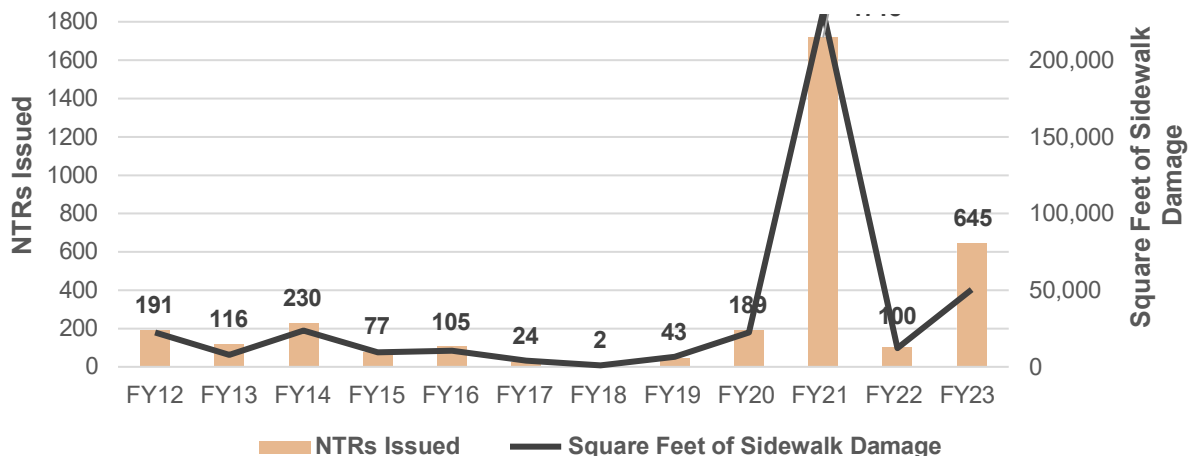


Figure 7 shows the number of NTRs the City has issued over the past twelve years and the accompanying square feet of damage associated with the notices to repair. The relatively significant volume of NTRs issued in FY21 were related to a standalone project that targeted the

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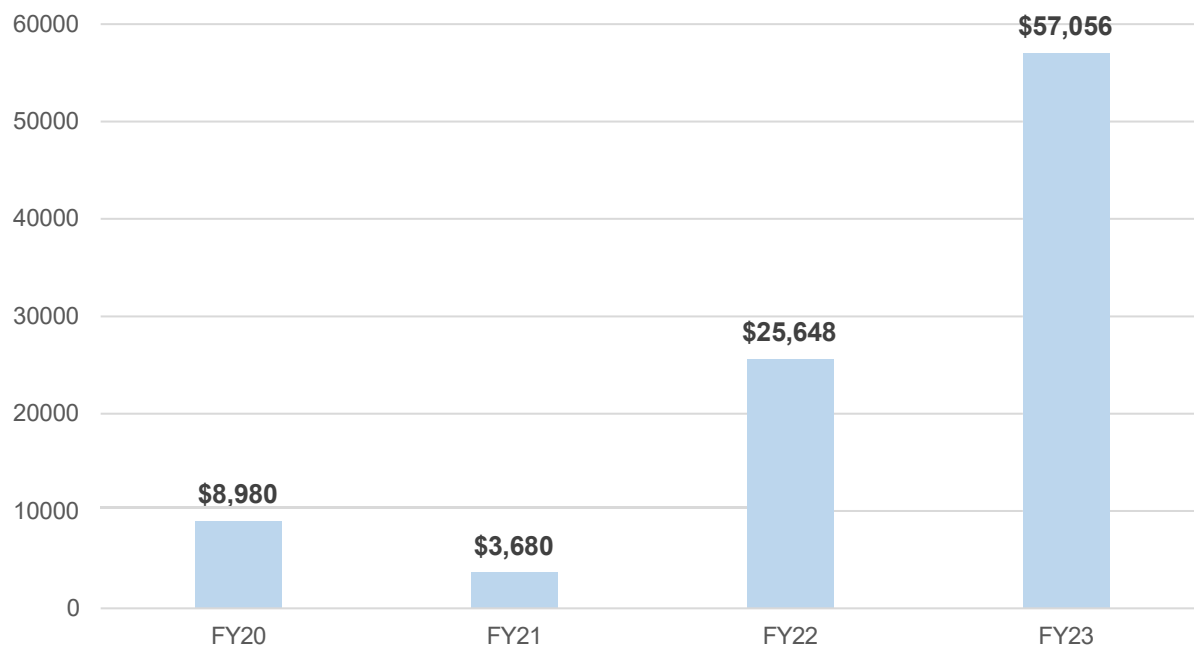
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backlog of locations with an open service request that did not have a tree associated with the damage and had not yet received a Notice to Repair (indicating the damage was likely the responsibility of the adjacent property owner). Each site was visited to verify and measure damage, then a Notice to Repair was prepared and issued as necessary. In total, 577 Notices to Repair were sent to property owners through this effort in FY21.

Low-Income Property Owner Repair Program

In July 2019, City Council approved Resolution No. 87746 C.M.S. authorizing the City of Oakland to perform sidewalk repairs at no cost on behalf of low-income property owners. Subsequently, OakDOT began including information about this option when issuing Notices to Repair. Information on the program and the program application are also available on the City's website, with the application provided in English, Spanish, and Chinese. To receive the waiver, a property owner residing in Oakland must present proof of participation in a means-tested program. In FY22, this program processed 23 applications and 27 applications in FY23. **Figure 8** shows the constructed repairs by value within the Low-Income Sidewalk Repair Program from FY20 to FY23.

Figure 8: Low-Income Program Sidewalk Construction (2019-2023)



American Disability Act (ADA) Sidewalk Repair Request Program

The ADA Sidewalk Repair Program expedites necessary repairs of sidewalks damaged by official 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. OakDOT received 15 applications through the ADA Sidewalk Repair Program in FY22 and 16 applications in FY23. OakDOT has responded to the applicants and is currently still working on completing the improvements.

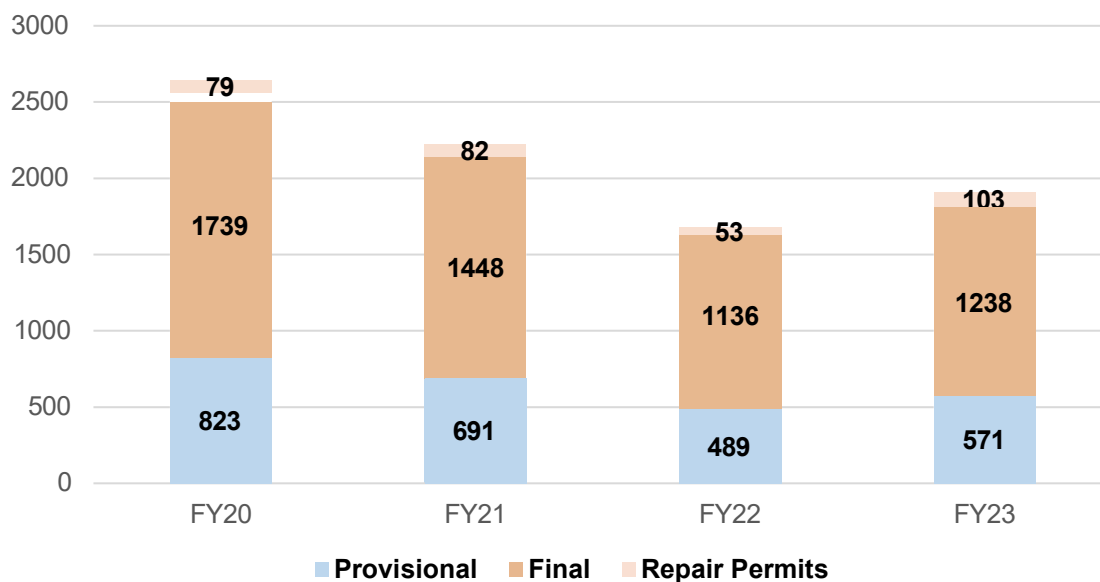
Buy-Sell-Repair Program

In July 2019, the Oakland City Council adopted a Buy-Sell-Repair Ordinance, Oakland Municipal Code (OMC 12.04.380) which requires that sidewalks must be in compliant condition² 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. For property owners who cannot repair and/or certify their sidewalk before title transfer, OakDOT also created a provisional certificate category. The provisional certificate is valid for a period of 120³ days, beginning the date the provisional certificate is issued. Within those 120 days, the property owner must repair and then certify their sidewalk.

In FY22, OakDOT issued 1136 compliance certificates and 53 sidewalk construction permits related to the Buy-Sell-Repair ordinance; in FY23, OakDOT issued 1238 compliance certificates and 103 sidewalk construction permits related to the ordinance. **Figure 9** shows the number of compliance certificates and repair permits associated with this ordinance from 2021 to 2023. OakDOT also sent 3,013 and 1,882 courtesy notifications to property owners who failed to comply in FY22 and FY23, respectively.

Figure 9: Number of Sidewalk Compliance Certificates and Related Repair Permits



Staff estimate that during FY22, 6,622 property transfers were subject to the ordinance. These title transfer records matched 1,728 properties that had a final or provisional sidewalk compliance certificate on file certifying that the sidewalk was compliant with 53 locations also

² 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.

³ In FY21, the provisional period was increased from 90 to 120 days to better support compliance.

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having a final permit for sidewalk repair performed. Staff estimates for FY23, 3,595 property transfers were subject to the ordinance. These title transfer records matched 1,701 properties that had a final or provisional sidewalk certificate on file with 103 locations also having a final permit for sidewalk repaired performed. Table 1 highlights the total property transfers and corresponding certifications or permits relating to the transfer from FY20 to FY23. All locations that do not have a compliance certificate on file will receive a written notice.

Table 1: Total Property Transfers and Sidewalk Certifications or Permits (FY20 – FY23)

	<i>FY20</i>	<i>FY21</i>	<i>FY22</i>	<i>FY23</i>
<i>Number of Properties Sold in Oakland⁴</i>	3,046	4,018	6,622	3,595
<i>Compliant Properties</i>	1,686	1,474	1,728	1,701
<i>Compliant Properties With Repaired Sidewalk</i>	79	82	53	103

Under the Buy-Sell-Repair Ordinance, renovations with job valuation greater than \$100,000 also trigger sidewalk certification requirements. In FY22 and FY23, staff found 262 and 66 properties, respectively, that completed renovations greater than \$100,000. Of these 328 properties, 102 properties had either a provisional or final certificate. All renovations that do not have a compliance certificate on file will receive a written notice.

ANALYSIS OF PROJECTS AND PROGRAMS

This section provides analysis of key projects and programs within the sidewalks program in FY22 and FY23 and upcoming activities for FY24.

Project Delivery Challenges

While FY22 and FY23 saw significant increases in contracted sidewalk construction overall, the sidewalk capital program saw less construction activity due to a lack of contracts. This meant that a smaller share of sidewalk construction citywide was addressing specific sidewalk prioritization plan priorities. Previously, there were consistent yearly and bi-yearly sidewalk projects prepared for bidding. However, these projects were stalled in FY22 due to multiple changes in management in Oakland Public Works’ Capital Contracts Division, the division that supports Oakland Public Works and OakDOT in contract processing. There was a new division manager in January 2022, and by August, there was a lack of a manager and staff members in the division. October 2022 saw a newly hired assistant director tasked with refilling the division. There was a hire in early 2023 for a division manager; however, there was again a vacancy by mid-2023, and now a new manager and new staff as of September 2023 (FY24). Throughout this period and with every change in leadership, the typical sidewalk contracts went through multiple reviews and changes to satisfy each new management requests while also waiting in the queue of many other contracts that needed to be delivered throughout the departments. Because of this, no contracts were open for approximately 18 months. After waiting in queue for more than a year, two sidewalk projects were bid in FY24; as of this report writing, neither is in construction yet.

Official Street Tree Sidewalk Damage Backlog Project (Phase 2) – On Hold

The last sidewalks annual report provided the update that Phase 1 of the Official Street Tree Sidewalk Damage Backlog Project was completed, with a concrete shaving contractor mitigating roughly 450 of the 1,400 locations identified as sidewalk damage relating to an official city tree

⁴ Applicable to ordinance

in the backlog of 12 plus years of open service requests. The contractor also identified and cataloged that roughly the remaining 1,150 locations were in need of full concrete replacement. Phase 2 started in September of 2021 (FY22), where OakDOT secured a sidewalk repair contract that included a knowledgeable arborist, as a subcontractor, familiar with the local forestry. This allowed the contract to work smoothly throughout the lifespan of the contract with the prime concrete contractor working hand-in-hand with the arborist on-site at each location to demolish and expose the tree roots, analyze the root conditions, and provide immediate insight, so that repairs can be made soon after. By the end of August 2022 (FY23), the contract's time limit had ended with 40% of the contract completed, concluding with 181 of roughly 1,150 locations repaired. Most of the repairs were made in neighborhoods of North Oakland and East Oakland. Status updates on this project were provided on an online map that was updated weekly. To date, just less than 20% of the remaining backlog of official-street-tree-damaged sidewalk locations have been addressed. The remaining unspent funds were re-allocated toward multiple smaller projects currently waiting to be solicited through the Oakland Public Works (OPW) Capital Contracts Division (CCD), the division that provides contract services for OakDOT and OPW. With staff turnover in CCD for the last 2 years, there have been no opportunities to secure new contractors; therefore, the remaining 900 locations are currently backlogged with OakDOT sidewalk maintenance staff until a new sidewalk contract(s) can begin.

Sidewalk Shaving – On Hold

Overall, even with limited funding available for sidewalk repairs, staff has found that the method of horizontal shaving has great value and provides enormous benefits, and therefore, will continue to pursue those efforts. No horizontal shaving was completed during FY23 due to lack of contract. A bid book was prepared and finalized for a new horizontal shaving project in May 2023; this project was eventually bid in May 2024. Due to the delay in issuing this bid, staff identified an opportunity for a small cooperative contract in FY24. Both the major project and small cooperative contract will be reported on in the FY24 sidewalks annual report.

Projects to Facilitate Sidewalk Replacement in Priority Neighborhoods - On Hold

In FY22, staff developed and implemented several small, neighborhood-based horizontal shaving projects. These projects were located in 4 census tracts that are among the highest priority neighborhoods in Oakland, based on the OakDOT's Geographic Equity Toolbox Map⁵.

The project completed repairs at 2,956 property addresses through horizontal shaving within 9 months. During this period, staff observed that this method of repair compared to the traditional removal and replacement of sidewalk has a faster repair time and is less disruptive to nearby residents that may be impacted by the work. Additionally, the project required the completion of thorough and geospatially recorded work orders for both horizontal shaving construction and full measurement of locations where horizontal shaving was not possible and would require full sidewalk replacement. A second phase of this project would return to these neighborhoods to facilitate full replacement for the rest of the sidewalk damage identified in Phase I. This effort is stalled due to lack of contracts.

Improved Processing and Notification of the Buy-Sell-Repair Ordinance

A major development that stemmed from the last two years are that property owners can now easily file for the sidewalk provisional or final compliance certificates or file for exemption online

⁵ <https://experience.arcgis.com/experience/57b194ffec8c4a7f949ec17682b819a1>

through the City's online permit portal, Accela Citizen Access, and receive the certificate the same day. This streamlines the process for applicants and eliminates the need to physically go to the City's Permit Office.

During this reporting period, staff also worked with the Planning & Building Department's Building Bureau to improve notification to property owners completing renovations and ensure they are made aware of the certification requirement. Implemented in FY23, formal and written documentation are now included in the Planning & Building Department's intake and permitting process that notifies applicants of their requirements for sidewalk certification for permit jobs greater than \$100,000. Previously, no other notification system was in place for Planning & Building permit applicants.

Upcoming Activities

The following are activities anticipated in FY24 and FY25 for the sidewalk program:

Small Contractor Opportunity

With the backlog of sidewalk repairs related to official street trees, there is a need for more sidewalk contracts with multiple different contractors. In addition, staff sees an opportunity to support small local businesses as well. In FY24, OakDOT staff is developing a request for qualifications to seek qualified contractors from certified small, local business enterprises (SLBE) in order to establish a pre-qualified list of small local businesses to perform small sidewalk construction contracts. The expectation is that work performed under this pre-qualified list will help small contractors learn about performing City work as a prime contractor and will help them to grow and expand their businesses. Contractors are expected to gain experience and will hopefully work on larger projects in the future.

Automatic Noticing and Compliance Database for Buy-Sell-Repair Ordinance

Staff have initiated a development request to create a more robust compliance database and automatic noticing workflow using Accela, the City's permit management software. This noticing workflow will trigger the creation of a holding permit for each property where a title transfer is recorded without a valid sidewalk certification and notices could be automatically generated for these properties. Currently this effort is performed manually on a monthly basis by comparing two databases. This development would also consolidate record-keeping for the Buy-Sell-Repair Ordinance and provide a robust database for compliance records.

Enforcement and Penalty for Non-Compliance of Buy-Sell Repair Ordinance

As the process for applying for certifications has been streamlined during the last two years and efforts are underway to develop a more robust enforcement database, in FY24 staff will analyze options for establishing financial penalties for non-compliance. Additionally, staff will be analyzing title companies that have processed transfers without valid compliance certificates and preparing related notification and potential enforcement action, as well as focusing on improving the overall rate of compliance among property owners.

Release of Citywide Sidewalk Survey and Development of Equity-Based Multi-Year Workplan for Sidewalk Construction

In FY24, staff anticipate the completion and release of a robust citywide sidewalk survey inventory, collecting and identifying all sidewalk distresses in the city. This process took two years and was conducted from 2022 to 2023. With this recent data, staff is in the beginning stages of developing a multi-year work plan, prioritizing sidewalk construction in underserved, priority neighborhoods based on the current and anticipate program budget.

Policy Supporting Owners of Official Street Tree Related Sidewalk Repairs

An existing City provision waives permit fees for private property owners performing sidewalk replacement related to official street tree damage. In FY25, OakDOT plans to notify property owners of this option through mailers to property owners reminding them of their responsibility to address sidewalk damage and advising them of the option to perform replacement with a permit fee waiver if damage is caused by an official tree.

Updating Low Income Property Owner Repair Program

In light of expected increases in facilitated sidewalk replacements, particularly in Oakland's priority neighborhoods, staff anticipate preparing a resolution for City Council approval that would increase the program allocation for the low-income property owner repair program.


In addition to these upcoming activities, for FY24 and FY25, staff will continue to move forward with the following ongoing efforts:

- Review and inspect new sidewalk repair requests and send NTRs to property owners or refer repair requests to OakDOT maintenance
- Work with OPW Tree Services Division to identify ownership of trees within sidewalk projects and service requests
- Support OakDOT's paving projects and 5-Year Paving Plan with sidewalk inspections, notice of intent letters, and NTRs in the vicinity of these projects and provide frontline support to property and homeowners
- Identify ways to improve the process of obtaining a sidewalk permit and/or sidewalk certification
- Improve the organization and reporting of sidewalk assets

PUBLIC INFORMATION

Information and reports related to the sidewalks program continually to be maintained and updated on the City's website.⁶ These include frequently asked questions regarding sidewalk damage, obtaining sidewalk permits, obtaining sidewalk certification, sidewalk standard detail design plan, and hiring a contractor.

Respectfully submitted,


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⁶ "City of Oakland | Sidewalks" <http://www.oaklandca.gov/topics/sidewalks>