

**ADVISORY REGARDING THE CITY OF OAKLAND  
POINT OF SALE SIDEWALK REPAIR ORDINANCE**

*This Advisory is effective as of January 29, 2021 and is based upon information provided by the City of Oakland.*

Effective July 9, 2019, the City of Oakland requires sidewalk repairs of known, unsafe conditions to be completed prior to the Close of Escrow on the sale of real property (with some exceptions, such as probate sales) which abuts city sidewalks. “Sidewalk” as defined in the Ordinance as including, but is not limited to, sidewalks, walkways, driveways, curbs, and gutters and other areas. These repairs are also required whenever applying for any city approval for construction, remodeling, modification or alteration with estimated costs exceeding \$100,000.

The Oakland Sidewalk Repair Ordinance authorizes property owners to hire a contractor holding specified “A,” “B” or “C-8” licenses and a current valid Oakland Business License to complete the repairs; the contractor would then submit a self-certification of sidewalk compliance under penalty of perjury to the City of Oakland. The City has a search function on their website at <https://www.oaklandca.gov/> to check on whether or not a licensed contractor has the requisite city business license. At some unknown point in time, City of Oakland construction inspectors would then perform random inspections to make certain that all necessary work has been completed.

The Ordinance went into immediate effect on July 9, 2019. **The City has recently issued its seventh set of guidelines** and clarified that **a property owner can obtain a Provisional Sidewalk Compliance Certificate (“PSCC”) from the Oakland Department of Transportation (which requires a filing and processing fee). This process would enable Buyers and Sellers to close escrow and delay making the necessary sidewalk repairs but the repairs would still need to be completed within 90 days of the issuance of the PSCC.**

The attached material from the City of Oakland answers many of the questions that had not been adequately addressed when the Ordinance first went into effect including, but not limited to, that Buyers and Sellers can negotiate who is be responsible for compliance and **the procedure to be used when there are no sidewalks**. The Ordinance is applicable to Common Interest Developments (where there is an HOA) and the HOA is responsible for compliance but only if the sidewalks are designated in the governing documents as being in the “common area” for the HOA. If the HOA is not responsible for the sidewalks, then the individual owner selling the single unit must comply with the Sidewalk Repair Ordinance.

Real Estate Brokers and Agents are not qualified to determine the need for, or the cost of, sidewalk repairs and/or provide legal advice or interpretations of this Ordinance and/or compliance requirements for any given Property. Sellers and Buyers are urged to carefully review all available information provided by the City of Oakland on this topic which may be accessed online at: <https://www.oaklandca.gov/resources/city-sidewalk-policies>.

*Sellers and Buyers are also advised to consult with their own qualified California real estate attorney regarding this Sidewalk Repair Ordinance, its compliance requirements and/or questions regarding how to proceed with a purchase and sale transaction that may be impacted by this Ordinance.*

**This Advisory may be signed in counterpart. The undersigned acknowledge receipt of this 1 page Advisory and the attached 4-page FAQ created by the City of Oakland dated January 29, 2021.**

**Seller:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Seller:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Date:** \_\_\_\_\_



# Frequently Asked Questions about Sidewalk Certification for Property Sellers, Buyers, and Renovators.

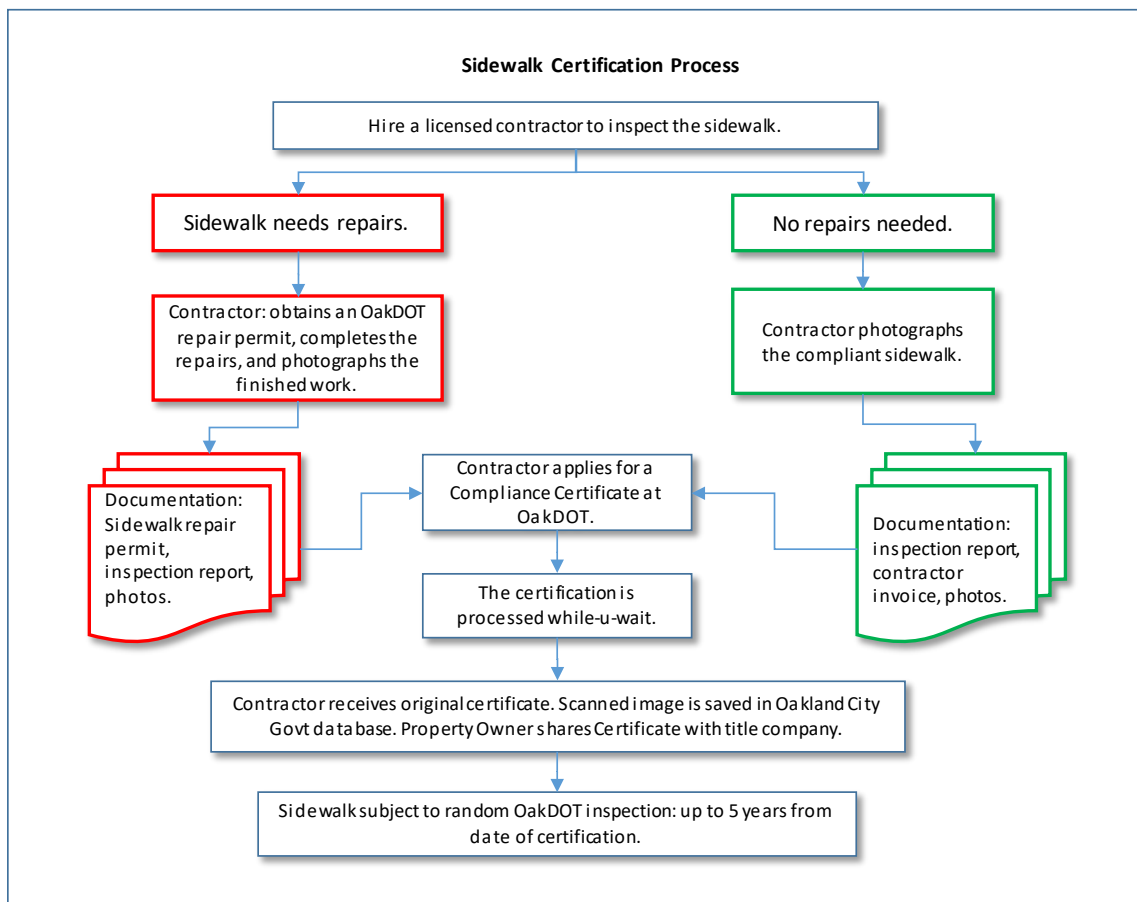
Effective July 9, 2019: Before a title transfer may be completed, property owners must complete an inspection, and any necessary repairs and upgrades, to bring abutting sidewalks into compliance. (Oakland Municipal Code Chapter 12 Section 12.04.380)

## Q. Does this apply to me?

This City Council ordinance applies to property owners who are selling, buying, or renovating [project value > \$100,000] property in Oakland. Some exceptions include property transfers during the administration of a decedent’s estate, transfers between co-owners, transfers to trusts, transfers to a spouse or registered domestic partner (including in the event of marriage dissolution or separation), or transfers because of a foreclosure or similar process. Properties with no improved sidewalk are also excluded.

## Q. What is the process to certify my sidewalk?

All property owners must apply for a Sidewalk Certificate of Compliance at the OakDOT Permit Office, 250 Frank H Ogawa Plaza, 4th floor; (510) 238-3199; prior to the first close of escrow on the property, or concurrent with the permitting process for a \$100,000+ renovation. The compliance process will depend on the condition of your sidewalk [see below].





**If your sidewalk requires repair**, you will need to hire a licensed contractor permitted by the City to complete the repairs. After repairs are completed, the licensed contractor (or professional engineer or licensed architect) self-certifies that the work has been performed per code and completes a Sidewalk Certificate of Compliance through the DOT Permit Counter. Note: You do not need to wait for a City inspection to receive your Sidewalk Certificate of Compliance.

**If your sidewalk does not require repair**, you will need a licensed contractor (or professional engineer or licensed architect) to inspect the sidewalk and to apply for a Sidewalk Certificate of Compliance at the OakDOT Permit Counter. Again, you do not need to wait for a City inspection to receive your Certificate of Compliance.

**If your property does not have a sidewalk**, you are not subject to the ordinance, and you are not required to obtain a Sidewalk Compliance Certificate. If you have questions or concerns, please contact the Permit Office at (510) 238-3891.

#### **Q. How do I know if my sidewalk requires repair?**

Any crack, depression, or vertical offset of more than  $\frac{1}{4}$  inch is considered a defect, per Americans with Disabilities Act (ADA) guidelines.

#### **Q. Which documents will I need to certify my sidewalk?**

Any documents that support the representation made in your application including the inspection report, a detailed contractor's invoice, and photographs of the sidewalk (before and after, as appropriate). Supporting documents will be scanned and added to the certification record in OakDOT's permit database.

#### **Q. How much will it cost to obtain a compliance certificate?**

Applicants pay the standard OakDOT Permit Intake Fee + a 14.75% Records and Technology Fee. As of July 19, 2019, the Intake Fee + 14.75% amounted to approximately \$80. Sidewalk repair permits carry a separate fee. Consult the [Oakland Master Fee Schedule](#) for up-to-date fee details.

#### **Q. What if I cannot complete the repair in time?**

If you cannot obtain a Compliance Certificate for your sidewalk before title transfer, you may apply for a Provisional Sidewalk Compliance Certificate which will allow a 90-day extension from the issue date for sidewalk repair work to be completed. The Provisional Sidewalk Compliance Certificate must be issued before title transfer.

During the 90-day extension period, the responsible party, as negotiated between the buyer and seller, shall complete the requirements to obtain a Sidewalk Compliance Certificate by repairing or replacing the sidewalk as necessary. Note that once the title transfer is complete, the new property owner is solely responsible for obtaining the Sidewalk Compliance Certificate.

Applicants applying for a Provisional Sidewalk Compliance Certificate will pay the standard OakDOT Permit Intake Fee + a 14.75% Records and Technology Fee. As of July 19, 2019, the Intake Fee + 14.75% amounted to approximately \$80 (consult the [Oakland Master Fee Schedule](#) [MFS] for up-to-



date fee details). This fee will then be applied towards the final Compliance Certificate once compliance is achieved before the end of the 90-day period.

Failure to comply may result in an OakDOT inspection, and further civil penalties may ensue, up to and including a lien on the subject property.

### **Q. Which types of contractors can certify sidewalk repairs?**

A self-certification inspection shall be conducted by a contractor holding specified “A,” “B,” “C-8” or “D-6” license and a current valid Oakland Business License.

In addition to the above licenses, if concurrent permitted work is occurring, the contractor permitted to work at the address may inspect and certify the sidewalk so long as their contractor license includes concrete or related construction (e.g. “C-42” or “C-57”).

### **Q. How long is the Compliance Certificate effective?**

A Compliance Certificate will be effective for **5 years** after the date of issuance.

You do not need to apply for a new Sidewalk Compliance Certificate if your property has a valid and unexpired Sidewalk Compliance Certificate.

To check if your property has a valid and unexpired Compliance Certificate, call the OakDOT Permit Counter at 510-238-3199.

### **Q. What if my property is part of a Homeowners Association?**

A Home Owners Association (HOA) or Community Association is a nonprofit corporation or unincorporated association that manages or governs a joint owner development and operates in accordance with governing documents, whether the corporation or association is formally designated or commonly referred to as an HOA or community association. Examples include condominiums, townhomes, planned unit developments, stock cooperatives, and other projects where separately owned individual units or parcels exist in conjunction with a common area.

HOAs or Community Associations are responsible for maintaining, repairing, and certifying sidewalks when sidewalks are a “common element” or a “common area” in governing documents such as the Covenants, Conditions and Restrictions (CC&Rs). The individual unit owners--as a group--are responsible for maintaining repairing, and certifying sidewalks if the HOA or Community Association does not cover sidewalks as a “common element” or a “common area” in governing documents such as the Covenants, Conditions and Restrictions (CC&Rs), or the joint owner development is not managed or governed by a HOA or Community Association.

Each HOA or Community Association should bring all sidewalks adjacent to the development into compliance. The HOA or Community Association will receive a Compliance Certificate once all sidewalks within their maintenance responsibility comply through the regular compliance process. Compliance Certificates are valid for 5 years.



If you are buying, selling, or renovating a property in an HOA or Community Association, contact your HOA or Community Association to request a copy of the Compliance Certificate to use during title transfer.

If your HOA or Community Association does not yet have a Sidewalk Compliance Certificate, then a no-fee Compliance Certificate can be issued to you as the property owner from the OakDOT Permit Counter. The City may then inspect the sidewalks and issue Notices to Repair for damaged sidewalks to the HOA or Community Association.

**Q. What if my sidewalk is damaged by a City tree?**

If you believe sidewalk damage is caused by a City of Oakland tree, the City must first verify that the tree is an official City tree. If the tree is not an official City tree, repair responsibility rests with the property owner. If the tree is an official City tree, the City must determine whether sidewalk damage at the address is caused exclusively by a City tree, partially, or not at all. Damage caused by City crews. The property owner must still arrange for inspection and repairs as needed for the remainder of the sidewalk. A Sidewalk Certificate of Compliance can be issued even if verified damage due to city trees has not been repaired by the City.

**Q. Is concrete shaving or horizontal sawcutting allowed and do I need a permit?**

This repair technique involves special equipment that “shaves” concrete panels to eliminate minor sidewalk uplifts without grinding or damaging the concrete slab. No permit is required for repairs under 25 square feet.