

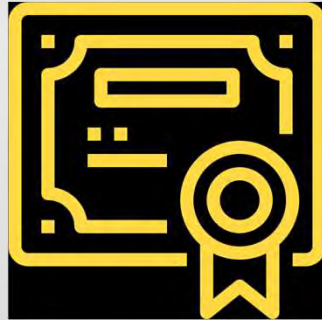
The Government's Approach to Safe Sidewalks (Sidewalk Liability – Who is Responsible?)

Presented by: Carl Valdez,
Retired Public Works Superintendent
Safe Sidewalk Advocate
Joanne Tran, Attorney
Stream Kim Law

Precision Concrete Cutting Northern California



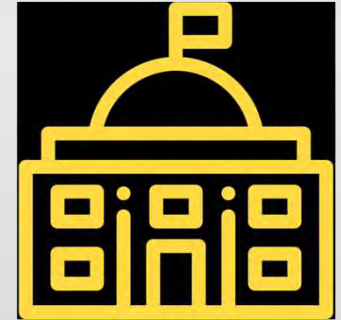
Global Leader
in Sidewalk Asset
Management.



9 Patents awarded by
the U.S. Patent and
Trademark Office.



Northern California
Franchise is the Largest
of 60 Franchises
throughout North
America and Australia
specializing in Sidewalk
Inspection and Repair.



PCC Northern California
has serviced over 100
cities and thousands of
HOA's and Schools. In
operation for over 20
years and growing.

Carl Valdez



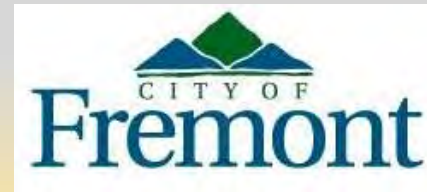
Retired Public Works Superintendent



Public Works career spanning 5 decades with 4 Public Agencies



22 years Capital Improvement/Engineering Technician and Designer



Government Sources



Early Government Involvement



National Highway Traffic Safety
Administration



Access Magazine



FHWA – Federal Highway Administration



National Complete Streets Coalition



Governors Highway Safety Association

Government Resources (cont.)



Vision Zero

CA Streets and Highway Code



League of CA Cities



Americans with Disabilities Act



United States Access Board



Risk Managers Associations



Cal Trans

Why Government involvement?



“At one point in the day, everyone is a pedestrian” – NHTSA

Why Government involvement?



Why Government involvement?



Sidewalks begin to Modernize



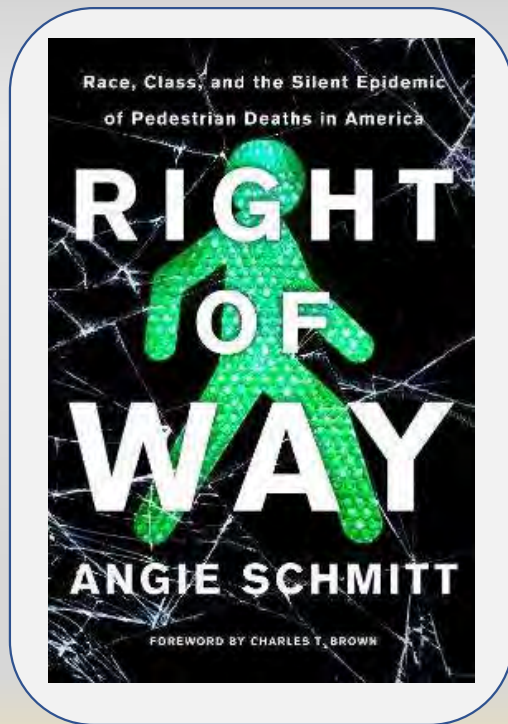
Sidewalks begin to Modernize



*"Laying and maintaining a network of walkways, or sidewalks, for pedestrians to move about is one of the first and most elementary functions of a municipality. Providing and upkeeping a network of walkways for pedestrians to get around town is a quintessential, not to mention ages old, **government***

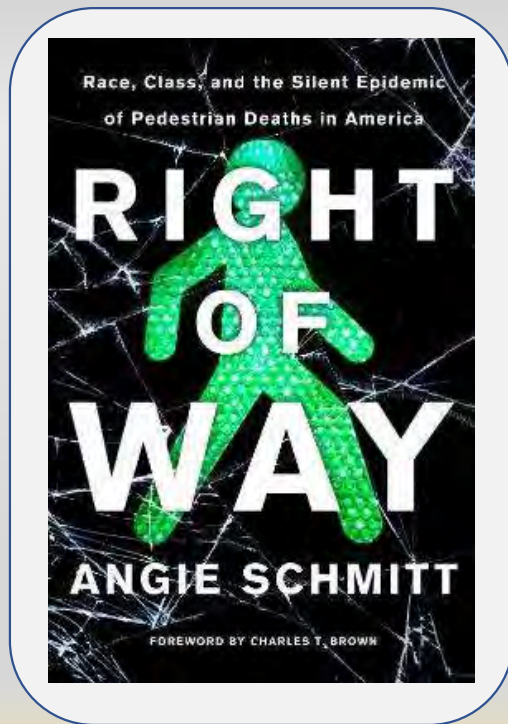
service." - U.S. Solicitor General Theodore B. Olson, White House Attorney

The Move to the Suburbs



In the 1910's and 1920's, there was an intense political struggle over the role of the car in American city life. That struggle came down to a fight over who would control the streets: drivers or pedestrians.

The Move to the Suburbs



Bike and pedestrian crashes:

1 in 5 traffic deaths

*cost = \$400 per American per year
(2010 data)*



Bicycle and Pedestrian Funding:

*only about 1.5% of federal
transportation funding, or \$2.65 per
American per year.*

The Move to the Suburbs



Director of the National Complete Streets Coalition stated “we have the solutions. We actually have the funding; we’re just not spending it well. We just don’t have the political will”.

The Modern Sidewalk

“We must re-imagine sidewalks as spaces that can accommodate both enjoyable and disruptive activities.”



Anastasia Loukaitou-Sideris
and Renia Ehrenfeucht -
“Vibrant Sidewalks in the
United States”, Access
magazine no. 36, Spring
2010

The Modern Sidewalk

Sidewalks have become:

- . De-emphasized*
- . Gentrified*
- . Privatized*
- . Contained*

Anastasia Loukaitou-Sideris
and Renia Ehrenfeucht -
“Vibrant Sidewalks in the
United States”, Access
magazine no. 36, Spring



What We Want in a Sidewalk

Five Basic Purposes of Sidewalks



Movement



Encounter



Confrontation



Survival



Beauty

Pedestrian Safety

Pedestrian Fatalities

6,516

PEDESTRIANS KILLED IN TRAFFIC CRASHES
IN 2020

[Source](#)

Pedestrian Fatalities

6,205

PEDESTRIANS KILLED IN TRAFFIC CRASHES
IN 2019

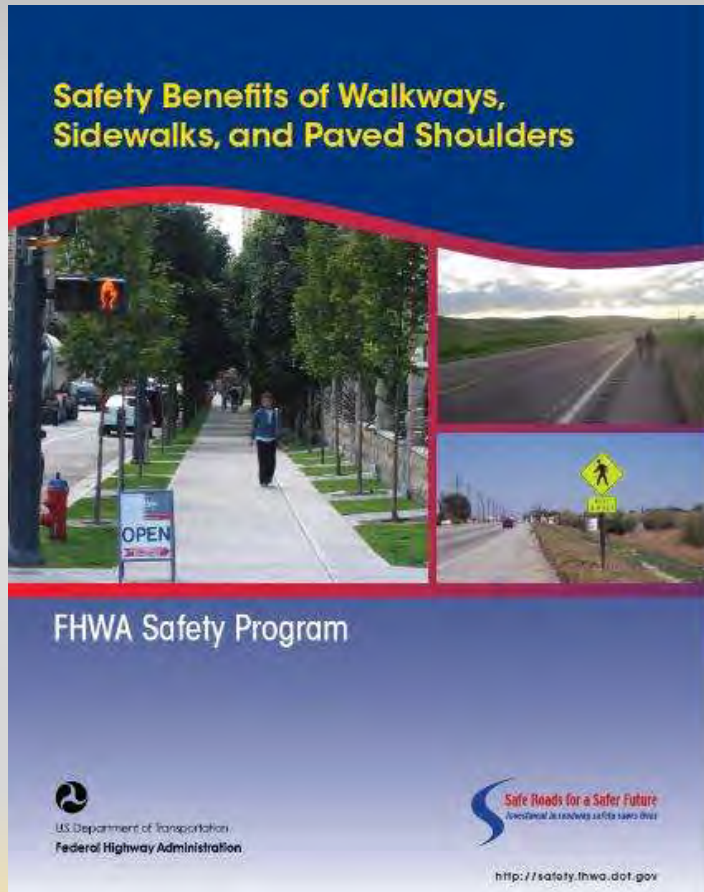
[Source](#)

GHSA projects at least 7,508 pedestrians were killed in traffic crashes in 2022, continuing the upward trend in recent years. This would be the most pedestrian deaths since 1981.



7508

Pedestrian Safety

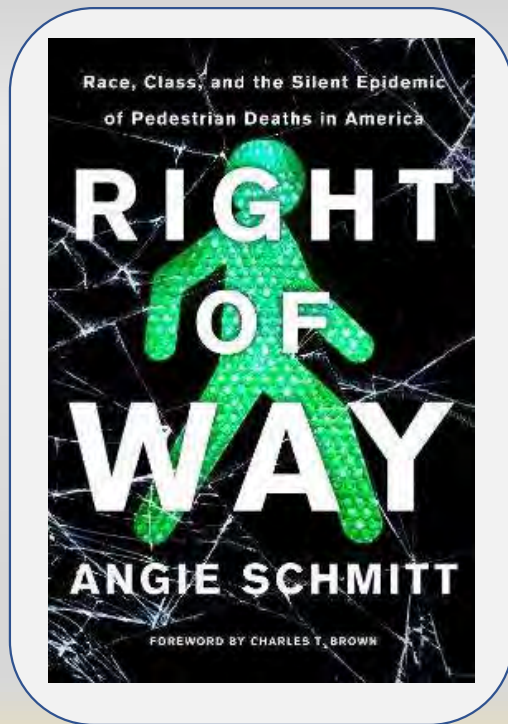


“Accessible sidewalks or pathways should be provided and maintained along both sides of streets and highways in urban areas, particularly near school zones and transit locations, and where there is frequent pedestrian activity.”

Pedestrian Safety



Safety, Funding, Maintenance



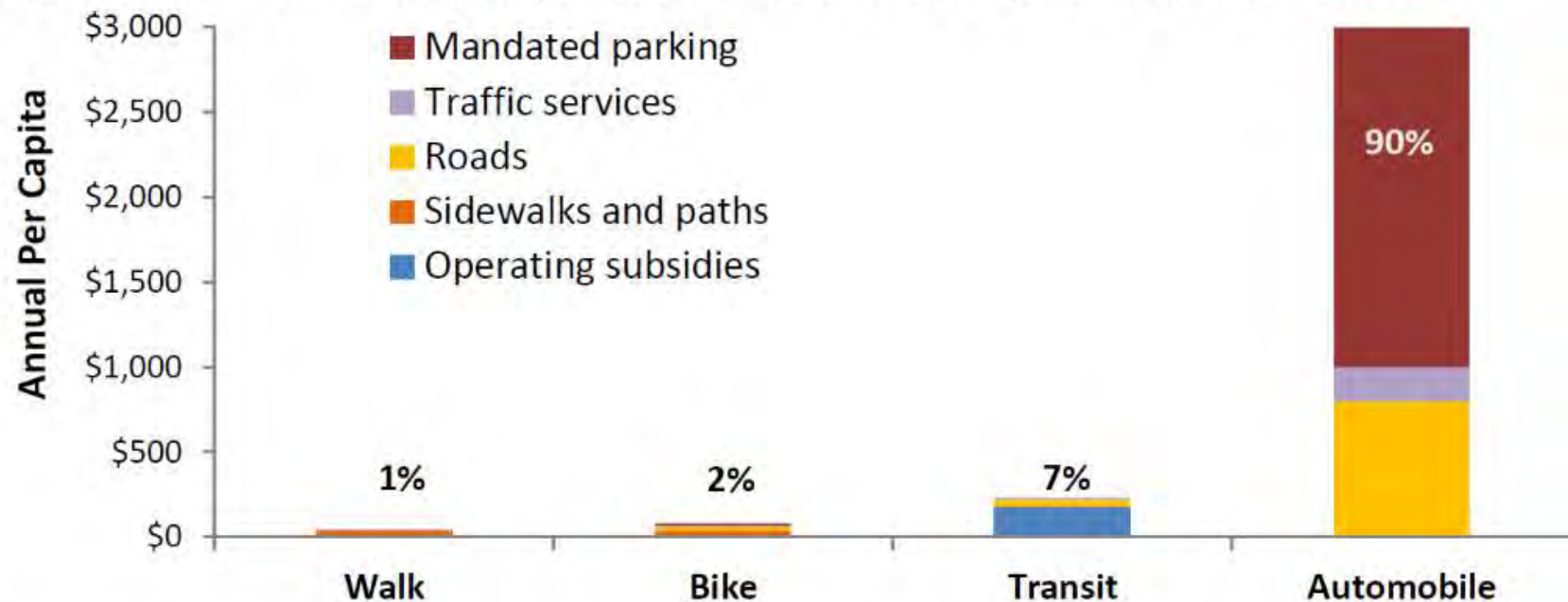
Safety, Funding, Maintenance



Safety, Funding, Maintenance

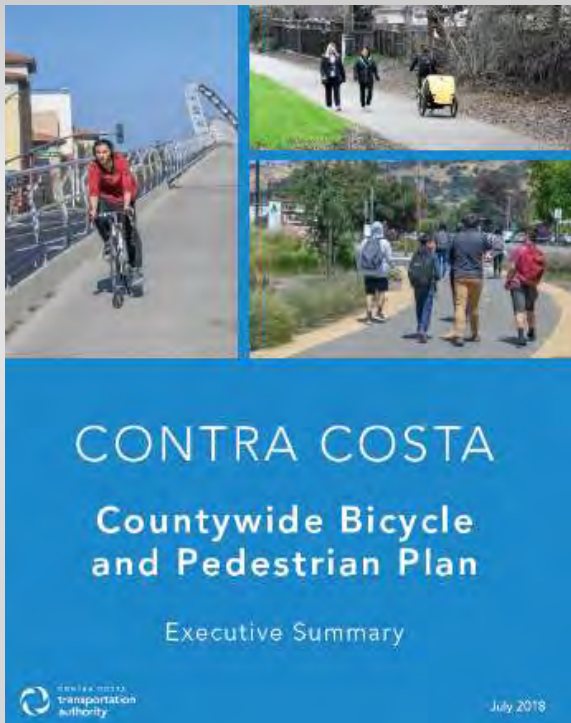
Figure 1

Estimated Transportation Infrastructure Spending (Litman 2023)



Currently only about 1% of total transportation infrastructure spending is devoted to walking facilities.

Safety, Funding, Maintenance



Safety, Funding, Maintenance



2008
the Great Recession

Safety, Funding, Maintenance

***WHO
IS RESPONSIBLE
FOR
MAINTENANCE OF
SIDEWALKS?***



CA Streets and Highway Code

5610. The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, 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...

CA Streets and Highway Code

Wait!!!

WHAT????

CA Streets and Highway Code



But It's Your Sidewalk! Sidewalk Repair and Liability

Thursday, May 8, 2014 General Session; 2:15 – 4:15 p.m.

Gerald C. Hicks, Supervising Deputy City Attorney, Sacramento

CA Streets and Highway Code

1929 – Great Depression

1935 – just a few years after the Great Depression, California Governor Frank Merriam in a speech,



CA Streets and Highway Code

1935 – just a few years after the Great Depression, California Governor Frank Merriam in a speech,



“government itself cannot indefinitely assume the responsibility for meeting all the demands of this depression and this emergency”

CA Streets and Highway Code

1935 – just a few years after
the Great Depression,
California Governor Frank
Merriam in a speech,



*“This we must do without
imposing intolerable taxes
upon the people and without
undertaking obligations not
absolutely essential to the
public service”*

CA Streets and Highway Code



Property Owners are responsible to Maintain Fronting Sidewalk (Sect. 5610 – is the process)



City Still has an obligation to make the hazard safe (ADA not into effect for almost 50 years)



Ordinance is only as strong as its implementation and needs consistent enforcement



Property Owner Responsible for the Cost to Repair – not necessarily liability (without an ordinance)



Political hot potato, residents don't fully understand

CA Streets and Highway Code



Arash Arjang
YARRA LAW GROUP

ADVOCATE
November 2017 Issue

Issues to consider when litigating a sidewalk case

YOU MUST DEAL WITH MANY ISSUES IN TAKING ON A SIDEWALK FALL CASE,
BUT FIRST UP IS BEATING THE INEVITABLE SUMMARY JUDGMENT MOTION

CA Streets and Highway Code

“... although a city can add liability to a property owner, it cannot legislate away its own liability by an ordinance.”

Examples of City Ordinances

Example 1:

OWNERS OF FRONTAGE RESPONSIBLE FOR REPAIR.

- It shall be the duty of the Property Owner(s) of lots or portions of lots adjacent to any portion of a public street, avenue, alley, lane, court or place to maintain the Sidewalks and sidewalk area, including any parking strip or Driveway Approach, in a safe nondangerous condition. The Property Owner has the primary and exclusive duty to fund and perform such repair and maintenance, whether or not the City has notified the property owner of the need for such repairs or maintenance or has performed similar repairs or maintenance in the past.

LIABILITY FOR UNSAFE CONDITIONS AND INJURY TO PUBLIC.

- The Property Owner required by [Section XYZ](#) to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any Property Owner to maintain the sidewalk area in a nondangerous condition as required by [Section XYZ](#), any person suffers injury or damage to person or property, the Property Owner shall be liable to such person for the resulting damages or injury.

Examples of City Ordinances

Example 2:

Maintenance of sidewalks.

(a) As used in this section, “sidewalk area” includes the sidewalk, any park or parking strip maintained in the area between the property line and the street line, and the curbing, gutter, driveway, bulkheads, retaining walls or other works for the protection of any sidewalk or of any park or parking strip.

(b) The owner of a lot fronting on or adjacent to a public street must maintain any sidewalk area in good repair and condition. This duty includes but is not limited to maintenance and repair of surfaces including performance of grinding, removal and replacement of sidewalks, and repair and maintenance of curb and gutters, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk area in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of the sidewalk area.

Examples of City Ordinances

Example 2 (cont.):

Maintenance of sidewalks.

- (c) An owner required by this section to maintain a sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition.
- (d) If, as a result an owner's failure to maintain a sidewalk area in a safe and nondangerous condition, any person suffers injury or damage to person or property, the owner shall be liable to the person for the resulting damages or injury.
- (e) The city of ABC shall have a cause of action for indemnity against a property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from injury to persons or property as a legal result of the owner's failure to maintain a sidewalk area in accordance with this section.
- (f) Failure of the owner to maintain a sidewalk area as set forth in this section shall constitute a public nuisance.

Examples of City Ordinances

Example 3:

Owner's duty to maintain and repair sidewalk areas.

- A. The owner of a lot, lots or portions of a lot adjacent to or fronting on any portion of a sidewalk area shall maintain the sidewalk area in a safe and nondangerous condition, and shall repair such sidewalk area and pay the costs and expenses therefor, including, but not limited to, charges for the City's costs of inspection and administration whenever the City undertakes sidewalk maintenance and repair pursuant to this chapter, and including the costs of collection of assessments for the costs of maintenance and repair or the handling of any lien placed on the property due to failure of the owner to promptly pay such assessments.
- B. The owner required to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a safe and nondangerous condition, any person suffers injury to or damage to person or property, the owner shall be liable to such person for the resulting damage or injury, and shall hold harmless, indemnify and defend the City against any liability for such damage or injury.

CA Streets and Highway Code



“... state law assumes the City has a sidewalk inspection program in place, whether or not the City actually inspects its sidewalks. In other words, if the City would have found the dangerous sidewalk condition with a reasonable inspection program in place, not having an inspection program will not insulate the City from liability.”

– San Diego Grand Jury, 2023

Americans with Disabilities Act



Americans with Disabilities Act



- **BARDEN v. CITY OF SACRAMENTO Landmark Case Establishes Nationwide Standard for Public Sidewalks**



- **Title II thus applies to the maintenance of public sidewalks, which is the normal function of a municipal entity**



- ***** 2015 L.A. agrees to spend \$1.3 billion to fix sidewalks in ADA case**

Americans with Disabilities Act

THE FIRST ACCESS RAMPS



1940-50's Illinois coach built ramps for disabled soldiers




Michigan - a WWII veteran, convinced City Council to make ramps





Ed Roberts, Berkeley, Late 1960's – central to the movement



Americans with Disabilities Act

 1960's and 70's, activists pouring concrete in the middle of the night to make ramps

 1980 Denver, wheelchairs protested by blocking traffic

 In 1990, while the ADA was signed being signed, disabled demonstrators left their wheelchairs and crawled up the steps of the Capitol building to witness



Americans with Disabilities Act



1976 Los Angeles took over responsibility of the sidewalks, but did not allocate funding



Over next 25 years more than 3,800 ADA sidewalk request



In 2015 LA agreed to pay \$1.4 Billion in ADA lawsuit



In 2017 alone - paid out more than \$20 million



Trip and Fall settlement for \$3 Million in 2018

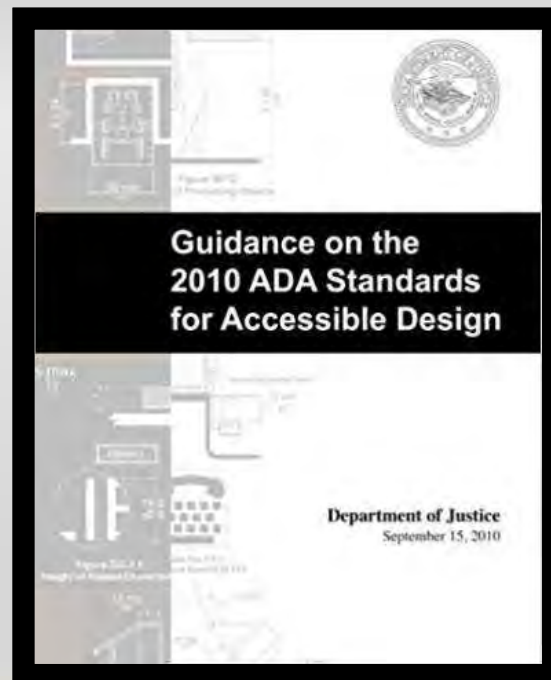


City trying to catch up, but takes time

Los Angeles Times



Americans with Disabilities Act



Changes in Level

Excerpts from Department of Justice 2010 Standards:

303.2 Vertical. Changes in level of 1/4 inch (6.4 mm) high maximum shall be permitted to be Vertical.

303.3 Beveled. Changes in level between 1/4 inch (6.4 mm) high minimum and 1/2 inch (13 mm) high maximum shall be beveled with a slope not steeper than 1:2.

303.4 Ramps. Changes in level greater than 1/2 inch (13 mm) high shall be ramped, and shall Comply with 405 or 406.

A change in level of 1/2 inch (13 mm) is permitted to be 1/4 inch (6.4 mm) vertical plus 1/4 inch (6.4 mm) beveled. However, in no case may the combined change in level exceed 1/2 inch (13 mm). Changes in level exceeding 1/2 inch (13 mm) must comply with 405 (Ramps) Or 406 (Curb Ramps).

405.2 Ramp Slope. Ramp runs shall have a running slope not steeper than 1:12. In existing sites, building and facilities, ramps shall be permitted to have running slopes steeper than 1:12 Complying with Table 405.2 where such slopes are necessary due to space limitations.

TECHNICAL

CHAPTER 4: ACCESSIBLE ROUTES

Table 405.2 Maximum Ramp Slope and Rise for Existing Sites, Buildings, and Facilities

Slope ¹	Maximum Rise
Steeper than 1:10 but not steeper than 1:8	3 inches (75 mm)
Steeper than 1:12 but not steeper than 1:10	6 inches (150 mm)

1. A slope steeper than 1:8 is prohibited.

Maintenance Responsibilities



What day-to-day maintenance is a public agency responsible for under the ADA?

As part of maintenance operations, **public agencies'** standards and practices **must ensure that the day-to-day operations keep the path of travel** on pedestrian facilities open and **usable for persons with disabilities**, throughout the year....

Maintenance Responsibilities



...lawsuit against the City of Portland alleging that the City had violated their rights under ADA by failing to maintain City sidewalks clear of debris and tent encampments. The City and Plaintiffs' reached a settlement that requires the City prioritizes the removal of campsites obstructing sidewalks.

Asset Management



Asset management is realizing the value and the process of maintaining assets in the most cost-effective manner

Asset Management

EXAMPLES OF CITY ASSETS



Vehicles/equipment



Facilities/buildings



Parks/grounds



Utilities



Trees



STAFF/RESOURCES



TRAFFIC SIGNALS



STREET LIGHTS

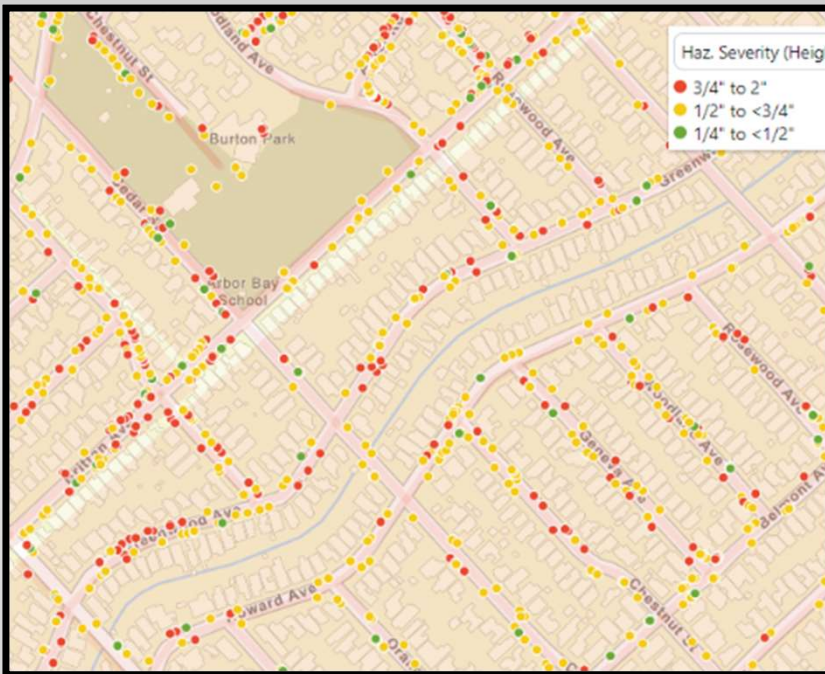


TECHNOLOGY



ROADS

Sidewalks Assessments – Why?










➤ Don't forget curb, gutter and ADA Ramps

- Confirm City Sidewalk Locations
- Determine Priorities, Schedule/Plan/Budget
- Virtual Audit, ideal for Risk Management
- Organize Ongoing Sidewalk Maintenance & Completed Repairs
- Ensure data is GIS compatible

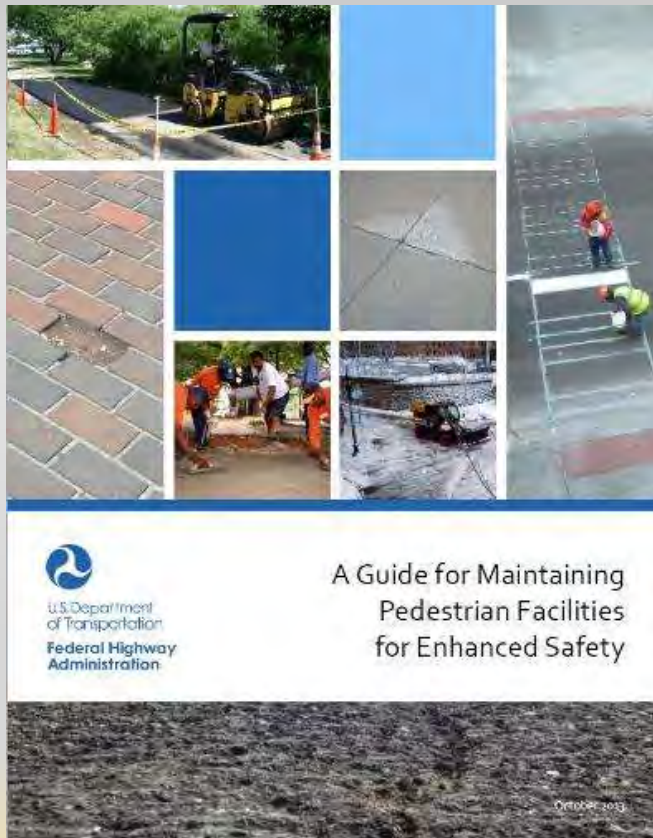
Sidewalk Assessments

TIPS FOR A SUCCESSFUL PROGRAM

-  Have an inspection program in place
-  Inspect Zones or specific areas of the City
-  Develop a schedule to complete an entire City
-  Inspect your Downtown and high pedestrian traffic areas annually
-  Develop an action plan
-  Have a plan in place to repair locations identified during inspection
-  Leverage technology and use GIS to manage Data



Methods of Repair



U.S. Department of Transportation
Federal Highway Administration

“A Guide for Maintaining Pedestrian Facilities for Enhanced Safety”

https://safety.fhwa.dot.gov/ped_bike/tools_solve/fhwasa13037/fhwasa13037.pdf

Methods of Repair



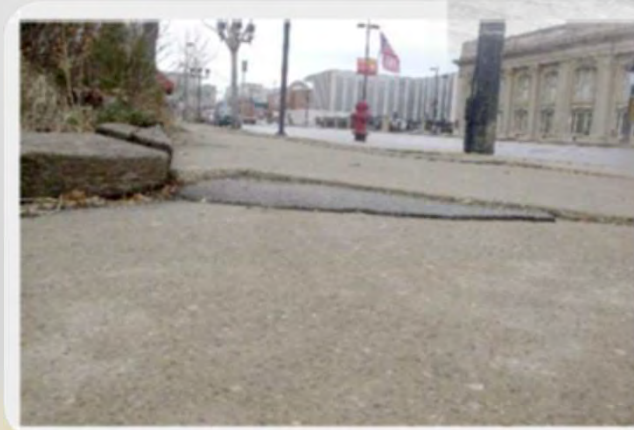
Methods of Repair



Asphalt Patch



Ramping up to the higher panel using asphalt filler



Methods of Repair



Concrete Grinding

Pounding Steel



Carbide Rods or Bits

Rotating Drum



A rotating drum pulverizes surface
with downward pressure.
i.e. Scraping of the Surface

Methods of Repair



Remove and Replace



Break up the concrete



Remove Debris



Form



Re-pour concrete



YOU ARE STILL DISTURBING
THE TREE

Methods of Repair

Concrete Shaving/Cutting



Removes the liability



Fast and Efficient, cost effective



No Sidewalk Closures



Aesthetically pleasing



Environmentally Friendly



No heavy machinery



ADA Compliant



Trip and Fall Liability



Sidewalk Trip and Fall Claims - Approx. 20% of Total Claims for Cities and Counties



Average Claim payout is now up to \$60,000 (not including Administration/Staff time)



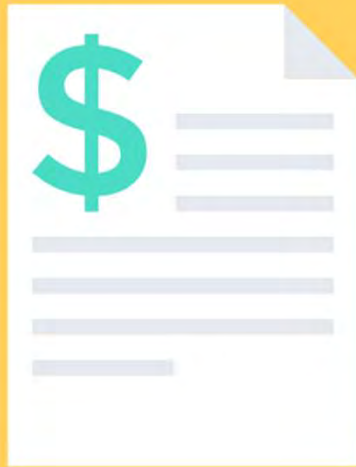
Cities and Counties seen as deep pockets.



ADA Compliance Claims much more expensive and difficult to defend (in the \$Millions!)



Streets and Highway Code 5610 was not written with ADA in mind



Trip and Fall Liability



TIPS:

- Take good photos
- Measurements – use a ruler
- Interview any witnesses
- Write a clear report
- Monitor Areas with prior history
- Have a good records keeping system
- Cooperate with the City's Defense Attorney

Trip and Fall Liability



TIPS:

- Take good photos
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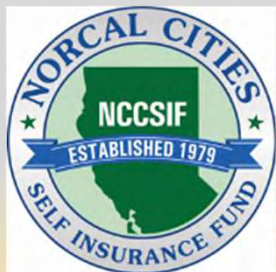
Trip and Fall Liability

The Grand Jury finds that the City has underfunded sidewalk repairs, leading to growing payments for trip-and-fall injuries ... The Grand Jury recommends the City take actions to better assess the quality of sidewalks and to proactively remediate damaged sidewalks to reduce the chance of trip-and-fall injuries.

2023/24 City of San Diego Grand Jury Report



Partnerships



Other Funding Alternatives



OAKLAND MUNICIPAL CODE
Section 12.04.380

The property owner shall be responsible for inspecting sidewalks and curb ramps, obtaining all required permits, performing all necessary sidewalk and curb ramp repair or replacement ... the entire sidewalk when one (1) or more of the following events occurs: **Title Transfer.**

Maximize Transportation Funding



“... all transportation projects funded or overseen by Caltrans will provide comfortable, convenient, and connected complete streets facilities for people walking...”

California Department of Transportation

Director's Policy Number: DP-37

Effective Date: December 7, 2021

Supersedes: DD-64-R2 (10/16/2014)

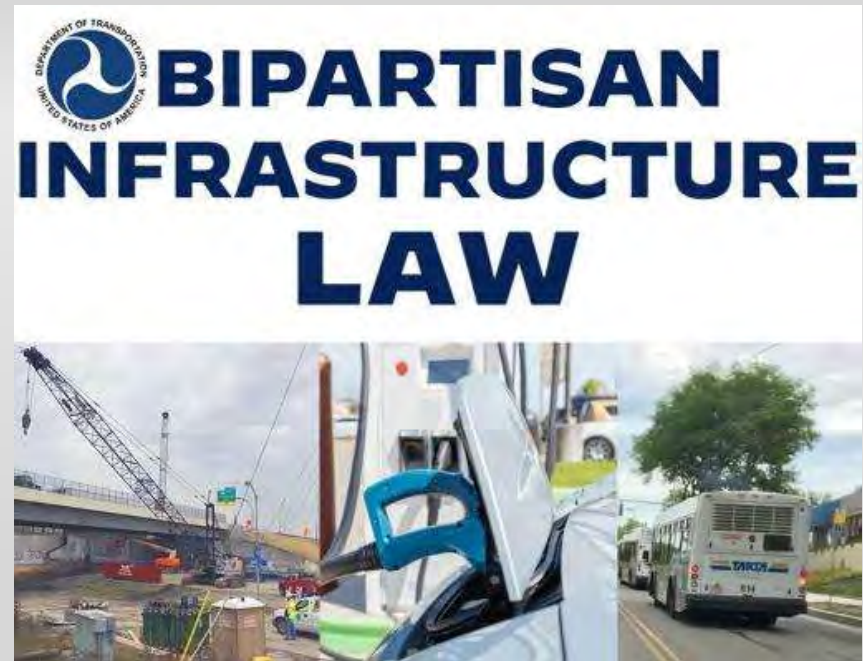
Responsible Programs: Finance
Maintenance & Operations
Planning and Modal Programs
Project Delivery
Safety Programs
Sustainability

Title Complete Streets

Policy

The California Department of Transportation (Caltrans) recognizes that walking, biking, transit, and passenger rail are integral to our vision of delivering a brighter future for all through a world-class transportation network. Additionally, Caltrans recognizes that streets are not only used

Maximize Transportation Funding



We've Come A Long Way



But We've Got a Way to Go



Questions???



www.pccnorcal.com
cvaldez@pccnorcal.com

650-418-4915