

2015 NOV -2 PM 3:57

Sec. 14-32.2 Surface maintenance.

- (a) Subject to the availability of appropriations, the department of facility maintenance may maintain by either remedial patching, resurfacing, or paving those portions of private, nondedicated and nonsurrendered streets and roads which have been determined by the chief engineer of the department of facility maintenance, with the approval of the director of the department of transportation services and the director of the department of planning and permitting, to meet the following criteria:
- (1) The street or road has not been dedicated or surrendered to the city or any other governmental entity, and is not otherwise owned by the city or any other governmental entity;
 - (2) The street or road is not maintained by any governmental entity other than the city pursuant to this article;
 - (3) The street or road is open to, serves, and benefits the general public;
 - (4) The street or road is not signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed or operated to exclude access by the general public, in whole or in part, which may be through such means as signs indicating that the street or road is a "private" street or road, or any restrictions on parking which are not applicable to all persons except as otherwise provided by law;
 - (5) The street or road directly serves: (A) six or more parcels and at least six of the parcels served are owned by separate individuals or entities; (B) six or more residential structures where at least six of the structures served are owned by separate individuals or entities; or (C) a parcel of land which has one or more condominium buildings or apartment buildings which contain six or more condominium or apartment units;
 - (6) The street or road is not part of a cluster housing development, planned development, or similar type of development;
 - (7) Maintenance of the street or road by the city will be practicable and safe;
 - (8) The street or road is not a private street or road within the meaning of Chapter 22 or the rules and regulations adopted pursuant thereto;
 - (9) The developer or subdivider of such street or road has not agreed to maintain such street or road in perpetuity;
 - (10) An association of apartment owners or homeowners association does not maintain such street or road;
 - (11) Maintenance of the street or road surface is necessary to protect the safety of motorists, bicyclists, and pedestrians or is otherwise in the public interest; and
 - (12) The street or road does not suffer such design defects as to make use of the street or road hazardous to the general public.

If they wish a private street or road to be maintained by the city, the persons collectively owning a 60 percent or more interest in the fee title or an appropriate roadway easement in the street or road shall initiate and submit a written request to the chief engineer of the department of facility maintenance for the maintenance of the street or road. If the chief engineer of the department of facility maintenance determines that the private street or road satisfies the criteria set forth in this subsection, the chief engineer of the department of facility maintenance may, subject to the availability of appropriations, proceed to maintain the street or road, provided that the persons having the right to control the use of the street or road shall submit their written approval of the maintenance work. The persons having the right to control the use of the street or road shall agree to such terms, conditions and covenants as may be determined by the chief engineer of the department of facility maintenance to be for the convenience and protection of the city and the public, including the granting of necessary easements; provided that one of the conditions the persons having the right to control the use of the street or road shall agree to is the condition that they keep the street or road open to the general public for as long as the city maintains the street or road surface or for the period of time specified in the agreement, whichever is longer. The requirement for a written request, approval and agreement shall not apply, however, to a (i) street or road over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to the effective date of this article, or (ii) a street or road which the chief engineer of the department of facility maintenance, with the approval of the director of the department of transportation services and the director of the department of planning and permitting determines has been dedicated by implication to public use for roadway purposes; provided that nothing contained herein shall be construed as prohibiting the chief engineer of the department of facility maintenance from requiring a written approval and agreement for new maintenance work on streets or roads over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to the effective date of this article if the chief engineer of the department of facility maintenance determines that such an agreement is in the best interests of the city.

- (b) Paved roads shall be maintained by remedial patching. Remedial patching shall be with like materials, for example: (i) asphalt concrete shall be used for asphalt concrete paved roads, and (ii) Portland cement concrete or asphalt concrete, as determined by the director and chief engineer, shall be used for Portland cement concrete paved roads. If the director and chief engineer determines that the pavement is in such poor condition that remedial patching is impractical and not cost effective, resurfacing may be provided.

Unpaved roads shall be maintained by remedial patching. Remedial patching shall be with like materials, for example: (i) coral for coral, and (ii) crushed rock for crushed rock. If the director and chief engineer determines that the street or road surface is in such poor condition that remedial patching is not cost effective and does not serve the best interests of motorists, bicyclists, and pedestrians, paving with asphalt concrete material may be provided.

The decks of bridges associated with private, nondedicated and nonsurrendered streets and roads may be maintained by remedial repairs. Remedial repairs shall be with like materials, for example, deteriorated wood planks shall be replaced with wood planks. If the director and chief engineer determines that the deck is in such poor condition that remedial repairs are impractical and not cost effective, the deck may be replaced with like material. The director and chief engineer may also provide for the maintenance, repair or replacement of railings.

Maintenance work to be performed by the city pursuant to this section shall not include installation or maintenance of curbs, shoulders, gutters, drainage facilities, or similar infrastructure.

- (c) The director and chief engineer, with the approval of the director of the department of transportation services, shall discontinue maintenance of specific private, nondedicated and nonsurrendered streets and roads, when the director and chief engineer determines that such streets and roads no longer meet the criteria set forth in subdivisions (1) through (11) of subsection (a), or when requested in writing by the persons having the right to control the use of the street or road.

discontinuing maintenance of any private, nondedicated and nonsurrendered street or road, the director and chief engineer shall provide each owner and roadway easement holder of record of the street or road with thirty days' written notice of such proposed action. Where maintenance is discontinued because the street or road is signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed or operated to exclude the general public, in whole or in part, the director and chief engineer is authorized, in the director and chief engineer's discretion and to the extent legally and economically feasible, to recover any removable fixtures or materials, if any, installed by the city, and to recover from the owners or roadway easement holders of the street or road, as may be appropriate, the value of the fixtures or materials left in place.

- (d) Nothing contained in this section and no action undertaken pursuant to this section shall be construed as adoption, acceptance or approval of a private, nondedicated and nonsurrendered street or road as a public highway.

(Added by Ord. 96-73; Am. Ord. 14-37)