



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____
BILL 65 (2018)

A BILL FOR AN ORDINANCE

RELATING TO PRIVATE STREETS AND ROADS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to address the conditions under which the City may maintain private streets and roads and recover the costs of providing such maintenance.

SECTION 2. Section 14-32.2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"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 that 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 that are not applicable to all persons except as otherwise provided by law;



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- (5) The street or road directly serves:
 - (A) Six or more parcels;
 - (B) Six or more residential structures; or
 - (C) A parcel of land which has one or more condominium buildings or apartment buildings that 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 adopted pursuant thereto;
- (9) The developer or subdivider of the street or road has not agreed to maintain the street or road in perpetuity;
- (10) An association of apartment owners or homeowners association does not maintain the 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 greater interest in the fee title or an appropriate roadway easement in the street or road may 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 submit their written approval of the maintenance work. The persons having the right to control the use of the street or road must agree to such terms, conditions and covenants as may be determined by the



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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~~ two of the conditions the persons having the right to control the use of the street or road must agree to ~~[is the condition that they]~~ are that they shall, 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, (i) 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,] and (ii) keep the street or road, and any adjacent sidewalk areas, free of obstructions and clear of debris that would prevent the safe passage of motorists, bicyclists, and pedestrians. The requirement for a written request, approval and agreement will not apply, however, to (i) a street or road over which the department of facility maintenance exercises surface maintenance responsibilities on the day prior to December 19, 1996, 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 will 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 December 19, 1996 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.



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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; provided that antispeed bumps that are removed as part of the city's maintenance of private streets and roads may be reinstalled by the city if the department of transportation services determines that the conditions for installation in Section 15-24.18 have been met. Prior to the removal of anti-speed bumps as part of the city's maintenance of private streets and roads, the director and chief engineer must notify persons residing within the immediate vicinity and persons having the right to control the use of the portion of the private street or road on which the anti-speed bumps are located of the removal of the anti-speed bumps and explain in writing to such persons conditions under which the city may reinstall the anti-speed bumps. For the purposes of this section only, "anti-speed bump" means a convex mound, approximately three feet wide at the base and approximately four inches in height at the apex, placed across the width of a private, nondedicated, and nonsurrendered street or road for the purpose of controlling the speed of vehicular traffic.

- (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] all criteria set forth in subdivisions (1) through [~~(44)~~] (12) of subsection (a), or when requested in writing by the persons having the right to control the use of the street or road. Prior to 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:



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- (1) ~~[recover any]~~ Recover 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~~[-];~~ and
- (2) Recover from the owners or roadway easement holders the total cost incurred by the city for paving or other maintenance work done pursuant to this section within the five-year period preceding the closure of the street or road to the public. The owners or roadway easement holders of the street or road may avoid liability for the costs by making signage, design, construction, operational, or other changes, or any necessary combination thereof, to again open the street or road to the general public and meet all criteria set forth in subdivisions (1) through (12) of subsection (a).
- (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."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



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SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

[Handwritten Signature]

DATE OF INTRODUCTION:

AUG 09 2018

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu