

Why Resolution 59-18 is Unworkable

Orinda City Policy for Public Maintenance of Private Roads

Moving Forward with an Inclusive Road and Drainage Repairs Plan

On September 4, 2018, the Orinda City Staff presented a revised policy for accepting existing private streets into the public road system. The reason for the revision was that the Council said the old policy was unworkable and that revisions were needed.

We object to both the process of creating the revised policy and the policy itself. It remains unworkable. It excludes virtually all, if not literally all, private streets from ever getting the public road funding that their taxes are paying for.

What needs to be created is a policy that addresses the needs of all of Orinda's residents, not just a select 80% majority.

Problems with the process

Resolution 59-18 was created by staff without consulting the CIOC, contrary to directions by Council, nor allowing adequate feedback by the community. The first time Resolution 59-18 was seen by anyone other than staff (including the Council, the CIOC, and the public) was when it was published as part of the September 4, 2018 Council meeting agenda packet on the preceding Friday (8/31/18 at 2:36 PM). This was the Friday before the Labor Day weekend. The resolution was discussed and passed four days later, the day after Labor Day.

The minutes of the discussion indicate several members of the public spoke; all objecting to the Resolution.

At the next CIOC meeting (September 12), the members of the Commission voiced their "displeasure" of not being consulted on the creation of Resolution 59-18.

Staff did not act in good faith in creating policy in an open manner.

* They created a policy behind closed doors and failed to include the CIOC which acts on behalf of the citizens of Orinda with matters regarding Orinda's infrastructure, despite being instructed to by Council.

* They first presented this revised policy late on a Friday before a holiday weekend and brought it to vote by the Council on the day following the weekend.

* The record shows (minutes of the September 4, 2018 City Council meeting) that the substance of the policy (which excludes 98% of all private roads from consideration) was never fully discussed before it was approved.

Issues with the Substance of Resolution 59-18

* Limited scope of the resolution: "[*Policy for Acceptance of Certain Existing Private Streets into the City's Public Roadway Network.*](#)"

The issue at hand is the public funding of street maintenance for all roads in Orinda, regardless of who owns the land upon which the road is on. Resolution 59-18 only provides one option: For private streets to deed the road to the City. It does not include the option of public maintenance funding provided for streets where the title for the land remains with the

private owners but an easement for public access to the street exists or is granted. This is a viable option which the policy does not consider.

We now consider the individual Sections in the resolution:

* Section A: *The request for acceptance shall be signed by all record owners of fee interest in the road in question. This will apply in all cases where a private road has not been covered previously by an offer of dedication.*

If title is to be transferred, this is a legal necessity. But if title is not transferred and only a public easement is granted, possibly a simple majority or super majority that desires public maintenance would suffice.

* Section B: *Except where the Council approves an exception, private roads for which a homeowners' association or similar entity was established for subdivision street ownership/maintenance are NOT eligible for acceptance by the City.*

This is the first of two major exclusionary clauses in Resolution 59-18. 61 of Orinda's 207 private streets are members of HOAs that provide the maintenance the City is currently not providing, even though the property owners on these streets pay the same taxes, including special sales tax and road bond taxes, as every other property owner in Orinda in addition to their HOA dues. In aggregate, these 69 streets include 11 of the 30 miles of private streets and are home to 650 households, almost ten percent of the City. This Section was the one major revision to the prior policy, Resolution 56-90.

It needs to be noted that the City currently maintains, with public funds, 22 streets which are also members of HOAs. If these streets were not maintained by the public, they too would be maintained by the HOAs.

* Section C: *The road in question shall directly connect to an Orinda public street.*

There is no reason for this condition other than to exclude the few private roads from consideration that are accessed by another private road. If residents on a private street must use another private street to gain access to the greater Orinda road network, and have been doing so historically for a statutory period (more than five years), openly and hostilely, then, if the connecting street will not, or has not already, granted an Express Easement, a Prescriptive Easement can be obtained. This solution is not considered

It should be noted that there is one street that is currently maintained with public funds, Watchwood Ct (which is on private land but is publicly maintained), which must cross a privately owned and maintained road, Watchwood Rd, to reach another road which is on private land but is publicly maintained. Village Gate Rd, which finally leads to public Orindawoods Dr.

* Section D: *There shall be a demonstrated need for the incorporation of the road in question into the City's Public Roadway Network for purposes of traffic circulation which provides benefit to the general public.*

This is the most exclusionary provision in the resolution. 199 of Orinda's 207 private streets are cul de sacs. They cover 27.4 miles and are home to 1,416 Orinda families, 20 percent of

the City. It is hard to imagine how a cul de sac would “add to traffic circulation”, therefore making it impossible for these 199 streets from ever getting public status or funding . This is simply a way to exclude 96 percent of Orinda’s private streets from inclusion in the public street network. It excludes 20 percent of Orinda’s citizens from receiving a public service which they are paying for.

It must be noted that there are 194 publicly maintained cul de sacs or loops which also do not “add to traffic circulation” but they are nonetheless maintained with public funds, approximately \$20 million of J&L funds. For the City to spend that amount of money on these streets (about \$10,000 per home on these streets), does this indicate that it believes there is a significant public benefit in doing so? And if there is a public benefit in maintaining the public cul de sacs and loops, then the 199 private cul de sacs must also provide a public benefit.

In total, about half of Orinda streets do not “add to traffic circulation.” These streets, in fact, define the very nature of Orinda which consists of hills with winding roads.

Section E: *Consistent with the City’s General Plan, any road proposed for inclusion in the City’s Public Roadway Network shall be repaired or upgraded, at no expense to the City, to standards that the City has adopted for this purpose, which are as follows:*

There are several points to be made about the “standards” specified in Resolution 59-18:

- 1) This resolution creates a policy for “*Acceptance of Certain Existing Private Streets*”. These are not new streets. Some of these streets have been in existence for close to a century. The average age is 62 years (from construction of the first house on the street), excluding Wilder and Orinda Grove streets (which have been built to the City’s new road standards).
- 2) These streets have been used by the residents living on these streets and their service providers, including emergency servicers, to successfully access these homes for decades.
- 3) The City has adopted no standards for existing roads, only new roads. The closest thing to a “standard” for existing roads is stated in the City’s Road and Drainage Repairs Plan adopted on March 15, 2016. On page two of this document the following statement is made: “The revised goal of this Plan update is to improve Orinda’s roads and drains with the objective of increasing the minimum of all roads to PCI = 50 over the course of this Plan and to have sufficient resources to maintain them in that condition thereafter.” Whether a “goal” is the same as a “standard” can be debated but this is the only official statement the City has made with regards existing road conditions. This is not a “temporary” goal/standard but a permanent one that should be kept “thereafter.”

If the “*standards that the city has adopted*” for **existing** residential streets are not specified in writing, what are they in practice?

Following are the 11 criteria listed in Resolution 59-18 with comments regarding the “standards” observed on the City’s 64 miles of public residential streets:

1) Pavement Conditions: *“Provide a pavement life of 20 years. The roadway shall be in a condition as to not need surface maintenance treatment for a minimum of 5 years.”* As noted, the most recently adopted Road and Drainage Repairs Plan states that the City’s goal for all streets is a minimum PCI of 50, not a pavement life of 20 years with no need for surface treatment for 5 years as 59-18 states. Such a condition is possible only with a road with a PCI in excess of 90. As recently as 2014 (according to the 2015 P-TAP published in December 2014), only three residential streets had PCI’s in excess of 90: Charles Hill Road (which is close to a collector and was rebuilt with a Federal grant; Lost Valley Drive (again, almost a collector and almost a school route); and Dalewood Terrace (the City’s only concrete road, serving two homes, on private property.) The same document showed that 75% of Orinda’s residential streets (49 miles) did not meet the existing goal/standard of PCI 50. According to the 2019 P-TAP published March 2019, 100 percent of residential street will be at or above PCI 50 by the end of this year, but only after the City has raised and spent over \$50 million for deferred maintenance. This money will be paid back with \$70 million of taxes collected from all of Orinda’s property tax payers.

2) Drainage: *“Adequate capacity of all drainage facilities shall be demonstrated.”* The City has a study stating the City’s street’s drains will require up to \$30 million of work. Why should the private road residents have to pay to ensure their drains are up to capacity, when they have been functional for half a century? Surely the city will upgrade “public” residential drains when necessary.

3) Soils Stability: *“A soils investigation, by a registered Civil Engineer shall be conducted for the roadway, right-of-way, and adjacent up and down slopes. The investigation shall also include the study of slides on adjoining property. The road area shall be stabilized to the satisfaction of the City Engineer.”* How many public residential streets have had this testing done? How many public residential streets start cracking within a year or two due to subsidence and which are simply repaired without major structural modifications?

4. Grades: *“The longitudinal grade of any section of the roadway shall not exceed 20 percent.”* Do any public residential streets exceed 20 percent grade? Do any private streets? A road’s grade might be something that can be defined when it is first built, but it cannot be amended after the fact.

5. Width: *“The minimum width of the road shall be 16 feet. The roadway shall be widened, to the satisfaction of the City Engineer on recommendation from the Fire Chief, at existing or future fire hydrant locations. On-Street parking shall be restricted on roads with widths of less than 28 feet.”* The latest survey of public residential streets, P-TAP 17, showed 13 streets (2.5 miles) with AVERAGE widths of under 16 feet. And many public residential streets with average widths in excess of 16 feet probably have minimum widths of less than 16 feet. It is known that lower Mira Loma, with an average width of 19 feet, has a minimum width of less than 13 feet and there are no parking restrictions signs on it. Linda Vista has an average width of 15 feet, a minimum of 14 feet, and it too has no parking restriction signs. The survey shows that of the 64 total miles of public residential streets, 54 miles (269 street segments) have an average width of less than 28 feet. Do 84 percent of all public residential streets have restricted parking signs? Do any? This is the public “standard”.

6. Traffic Control Devices – *“Signing and striping shall be installed and safety measures shall be taken to reduce potential traffic safety incidents to the satisfaction of the City Engineer.”* Do all public cul de sacs have signing and striping? Have they all been inspected by the City Engineer?

7. Fire Department Access: *“The roadway shall be accessible to emergency vehicles. This may require additional street widening and construction of turn-around areas. The City Engineer on recommendation from the Fire Chief shall determine whether the roadway is in compliance with this criteria.”* Again, the “standard” needs to be the minimum condition the City’s public streets provide. Lower Mira Loma, which provides access to Upper Mira Loma, El Patio and Linda Vista (34 homes total) has a minimum width of under 13 feet yet fire trucks have accessed these streets for 70 years. Linda Vista has no turn-around at the end. What is the City “standard” in practice?

8. Alignment and Sight Distance: *“The alignment and sight distances along the roadway shall be evaluated by a registered civil engineer. Improvements shall be implemented in non-complying areas to the satisfaction of the City Engineer. Fifteen mile per hour (15 mph) design speed shall be used for sight distance requirements and a minimum of 50 foot horizontal centerline radius shall be used for the geometric standards.”* Do all 64 miles of public residential streets comply with this standard? If not, what will the City do? Realign the street? “Disown” it? Again, on average the private streets have been providing access to the residents living on them and their service providers for 62 years. They work. They provide the service they were intended to.

9. Clear title: *“of the right-of-way area shall be provided to the City, with appropriate recordation on all affected parcels.”* Case law shows that public funds can be used to maintain a street on private property with just an easement, and a Prescriptive Easement at that; not even an Express Easement. (CA Attorney General Opinion No. No. 96-405.) Is that an option instead of passing clear title?

10. Street name signs: *“shall be installed that match City signs.”* Haven’t virtually all streets, public and private, been provided by the City with a street name sign? Isn’t that a general benefit like police services and MOFD emergency services? Isn’t this a safety issue so emergency responders can find addresses? Wouldn’t street name signs be a basic public service?

11: Private development on the property fronting the road: *“Generally meets zoning and subdivision standards applicable to property on public roads.”*

12: Compliance with the above criteria and standards: *“Shall be subject to the review and approval of the City Engineer.”*

Section F: *Interested private road owners who wish to initiate this private road acceptance process must submit a sufficient deposit for the preparation of an Engineer’s Report to determine the necessary repairs/upgrades, including the total improvement cost to meet the requirements of Section E.*

As noted, Section D excludes all but eight roads from consideration of ever getting down to the provision of Section E. The Section B, maintenance by an HOA, excludes half of those

remaining eight roads unless the Council grants an exception. And then Section E requires that the road, (the newest of the four is 30 years old; the oldest 80), bring itself up to virtually new condition, at the discretion of the City Engineer. And this section requires that it post a deposit to pay for engineering studies to determine exactly what must be done to bring it up to new condition. What street owners would submit themselves to such a process? This provision manages to exclude the final four roads from consideration.

Conclusion

Resolution 59-18 was created by Staff to exclude any private street from every gaining public status or public funds for maintenance. This is despite the fact that the average age of the private streets is over 60 years (excluding the aforementioned new developments) and the residents on those streets have been paying the same taxes that all Orinda residents pay, but only the “public” 80% get their streets maintained with public funds. These funds include the \$10 million in Measure L sales tax and the \$66 million it will cost to repay the Measures J&L road bonds. 20% of that \$76 million cost, \$15 million, will be paid by the property owners living on private streets; an average of \$10,000 each.

It is understood that the City does not (yet) have the funds to repair or maintain 30 more miles of roads. Just as it did not have the funds to repair the first 64 miles of residential streets until the voters, those living on public and private streets, voted in the funds. They were educated in what it would take to bring our roads up to standards and agreed to fund that.

As one Council Member recently noted, the Road and Drainage Repairs Plan is a living document.

The first version (2012) stated it would cost \$39 million to repair the City’s streets and based on that, the Sales Tax was passed. The second edition (2014) the CIOC increased the cost to \$52 million because they realized that the first version “inadvertently” used a cost assuming that all of the work would be done at once, not spread over ten years. This plan was what the first road bond was sold on. The third version (2016) again increased the cost to \$72 million as they “realized” that the previous goal (an average system PCI of 70) would leave 25 miles of streets in Poor to Very Poor condition. Bringing all roads up to a minimum standard of 50 PCI would cost another \$20 million. And based on this new-and-improved report, another \$25 million bond was passed.

So, it is not outside the realm of possibility to create Version 4 of the Road and Drainage Repairs Plan which “discovers” that Orinda has 123 miles of roads, not just 93. The Plan has evolved over the years and it has been accurately called by the Council a “living document.” The goals have evolved and the projected costs have been revised. The 2012 voter survey showed that only 46% would approve a \$200 parcel tax. Since then, 70% have approved a half cent sales tax which is costing each household \$150 a year plus \$45 million in bonds which will cost the average household \$425 a year for the next 20 years. That is a total of \$575 per household annually; which is only \$1.60 per day. Public knowledge and perceptions evolve.