

**CITY OF ORINDA
CITIZENS' INFRASTRUCTURE OVERSIGHT COMMISSION
MINUTES**

Wednesday, February 14, 2018

A REGULAR MEETING OF THE CITIZENS' INFRASTRUCTURE OVERSIGHT COMMISSION (CIOC) WAS HELD ON THE ABOVE DATE IN THE SARGE LITTLEHALE COMMUNITY ROOM, 22 ORINDA WAY, ORINDA, CALIFORNIA.

A. CALL TO ORDER

Chair Murphy called the meeting to order at 6:30 p.m.

The following documents were provided at this meeting:

1. *City of Orinda Cash Transaction History* – dated February 9, 2018

B. ROLL CALL

COMMISSIONERS: Walter Bell, Dennis Fay, Robert Hubner, Jud Hammon, Terry Murphy, Richard Nelson, Bill Hurrell (absent, excused)

City Staff: Paving Program Project Manager Farah Khorashadi

C. PLEDGE OF ALLEGIANCE– led by Chair Murphy

D. ADOPTION OF AGENDA

MOTION: By Commissioner Hammon, seconded by Commissioner Fay, to adopt the agenda. The motion carried by unanimous voice vote.

E. PUBLIC FORUM

Charles Porges, Orinda resident, stated that he had sent an email to the Commissioners regarding private roads; he strongly recommended that the CIOC perform a survey of private roads because he does not believe there is data on the condition or length of the private roads; he supports the creation of a Task Force and offered to cite the legal ground which he believes authorizes the CIOC to do so.

Chair Murphy asked the Commissioners if they had the opportunity to read Mr. Porges' e-mail with the attachment.

Commissioner Nelson noted that he had not had a chance to review the e-mail.

Chair Murphy inquired if Mr. Porges is a lawyer.

Mr. Porges replied in the negative.

Chair Murphy requested that Paving Program Project Manager Khorashadi include Mr. Porges' two e-mails including the attachment as part of the minutes of the meeting.

Paving Program Project Manager Khorashadi stated that she had received only one e-mail.

Chair Murphy will forward the second e-mail to her.

Commissioner Nelson questioned if Mr. Porges thinks the CIOC has the authority to authorize the survey of the private roads.

Mr. Porges replied that the City Council has the authority.

Mr. Porges' e-mail dated February 13, 2018, addressed to the Commissioners:

*To the members of the CIOC,
I request that you recommend a survey of all private roads to the city council, as this will have to be done to establish factual costs. I request that you also support the creation of an independent task force. I have sent the following to the City Council that applies to the CIOC as well.*

*I look forward to hearing comments or questions back from you
Charles Porges*

*Councilmembers,
I have previously told the Council how unfair the current situation is to the 20% of Orinda residents who live on private roads and pay taxes and fees for road maintenance but receive no benefits. These residents will probably be asked to vote on future road maintenance bond measures and are part of the public you serve.*

I have told the Council at its last meeting why I believe that it is within your power to initiate a survey of all private roads for public safety citing the Supreme Court of California (See Note 1). I request that you ask the City Attorney to confirm that this is correct and initiate this inexpensive survey to alleviate your fears of large unfunded liabilities. Furthermore since the private road residents are "the public" I believe it is within your power to simply pass a resolution that states it is in the public interest to maintain all Orinda roads, both public and private. (See Note 2). This would be the simplest way to resolve the issue.

Failing such a resolution I would also like you to ask the City Attorney to research all the legal ways for the City to make private roads publicly maintained without significant financial or other burdens on the private road residents.

I support the creation of a Task Force to study the situation if it results in changes to City policy promptly. We brought up the issue about a year ago and have made absolutely no progress in getting this inequity resolved. Working together I believe we can solve it.

*I wish to hear your concerns, comments or questions.
Thank you, Charles Porges.*

Note 1:

As the California Supreme Court explained in City of Oakland v. Garrison (1924) 194 Cal. 298, 302: [W]here the question arises as to whether or not a proposed application of public funds is to be deemed a gift within the meaning of that term as used in the constitution, the primary and fundamental subject of inquiry is as to whether the money is to be used for a public or private purpose. If it is for a public purpose within the jurisdiction for the appropriating board or body, it is not, generally speaking, to be regarded as a gift. Furthermore, from the guidance of the Office of the City Attorney of LA :- Courts defer to the legislative body's determination of what constitutes a "public purpose." County of Alameda v. Carleson (1971) 5 Cal. 3d 730, 746. The concept of public purpose has been "liberally construed by the courts," and a city council's determination of public purpose will be upheld "so long as that determination has a reasonable basis." Ibid.

Note 2:

*Consider something like,
Whereas about 20% of Orinda residents live on private roads,
Whereas these residents pay all taxes and fees for road maintenance,
Whereas these roads need to be maintained in good condition for emergency access such as fire trucks and ambulances,
Whereas an integrated flood control system depends on both private and public storm drains,
Whereas these residents constitute a large minority of the public we serve,
We herewith resolve to inspect and maintain all of Orinda's roads and storm drains regardless of whether they are on private or public property.*

Mr. Porges asked if he could speak three minutes under the Public Forum and three minutes for the Agenda Item.

Chair Murphy replied in the negative.

Melissa Roeder, Orinda resident, pointed out that at the last City Council meeting, the Mayor allowed three minutes per person both in the Public Forum *and* during the Agenda Item; as a matter of protocol, that is what is allowed by the City Council and the same rule should apply to the CIOC meeting.

Commissioner Murphy stated he chaired the Planning Commission for six years and that was, and is, the policy. It is fair to have three minutes under the Brown Act, so he attempts to be as fair as possible.

F. CITIZENS' INFRASTRUCTURE OVERSIGHT MEETING MINUTES

Approval of CIOC meeting minutes of January 10, 2018.

Commissioners Bell and Fay noted that they would abstain from the vote, as they were not present at the January meeting.

MOTION: By Commissioner Hubner, seconded by Commissioner Hammon, to approve the meeting minutes of January 10, 2018. The motion carried by voice vote of 4-0-2 (Bell, Fay abstain).

G. DISCUSSION – CONSIDER FORMATION OF A TASK FORCE TO INVESTIGATE PRIVATE ROADS, PRIVATE DRAINS, AND SUBSTANDARD FIRE HYDRANTS

Paving Program Project Manager Khorashadi advised that at the January CIOC meeting Commissioner Hammon had requested that she contact the Moraga Orinda Fire District (MOFD) to acquire the map of substandard fire hydrants in the City; however, MOFD was unable to provide the map because there is disagreement between MOFD and the East Bay Municipal Utility District (EBMUD) regarding the rating of fire hydrants; when it is received, she will forward to the Commissioners. Additionally, Commissioner Hammon had requested that Director Theis contact neighboring cities regarding private road policy acceptance; Lafayette and Pleasant Hill both have communicated to staff that they do not have written policies addressing this issue and do not accept private roads unless the property owners on the private streets improve the road to the city standards.

Commissioner Hammon noted that he and Commissioner Nelson have both requested the same information. MOFD has a map but it has not been updated since 2001. Since then, EBMUD has upgraded 17 miles of water pipes. MOFD is trying to update the map and present the data in a comprehensive format; the map may be ready for the next CIOC meeting.

Commissioner Nelson stated that he had recently attended a number of MOFD meetings; he had also met with Fire Chief Winnacker and spoken to some of the MOFD Boardmembers. The Fire Chief is actively involved in updating the data and believes that the information he has is not adequate at this time to take any action. Commissioner Nelson suggested separating the discussion regarding fire hydrants from the private roads issue and moving the discussion of fire hydrants to the next CIOC agenda; he also recommended inviting Fire Chief Winnacker to the meeting to speak about fire hydrants and other matters, including emergency access which involves roads.

Commissioner Bell noted that he had not been in attendance at the previous CIOC meeting and he questioned the purpose of the investigation and whether it is to inform the City Council of the condition of the roads and fire hydrants.

Chair Murphy advised that an MOFD Boardmember had attended the January CIOC meeting and requested that the Commission look at the substandard fire hydrants because he believes it to be interrelated with the road projects. Chair Murphy supported the recommendation to move the discussion of fire hydrants to the next CIOC agenda.

Commissioner Fay wanted some background information as this was his first meeting as a Commissioner. He questioned the genesis of this agenda item and if the City Council had referred this matter on private roads/draains and private hydrants to the CIOC.

Commissioner Hammon replied that these are two separate items and probably should have been listed as two separate and distinct items on the agenda. Two MOFD Boardmembers came to previous CIOC meetings to speak about substandard fire hydrants, the risk of wildfires in Orinda, and the ability of fighting such fires; they had encouraged the CIOC to actively look at this issue. There has also been several discussions regarding private roads. Residents Porges, Roeder, and others came to the CIOC and had requested that the potential conversion of private roads to public roads be investigated. The City Council also had addressed the private roads issue and wants to address the matter first and then refer it to the CIOC for further consideration.

Commissioner Nelson stated that the fire hydrant issue has been ongoing for the past 30 years; it is a Tri-Agency problem and the CIOC should get involved since each agency shifts the responsibility of upgrading the system to the other agency.

Chair Murphy advised that he has asked Fire Chief Winnacker to provide the map to the CIOC; it would be helpful to see the original map and the updated map.

Mr. Porges stated that Mira Loma has a fire hydrant with a red top, which indicates a flow rate of 500 gallons-per-minute. The road, which has been recently paved, would need to be torn up in order to install a new water main. He was unaware which fire hydrants are substandard, however, he believes there is clearly a pressing need to deal with this issue. He stated that to his knowledge, fire hydrants and water mains are on public roads and he did not believe there are mains and fire hydrants on private roads. The hydrant issue is largely a public issue and it really needs to be separated from private roads and private storm drains; he urged the CIOC to recommend formation of an independent Task Force. Property owners on private roads are 20 percent of the public and are being ignored because no data exists regarding private roads; these property owners should get some support for taxes and fees; they pay thousands of dollars per year for garbage impact fees that goes for maintenance of public roads and then have to pay for the maintenance of their private road. He recommended that a Task Force be formed to deal just with private roads.

Commissioner Nelson advised that there are water mains under private roads.

Mr. Porges replied that he thought utilities had automatic easements on the private roads and EBMUD is a utility company.

Chair Murphy noted that EBMUD is its own entity and all fire hydrants on private roads are installed by EBMUD in compliance with the requirements of the Fire District; they have easements on private roads.

Commissioner Hubner asked Mr. Porges what he envisioned for the Task Force.

Mr. Porges replied that he imagined there would be Councilmembers, CIOC members, private citizens, a financial person, and also a legal person to consult on what could be done.

Melissa Roeder, Orinda resident, urged the CIOC to recommend to the City Council to form an independent Task Force to discuss the feasibility of converting private roads and private drainage to public roads; the CIOC has a lot to do and this is a complex issue; the best chance of resolution is for there to be a dedicated forum involving various parties to have sustained discussions. The first priority of such a Task Force should be the survey of the roads because that is the piece of data that is missing; it is in the public interest to do the survey because of emergency access and for public safety.

Commissioner Fay asked staff to send him the private road policy; he requested that the CIOC summarize the policy and questioned if it is similar to most policies that it will consider taking a private road if it is up to City standards.

Chair Murphy replied in the affirmative, stating that a private road should be in very good condition.

Commissioner Fay stated that his understanding is that the existing pavement surface would not alone dictate the condition; the condition of the base and subbase would be vital in determining how much the costs would be over the long haul. The fact that the road has been paved by a private group does not mean a lot unless it is known what is underneath the pavement.

Chair Murphy was unclear whether the City can use public funds to survey private roads. He recommended that the City Attorney come to a future CIOC meeting to provide her opinion; he did not believe that it is legal to spend public funds to survey private streets.

Commissioner Nelson stated that issue is one a Task Force could address.

Chair Murphy stated that the question before the CIOC is whether to make a recommendation to form a Task Force to look at the private roads and private drains. He took exception to a comment made in Mr. Porges' letter that the CIOC is busy and doesn't have time to address the matter; he pointed out to Mr. Porges and the other residents interested in this issue that the Commission is there to schedule the work for this year and through the next year; the CIOC could look at the infrastructure; obviously that has a disadvantage from their perspective because it does not include a member of their group; however, it also it means that the residents get the expertise of people that have spent many years looking at infrastructure - engineers, developers, and economists.

Commissioner Fay commented that he was not comfortable making any recommendation to form a Task Force until the City Attorney could advise whether it is legal for the City to spend public monies on private roads; or if there are conditions which would allow spending of City funds and the limits to such spending; otherwise the CIOC would not

Nelson makes a good point. If it had been made over and over, it might not have taken a year and a half to schedule the first meeting of the Task Force, called a "Workshop".

have done the job to narrow the focus of what the Task Force might discuss and the scope of those discussions.

Note: Mr. Fay has come a long way since this meeting. This is the power of understanding the facts.

Commissioner Nelson was unsure whether it was necessary to know if public money can be spent to conduct the survey. The Task Force could deal with that issue.

Commissioner Fay questioned why they would go to the trouble of creating a Task Force if at the end it is determined that City funds cannot be used for such a purpose.

Chair Murphy advised that there was no urgency to make a decision; there are no funds to fix the roads at this time.

Commissioner Nelson supported forming a Task Force to look at private roads and to develop a plan that could be used to convert private roads to public streets.

Commissioner Hubner questioned if he meant the Task Force should be formed to develop a step-by-step process on how to convert private roads for the City to accept, as well as defining the cost impact to the City as a whole.

Commissioner Nelson replied that he would not call it a step-by-step, but to develop several alternative proposals and determine associated costs; the Task Force is the right format to develop a plan.

Commissioner Bell supported the creation of a Task Force; however, it would be prudent to have the City Attorney lay out some guidelines; there may be State and Local laws that need to be considered to structure a Task Force.

Commissioner Hubner stated that he did not recognize the need for a Task Force at this time; that would be stepping into territory which may prevent any action; there is already a City policy for converting private roads to public streets. The CIOC can present the policy and if property owners want to convert their private street to a public street, use that policy. The Council should inform the CIOC if they want to address the issue at all or if they are comfortable with the existing policy.

Chair Murphy stated that the CIOC may want to consider modifications to the policy to make it easier for property owners on a private road to convert to a public road. The Commission has been asked to make a recommendation about possible formation of a Task Force to address three issues; it appears that there is agreement to separate the fire hydrant issue from the private roads and drains matter and wait until all the data is in hand.

Commissioner Hammon agreed that the fire hydrant matter should be handled separately; although there is huge overlap because fire hydrants are adjacent to the roads and most of the pipes are under the road. He supported the idea of a Task Force to address private roads. He appreciated that Orinda resident Steve Cohn had surveyed the private roads,

however it would be necessary to confirm that information and quantify the magnitude of the problem. It is also necessary to look at some facts - it is not rational to assume that all property owners on private roads want their road to be taken over; that is also part of the quantification of the problem; there is a legal issue; and there is a monetary cost that is difficult to determine because the status of these roads is unknown. It is not sufficient to say that a Task Force should be created – it would be necessary to determine a recommendation for the charter of such a Task Force.

Paving Program Project Manager Khorashadi advised that Director Theis and the City Manager are reviewing the private road policy and will make a recommendation to the City Council in March. Note: This did not happen.

Chair Murphy thought it was premature to make a recommendation to form a Task Force given that the charter may change.

Commissioner Nelson said it would be unfortunate if the CIOC did not recommend formation of a Task Force; the Commission has been very efficient in dealing with roads.

Chair Murphy opened the Public Hearing.

Ms. Roeder questioned the hesitation to recommend formation of a Task Force; it is premature to be concerned with who would comprise the members and the scope of the discussion; the Mira Loma property owners initiated a petition to request acceptance of the road ten months ago; a 30 year old policy is now under review; Director Theis will present it to the City Council in March; formation of a Task Force may also be on the City Council agenda in March.

Commissioner Fay observed that 20% of City residents live on private roads; there are some legal issues and he was not comfortable spending public funds to investigate the magnitude of problems on the private roads. If the Commission is to look at fire hydrants, consideration should be given to how technology will affect the current situation; a large volume of water is required to fight wildfires if they occur; however, small fires may be detected with technology and controlled before the fires intensify; technology should play a significant role in solving substandard fire hydrants before committing to another large capital investment and prior to deciding to replace every substandard fire hydrant and water line.

Chair Murphy suggested that such questions could be addressed to the Fire Chief; he asked if the Commission was prepared to vote.

Commissioner Fay stated that it was necessary to see some criteria before recommending a Task Force.

Commissioner Hubner concurred with Commissioner Fay.

Commissioner Fay noted that he lives on a private street and understands their viewpoint; however, it could also be viewed that property owners on private streets want to offload their costs to the City, and the other residents of Orinda could be offended by that; when property owners purchase a house on a private road, they know it is private; he clarified that he was torn on this particular issue; in fairness to the property owners of Orinda on public roads *and* private roads, the City should not just respond to the property owners on private roads; this issue should be debated by all the residents. The City may want to consider a workshop on this issue.

Commissioner Hubner commented that when the CIOC placed this item on the Agenda, he did not see a request from the City Council to make a recommendation to form a Task Force.

Commissioner Murphy asked Paving Program Project Manager Khorashadi how this item was placed on the Agenda.

Paving Program Project Manager Khorashadi replied that discussion of the private roads was initiated by the CIOC at the January 10, 2018, meeting; the request did not come from the City Council.

Commissioner Hammon advised that in two City Council meetings past, the City Council advised that they did not want the CIOC to address the policy of conversion of private roads to public; that is why staff is working on it; the matter will probably come back to the CIOC for review and comments.

Commissioner Fay stated that the Commission should wait until clear direction is received from the City Council and a written opinion is obtained from the City Attorney.

Chair Murphy commented that he would like the City Attorney to attend the next CIOC meeting.

This item was continued to the next CIOC meeting.

Note: Topic was discussed at the next meeting; March 14.

H. STAFF UPDATES

Paving Program Project Manager Khorashadi reported on the following items:

- *Update – Road and Drainage Repairs Plan* - Approval is on-hold.
- *Update – Public Information and Outreach* – Information has been posted on NextDoor regarding homeowner sewer later inspections.
- *Update - Measure L and Measure J – Monthly Revenue and Expense Summaries* – The summaries were distributed; there is approximately \$1 million of outstanding invoices not shown in the report.
- *Update - 2017 Paving Project* – The project is complete.
- *Update - 2018 Paving Project* – Staff anticipates Council authorization to advertise the project in March.

I. ELECTION OF CHAIR AND VICE-CHAIR

MOTION: By Chair Murphy, seconded by Commissioner Nelson, to nominate Commissioner Hubner to Chair. The motion carried by unanimous voice vote.

MOTION: By Commissioner Murphy, seconded by Commissioner Nelson, to nominate Commissioner Hammon to Vice-Chair. The motion carried by unanimous voice vote.

J. MATTERS INITIATED:

An invitation to the City Attorney to attend and speak at the next CIOC meeting regarding private roads and drains.

Items for the next CIOC Agenda:

- Discussion - Consider Formation of a Task Force to Investigate Private Roads, Private Drains
- Discussion – Substandard Fire Hydrants

K. ADJOURNMENT

MOTION: By Commissioner Fay, seconded by Commissioner Hammon, to adjourn the CIOC meeting. The motion carried by unanimous voice vote.

The Citizens' Infrastructure Oversight Commission meeting adjourned at 8:30 p.m.

The next regularly scheduled meeting of the Citizens' Infrastructure Oversight Commission will be 6:30 p.m., March 14, 2018, in the Sarge Littlehale Community Room, 22 Orinda Way, Orinda, California.