

Comparison of Orinda Private Road Conversion Policy 56-90 to 59-18

Resolution 56-90, enacted in 1990, created standards for new public roads in Orinda. It was designed to define new roads and to disallow existing private roads' conversion to public as evidenced by the following elements of the act:

Paragraph C: "There shall be demonstrated a need for the incorporation of the road into the City's road system for purposes of traffic circulation". In 1990, 93% (158 out of 170) of Orinda's private roads were cul-de-sacs. A street that is a cul-de-sac would be hard pressed to claim that it was needed to add to the city's "traffic circulation". That left only 12 private roads, 3.5 miles out of 24 miles, home to 156 Orinda families out of the 1,240 then living on private roads.

But there were further restrictions including 12 design restrictions included in Paragraph D. The most onerous was restriction D.1, requiring a 20-year pavement life and, more importantly "no maintenance required for five years". Only a new road, with a PCI of 100, could meet this requirement. While one through road (Barbara Rd) was new in 1990 and probably did meet these requirement (but still was not accepted and the residents of that road are still fighting with the city over acceptance), the other 11 were between 30 and 50 years old and might require total reconstruction at a cost that would negate any benefit of publicly funded maintenance not starting for at least five years.

And so, starting in 1990, no private road was ever converted to a public road. And further, of the 34 roads (7 miles; 347 homes) constructed since 1990, only one, Wilder Rd, has been accepted as a public road.

There was one exception and that was the result of "skirting" the policy, not following it. In 1992 the Orindawoods HOA and the City entered into an agreement where in exchange for Orindawoods allowing public access to three of its roads (which were effectively one large cul-de-sac), the City would provide road maintenance. The roads were not dedicated to the City (governed by Resolution 56-90), they remained privately owned by the Orindawoods HOA, they were "simply" maintained by the City. This agreement was for five years, but it has been renewed every five years since then, with the last renewal in 2022.

Pursuant to 23 USCS § 101 (23) [Title 23. Highways; Chapter 1. Federal-Aid Highways]: "The term 'public road' means any road or street under the jurisdiction of and maintained by a public authority and open to public travel." Therefore, these three roads, while on private property, but which are open to public travel and maintained by a public authority, considered Public Roads (at least by the federal government's definition of "public road".) And, they are part of the bi-annual P-TAP report for public roads; are allocated garbage

impact fees applicable to public roads; and allocated county return-to-source revenue applicable to public roads.

Resolution 56-90, titled “Existing Private Roads; City of Orinda Policy Statement Regarding Acceptance” was a failed policy. In 28 years, from 1990 to 2018 not a single road attempted to “jump through the hoops”. So, the Council, at their July 10, 2018 meeting, instructed staff to “bring back the matter for Council discussion of policy and financial issues and decide how to move the process forward.” The minutes of the meeting show that prior to this Larry Theis, the Public Works Director, “asked if the Council would like the COIC to provide input prior to it returning to the Council or direct staff to proceed.” Council Member Gee supported review by the CIOC and Mayor Worth and Council Member Miller concurred.

What happened, however, was Theis took it upon himself to review the policy (56-90), amend it, and present it back to the council at their 9/4/18 meeting, with no input from the CIOC. The changes he made were minimal and, in fact, more draconian than previously existed. The only change was adding in the provision that any road maintained by an HOA or similar entity was excluded from consideration for acceptance as a public road. As shown above, the existing policy already excluded all but 12 privately maintained through streets from consideration. The revised policy then excluded four of those 12 streets. Unbelievably, the Council adopted the revised policy in a 3:1 vote with only Councilmember Gee, a professional transportation engineer, opposing it.

The Council did not inquire how the CIOC felt about the changes and no one from the CIOC was at the Council meeting (because the CIOC was not aware that Theis had created the revised policy). At the next CIOC meeting (9/12/18), the commission was advised of the revised policy and was told that the reason they had not been asked to opine was because the Council did not want the commission to review the policy prior to approval (when just the opposite was the truth). The commission discussed this exclusion at the 9/12 meeting and at the next two meetings, considering a strongly worded letter to the Council, but decided against it. This was the last time the CIOC discussed the private road issue. Larry Theis had put a stake through the issue for reasons we will never know.

Below is a comparison of the original (56-90) and revised (59-18) policies. Red text indicates text removed; blue text indicates text added. The notes at the bottom of the comparison are of this web site.

Copies of both resolutions follow the comparison.

Comparison of Orinda Private Road Conversion Policy 56-90 to 59-18

Resolution 56-90 (8/28/90)

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.

B The road shall directly connect to a public street or highway.

C There shall be demonstrated a need for the incorporation of the road into the City's road system for purposes of traffic circulation, **for example:**

- the road connects two existing public streets and provides the only means of access to one of those streets.
- the road is a "collector" street that connects a public street with other private streets, particularly in situations where maintenance of the private streets is under separate agreement from the "collector" street.
- the road can provide a viable alternative to an existing public street in the event that public street is impassable.

D Any road proposed for inclusion in the public street system shall be upgraded, at no expense to the City, to standards that the City has adopted for this purpose, which are as follows:

1. Pavement conditions - improvements shall be made as necessary to the asphalt and/or roadbed to 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.
2. Drainage adequate capacity of all drainage facilities shall be demonstrated and all damaged and undersized facilities shall be replaced.

Resolution 59-18 (9/4/18)

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.

B Except where the City 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.

C The road shall directly connect to a public street or highway.

D note(1) There shall be demonstrated a need for the incorporation of the road into the City's road system for purposes of traffic circulation **which provides benefit to the general public.**

E note(2) **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:

1. Pavement conditions - improvements shall be made as necessary to the asphalt and/or roadbed to 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.
2. Drainage - adequate capacity of all drainage facilities shall be demonstrated and all damaged and undersized facilities shall be **repaired and/or replaced to the satisfaction of the City Engineer.**

Comparison of Orinda Private Road Conversion Policy 56-90 to 59-18

Resolution 56-90 (8/28/90)

3. Soil Stability - a soils investigation, by a registered Civil Engineer with the title of "Soils Engineer" or "Geotechnical Engineer" as outlined in section 6736.1 of the Professional Engineers Act, 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.

4. Grades - the grade of any section of the roadway shall not exceed 20 percent.

5. Minimum 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 fire hydrant locations. Parking shall be restricted on roads with widths of less than 22 feet.

6. Traffic hazards - signing shall be installed and safety measures shall be taken to reduce potential traffic hazard areas.

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.

8. Alignment and sight distance - the alignment and sight distances along the roadway shall be evaluated by a registered engineer. civil Improvements shall be implemented in **problem** areas to the satisfaction of the City Engineer. Fifteen mile per hour sight distance and 50 foot centerline radius shall be used for **minimum** design standards.

9. Clear title of the right-of-way area shall be provided to the City, with appropriate recordation on all affected parcels.

Resolution 59-18 (9/4/18)

3. Soil stability - A soils investigation, by a registered Civil Engineer with the title of "Soils Engineer" or "Geotechnical Engineer" as outlined in section 6736.1 of the Professional Engineers Act, 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.

4. Grades - the **longitudinal** grade of any section of the roadway shall not exceed 20 percent.

5. Minimum 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.

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**.

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.

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.

9. Clear title of the right-of-way area shall be provided to the City, with appropriate recordation on all affected parcels. **The City Attorney will evaluate, on a case-by-case basis, whether this clear title requirement can be met through City acceptance of an open offer to dedicate a given street recorded as part of the relevant subdivision map.**

Comparison of Orinda Private Road Conversion Policy 56-90 to 59-18

Resolution 56-90 (8/28/90)

10. Street name signs shall be installed that match City signs.

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.

Resolution 59-18 (9/4/18)

10. Street name signs shall be installed that match City signs.

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.

Note(1)

A cul de sac cannot possibly pass the "need for traffic circulation" criteria. 90% of private streets are cul de sacs. Only 12 private streets, 3.5 miles, are through streets. It should be noted that the City maintains 177 cul de sacs, 24.6 miles, with 2,032 homes on them. In total, half of Orinda's residents live on cul de sacs. Cul de sacs define the very nature of Orinda's semi-rural character.

Note(2) These criteria should be applicable to newly developed streets, not streets that have been in existence for up to a century. 75% of private streets were developed prior to 1985 when the City was incorporated. However, every new street developed since Orinda has been incorporated has been forced to be a "private" street by the City. 2/3 of these streets are in three developments: Orinda Downs, Wilder and Orinda Groves. The condition for development was that the streets would not be publicly maintained and for Wilder and Orinda Grove, that the street be open for public access.

Note(3) The average age of a private street in Orinda, excluding Wilder and Orinda Grove, is 66 year; 2/3 of a century. They have been successfully providing access to private homes by the residents and their service providers, including emergency services (fire and police). To claim that any of these streets cannot be a public street because it cannot provide that function because it is less than 16 feet wide when it has been performing that function for up to a century, is ludicrous.
Note: 2 miles of public residential streets have an average width of under 16 feet, even after the City has spent \$50 million upgrading them, and many more have minimum widths of less than 16 feet.
With regards to "no parking on streets less than 28 feet wide": 54 miles of Public Residential and "School" streets and 12 miles of Collectors have an average width of under 28 feet. There are not "no parking" signs on 66 miles of Orinda streets. This is another ridiculous constraint to prevent a private street from becoming public.

Note(4) It is crazy to talk about changing the geometry of streets that are, on average, 66 years old and have been functioning for up to 100 years. This is another example of how non-sensical Resolution 59-18 is.

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Revised Policy for Acceptance)
Of Certain Existing Private)
Streets into the City's Public)
Roadway Network)

Resolution No. 59 -18

WHEREAS, the City has an existing policy regarding the criteria for accepting existing private streets for public maintenance which was ratified in Resolution 56-90 and approved by the City Council on August 28, 1990; and

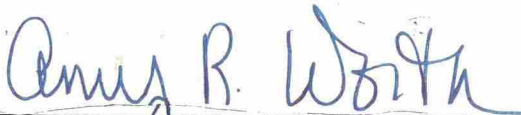
WHEREAS, per the Orinda General Plan states in accordance with Section 2.3.2 "Circulation: Implementing Policies", subsection G, the following: "Voluntary dedication of private streets will be considered for acceptance by the City on a case-by-case basis when streets and drainage systems are improved to City standards and present no expense to the City upon dedication."; and

WHEREAS, the City Council discussed the matter of accepting private roads at its April 10, 2018 and July 10, 2018 meetings and directed Staff to present a revised policy to amend the current policy as outlined in Resolution 56-90; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Orinda does find, determine, and order as follows: Resolution 56-90 is rescinded/superseded with Resolution 59-18 - Revised Policy for Acceptance of Certain Existing Private Streets into the City's Public Roadway Network as set forth in Exhibit "A" attached to this resolution is adopted.

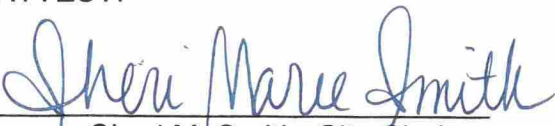
The above and foregoing Resolution was passed and adopted at a regular meeting of the City Council of the City of Orinda held on the 4th day of September, 2018 by the following vote:

AYES:	COUNCILMEMBERS:	Orr, Miller, Worth
NOES:	COUNCILMEMBERS:	Gee
ABSENT:	COUNCILMEMBERS:	Phillips
ABSTAIN:	COUNCILMEMBERS:	None



Amy Worth, Mayor

ATTEST:



Sheri M. Smith, City Clerk

Date: September 4, 2018

**Revised Policy for Acceptance of Certain Existing
Private Streets into the City's Public Roadway Network**

City of Orinda Policy Statement regarding Acceptance:

The acceptance of existing, privately maintained roads into the City's public roadway network shall be by Resolution of the City Council and shall be subject to the following criteria:

- 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.
- B. **Except where the City 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 excludes from consideration 4 of the 12 private streets not excluded by paragraph D.
- C. The road in question shall directly connect to a Orinda public street.
- 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.**
- 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:
 - 1. Pavement conditions – improvements shall be made as necessary to the asphalt and/or roadbed to 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.
 - 2. Drainage – adequate capacity of all drainage facilities shall be demonstrated and all damaged and undersized facilities shall be repaired and/or replaced to the satisfaction of the City Engineer.
 - 3. Soil Stability – a soils investigation, by a registered Civil Engineer with the title of "Soils Engineer" or "Geotechnical Engineer" as outlined in section 6736.1 of the Professional Engineers Act, shall be conducted for the

This excludes from consideration 192 of the 204 private streets in Orinda, covering 26 miles and home to 1,405 of the 1,563 Orinda families living on private streets. Note that there are 29 miles of public cul de sacs and loop streets for which there is no "need for the purposes of traffic circulation." Hopefully, however, these public streets do provide some "benefit to the general public" because tens of millions of dollars of public funds have recently been spent repairing them.

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.

4. Grades – the longitudinal grade of any section of the roadway shall not exceed 20 percent.
5. Minimum 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.
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.
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.
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.
9. Clear title of the right-of-way area shall be provided to the City, with appropriate recordation on all affected parcels. The City Attorney will evaluate, on a case-by-case basis, whether this clear title requirement can be met through City acceptance of an open offer to dedicate a given street recorded as part of the relevant subdivision map.
10. Street name signs shall be installed that match City signs.
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.

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.

1. The private road owners may elect to conduct the repairs with their own selected contractor, under the inspection by the City Engineer's staff. Upon confirmation all repairs/upgrades are completed and appropriate right-of-way dedications are cleared by the City Attorney, the City Engineer will request the City Council to accept the private road into the City's Public Roadway Network.
2. The City, at the its sole discretion, may facilitate setting up a special benefit assessment district for interested fronting property owners along a private road. A minimum of 60% of all fronting property owners along the private road must confirm in writing (via a petition) of their support for a potential special benefit assessment district. Each fronting property owner who signed the petition in favor of the district shall deposit \$1,000 to the City to initiate the process of holding public hearings and sending ballots to all property owners in the proposed special benefit assessment district.

If the district is approved (greater than 50% in favor), then the \$1,000 deposits shall be returned to each fronting property owner. The City will accept the private road into the City's Public Roadway Network. The calculated annual assessments would be included on the property tax bills for each property included in the district. The City would begin preparing bid documents to complete the necessary repairs/upgrades and construct the project. The City would then be repaid over a 10 to 30 year period from these annual property assessments.

If the district is NOT approved (50% or less in favor), then the City will retain each fronting property owner's \$1,000 deposit to recover some of the processing cost of the public hearings and mailing of ballots.

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Establishing a Policy and)
Criteria for the Acceptance)
of Existing Private Streets)
for Public Maintenance)

Resolution No. 56-90

Section 2.3.2-H of the Orinda General Plan provides that:

"Voluntary dedication of private streets will be considered for acceptance by the city on a case-by-case basis when streets and drainage systems are improved to city standards and present no expense to the city upon dedication."

A draft document entitled "Development Standard Guidelines" has been developed by the Development Standards Committee and staff and considered by the Planning Commission. Following several public hearings, the Planning Commission recommended that the City Council adopt the "Development Standard Guidelines" which included a chapter on existing roads.

On June 12, 1990, the City Council considered the "Development Standard Guidelines" at a public hearing.

NOW, THEREFORE the City Council of the City of Orinda finds, determines and orders as follows:

The policy and criteria for acceptance of existing private roads as set forth in Exhibit "A" attached to this resolution is adopted.

Passed and adopted at a meeting of the City Council of the City of Orinda at a meeting held on August 28, 1990 by the following vote:

AYES:	COUNCILMEMBERS:	Dabel, Heggie, Landers, Knebel
NOES:	COUNCILMEMBERS:	Guidotti
ABSENT:	COUNCILMEMBERS:	None


Linda R. Knebel, Mayor

ATTEST:


Thomas C. Sinclair, City Clerk

Resolution No. 56-90
Exhibit A

EXISTING PRIVATE ROADS

City of Orinda Policy Statement Regarding Acceptance:

The acceptance of existing, privately maintained roads into the City's street system shall be by Resolution of the City Council and shall be subject to the following criteria:

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.

B. The road shall directly connect to a public street or highway.

C. There shall be demonstrated a need for the incorporation of the road into the City's road system for purposes of traffic circulation, for example:

- the road connects two existing public streets and provides the only means of access to one of those streets.
- the road is a "collector" street that connects a public street with other private streets, particularly in situations where maintenance of the private streets is under separate agreement from the "collector" street.
- the road can provide a viable alternative to an existing public street in the event that public street is impassable.

D. Any road proposed for inclusion in the public street system shall be upgraded, at no expense to the City, to standards that the City has adopted for this purpose, which are as follows:

1. Pavement conditions - improvements shall be made as necessary to the asphalt and/or roadbed to 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.
2. Drainage - adequate capacity of all drainage facilities shall be demonstrated and all damaged and undersized facilities shall be replaced.
3. Soil stability - A soils investigation, by a registered Civil Engineer with the title of "Soils Engineer" or "Geotechnical Engineer" as outlined in

section 6736.1 of the Professional Engineers Act, 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.

4. Grades - the grade of any section of the roadway shall not exceed 20 percent.
5. Minimum 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 fire hydrant locations. Parking shall be restricted on roads with widths of less than 22 feet.
6. Traffic hazards - signing shall be installed and safety measures shall be taken to reduce potential traffic hazard areas.
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.
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 problem areas to the satisfaction of the City Engineer. Fifteen mile per hour sight distance and 50 foot centerline radius shall be used for minimum design standards.
9. Clear title of the right-of-way area shall be provided to the City, with appropriate recordation on all affected parcels.
10. Street name signs shall be installed that match City signs.
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.