

BILL NO. 82
(DRAFT 5)

ORDINANCE NO. 24 1

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 9, SECTION 2-40 AND ADDING A NEW ARTICLE TO CHAPTER 14 OF THE HAWAI'I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO IMPROVING, GRADING, REPAIRING, OR CONSTRUCTION WORK UPON PRIVATE, NONDEDICATED, AND NON-SURRENDERED ROADS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Chapter 2, article 9, section 2-40, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended to read as follows:

“Section 2-40. Duties and functions of department.

The department shall be responsible for:

- (1) The performance of all matters relating to engineering;
- (2) Public and private building construction and inspection;
- (3) Public improvements;
- (4) Construction, inspection, and maintenance of public highways, bridges, streets, and sidewalks;
- (5) Acquisition of public and private property for public purposes;
- (6) Design and maintenance of a system of traffic control and devices;
- (7) Floodplain management;
- (8) Construction and inspection of all other County projects, except for matters relating to the department of water supply[-]; and
- (9) Such other duties or functions conferred upon the department by ordinance or statute.”

SECTION 2. Chapter 14, of the Hawai'i County Code 1983 (2016 Edition, as amended), is amended by adding a new article 26 to read as follows:

“Article 26. County Authority to Improve, Grade, Repair, or Do Construction Work Upon Private, Nondedicated, and Non-surrendered roads.

Section 14-26-1. Purpose.

Section 265A-1, Hawai'i Revised Statutes, provides that the council may enact an ordinance that authorizes the County to improve, grade, repair, or do construction work upon private roads. The council finds that there are private, nondedicated, and non-surrendered roads

in Hawai‘i County that are open to the general public and necessary for public transportation or public safety, or both. The council further finds that the public interest of the County is served by performing such improvement, grading, repair or construction work upon such roads, in limited circumstances. Any such work undertaken by the County pursuant to this article shall not be construed as evidence of intention by the County to dedicate or condemn any subject road to the public use, take control over the subject road, nor obligate the County to improve, grade, repair, or do construction work upon the subject road in the future.

Section 14-26-2. Definitions.

As used in this article, unless it is apparent from the context that a different meaning is intended:

“County” means the County of Hawai‘i.

“Department” means the department of public works of the County of Hawai‘i.

“Director” means the director of the department of public works of the County of Hawai‘i or the director’s duly authorized representative.

“Private, nondedicated, and non-surrendered roads” or “subject roads” means streets, roads, highways, ways, or lanes used for purposes of vehicular traffic that are owned, in whole or in part, by persons other than governmental entities and which have not been dedicated or surrendered to the County in accordance with section 264-1(c)(1) and (2), Hawai‘i Revised Statutes.

“Requester” means:

- (1) The representative body authorized to make legal decisions about a private, nondedicated, and non-surrendered road on behalf of the owners of the subject road as to the: use, improvement, repair, and maintenance of the road; sign agreements with respect thereto; and bind all other persons having rights in or to such road or other property; or
- (2) In the absence of a representative body, persons collectively owning a sixty percent or greater interest in the fee title or an appropriate roadway easement in a private, nondedicated, and non-surrendered road, and who have delegated authority to one or more of the owners to act on behalf of the ownership.

“Speed hump” means a gentle rise in the profile of the road that is used to regulate the speed of a vehicle.

Section 14-26-3. Powers and duties of director.

Upon request and subject to the availability of appropriations and necessary resources, the director may improve, grade, repair, or do construction work upon portions of private, nondedicated, and non-surrendered roads that have been determined by the director, in the director’s discretion, to meet the criteria set forth in this article.

Section 14-26-4. Eligibility criteria to be considered.

Subject to the availability of appropriations and necessary resources, the department may improve, grade, repair, or do construction work by remedial patching, resurfacing, paving, or installation of signs, marking, and lighting, upon those portions of private, nondedicated, and non-surrendered roads that have been determined by the director to meet the following criteria:

- (1) The subject road has not been dedicated or surrendered to the County or any other governmental entity, and is not otherwise owned by the County or any other governmental entity;
- (2) The subject road is not maintained by any governmental entity other than the County pursuant to this article;
- (3) The subject road is open to, serves, and benefits the general public;
- (4) The subject 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 road is a “private” road, or any restrictions on parking that are not applicable to all persons except as otherwise provided by law;
- (5) The subject road directly serves one of the following:
 - (A) Fifty or more contiguous parcels;
 - (B) Fifty or more residential structures; or
 - (C) A parcel of land which has two or more condominium buildings or apartment buildings that contain twenty-four or more condominium or apartment units;
- (6) The subject road is not part of a cluster plan development, planned unit development, or similar type of development;
- (7) Improving, grading, repairing, or construction work upon the subject road by the County will be practicable and safe;
- (8) The developer or subdivider of the subject road has not agreed to maintain the subject road in perpetuity;
- (9) Improvement, grading, repair, or construction work upon the subject road surface will increase the safety of motorists, bicyclists, and pedestrians or is otherwise in the public interest;
- (10) The requesters demonstrate a lack of ability to improve, grade, repair, or perform the construction work requested pursuant to section 14-26-6 and supply documentation to this effect;
- (11) The subject road does not suffer such design defects as to make use of the subject road hazardous to the general public regardless of improvement, grading, repair, or construction work; and
- (12) The County is provided legal access and right of entry to work within the roadways and adjacent areas necessary to complete the work.

Section 14-26-5. Allowable work upon private, nondedicated, and non-surrendered roads.

- (a) Paved private, nondedicated, and non-surrendered roads shall be improved, graded, or repaired by:
 - (1) Remedial patching with like materials, for example:
 - (A) Asphalt concrete shall be used for asphalt concrete paved roads;
 - (B) Portland cement concrete or asphalt concrete, as determined by the director, shall be used for Portland cement concrete paved roads; or

- (C) Gravel for gravel.
 - (2) Resurfacing, if the director determines that the pavement is in such poor condition that remedial patching is impractical and not cost effective.
 - (3) Installation of signs, marking, and lighting.
- (b) Unpaved private, nondedicated, and non-surrendered roads shall be improved, graded, or repaired by:
- (1) Remedial patching with like materials, for example:
 - (A) Coral for coral; or
 - (B) Gravel for gravel.
 - (2) Paving with asphalt concrete material, if the director determines that the 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, and available funds and resources permit.
 - (3) Installation of signs, marking, and lighting.
- (c) Improvement, grading, repair, or construction work performed by the County pursuant to this article, shall not include installation or maintenance of curbs, shoulders, gutters, drainage facilities, or similar infrastructure, provided that speed humps that are removed as part of the County's improvement, grading, repair, or construction work upon private roads may be reinstalled by the County if the director determines that the conditions for reinstallation have been met.

Section 14-26-6. Process to request improvement, grading, repair, or construction work upon private, nondedicated, and non-surrendered roads, resolution.

- (a) The requester for a private, nondedicated, and non-surrendered road, may initiate and submit a written request to the director for assistance to improve, grade, repair, or do construction work upon a subject road. The request shall specify the area and nature of the requested improvement, grading, repair, or construction work and provide evidence that demonstrates that the request satisfies the eligibility criteria for assistance set out in section 14-26-4.
- (b) The director shall process requests for assistance as follows:
- (1) The director shall determine whether the subject road proposed for consideration satisfies the eligibility criteria set out in section 14-26-4 and notify the requester of the director's determination within six months of the date the written request is received by the department.
 - (2) If the director determines that the subject road satisfies the eligibility criteria set out in section 14-26-4, the director shall request comments from the civil defense agency, Hawai'i fire department, police department, mass transit agency, and planning department, regarding whether the subject roads meet any or all of the following criteria:
 - (A) The roads were created or platted before December 21, 1966;
 - (B) The roads are necessary to maintain emergency and mass transportation access;

- (C) The roads can be utilized to develop emergency or alternate routes and thereby promote community safety and the public interest; or
- (D) The roads can be integrated into public transportation routes for mass transit, multi-modal transportation systems, or department of education bus routes.

These agencies and departments shall respond to the director's request for comment within thirty calendar days from the date the request for comment is received. If any agency or department does not respond within this time, the director may proceed without their input.

- (3) Following either the receipt of comments, or the expiration of the comment period specified in section 14-26-6(b)(2), the director shall identify subject roads that satisfy section 14-26-4 criteria and have been identified by the civil defense agency, Hawai'i fire department, police department, mass transit agency, or planning department, as satisfying any or all of the criteria in section 14-26-6(b)(2). Higher priority shall be afforded to subject roads that meet two or more criteria listed in section 14-26-6(b)(2).
- (4) Feasibility. With respect to subject roads deemed by the director to satisfy the criteria in section 14-26-6(b)(3), the director shall assess whether the requests are feasible for assistance pursuant to this article, after consideration of:
 - (A) The area of the requested improvements, gradings, repairs or construction work;
 - (B) The designs and the types and amounts of materials appropriate for the improvements, gradings, repairs, or construction work, pursuant to section 14-26-5;
 - (C) The estimated cost and nature of resources necessary to complete the work for each request; and
 - (D) Appropriation and resource limitations.
- (c) The director, after consideration of the criteria set out in sections 14-26-4 and 14-26-6(b)(2) and appropriation and resource limitations, shall identify requests that are feasible, if sufficient appropriations and necessary resources can be secured.
- (d) The director shall annually compile and submit a report to the Council by the end of January that includes the following information:
 - (1) A summary of requests for assistance received from January through December of the previous calendar year. This summary shall also include requests for assistance received in previous years that have not been granted;
 - (2) A list of requests found to be eligible for assistance pursuant to section 14-26-4;
 - (3) A list of requests found to satisfy section 14-26-6(b)(2) criteria;
 - (4) A list of requests found to be feasible pursuant to section 14-26-6(b)(4); and
 - (5) An update regarding the status of requests identified as feasible in prior calendar years that have not yet been granted.

- (e) If sufficient appropriations and necessary resources for a road on the list of feasible requests become available, the requester must submit written approval of the proposed improvement, grading, repair, or construction work that has been determined by the director to be appropriate. Further the requester shall agree to such terms, conditions, and covenants as may be determined by the director to be required for the convenience and protection of the County and the public, including but not limited to, the granting of necessary licenses, rights of entry, and easements.
- (f) The requirement for a written request, approval, and agreement will not apply, however, to:
 - (1) A road over which the department exercises surface maintenance responsibilities on the day prior to the effective date of this ordinance; or
 - (2) A road that the County determines has been dedicated by implication to public use for roadway purposes.
- (g) Nothing contained in this article shall be construed as prohibiting the director from requiring a written approval and agreement for work undertaken pursuant to this article.

Section 14-26-7. Discontinuance of County assistance to improve, grade, repair, or do construction work upon a private, nondedicated, and non-surrendered road.

- (a) The director may immediately discontinue County assistance to improve, grade, repair, or do construction work upon a specific private, nondedicated, and non-surrendered road, if the director determines that:
 - (1) Such road no longer meets all criteria set forth in this article;
 - (2) The requested work is no longer feasible, pursuant to section 14-26-6(b)(4); or
 - (3) The request has been withdrawn by the requester.
- (b) Prior to discontinuing any improvement, grading, repair, or construction work upon any private, nondedicated, and non-surrendered road, the director shall provide the requester with written notice in advance of such proposed action.
- (c) Where assistance is discontinued because the road has been signed, marked, delineated, fenced, barricaded, or otherwise designed, constructed, or operated to exclude the general public, in whole or in part, the director is authorized to:
 - (1) Recover removable fixtures and materials, if any, installed by the County, and to recover from the requester the value of the fixtures or materials left in place; and
 - (2) Recover from the requester the total cost incurred by the County for paving or other improvement, grading, repair, or construction work done pursuant to this article within the five-year period preceding the closure of the road to the public. The requester may avoid liability for the costs by making signage, design, construction, operational, or other changes, or any necessary combination thereof, to again open the road to the general public and meet all criteria set forth in this article.

Section 14-26-8. Control and liability.

Nothing contained in this article and no action undertaken pursuant to this article shall be construed as the County:

- (1) Taking control of a subject road;
- (2) Assuming responsibility either to improve a subject road to a dedicable standard or to a standard above the condition at the time repairs are undertaken;
- (3) Making any warranties or representation as to the safety or suitability of roads that have been improved, graded, repaired, or constructed pursuant to this article, for public vehicular or nonvehicular transportation;
- (4) Adopting, accepting, or approving of a private, nondedicated, and non-surrendered road as a public highway; or
- (5) Agreeing to approve or undertake future work pursuant to this article.

Section 14-26-9. Administrative rules.

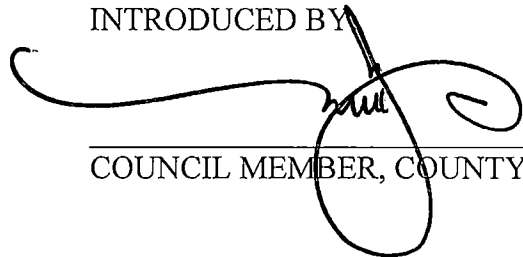
The director may adopt administrative rules pursuant to chapter 91, Hawai‘i Revised Statutes, as may be necessary to implement this article.”

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. Material in Section 1 to be repealed is bracketed and stricken. New material in Section 1 is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 5. This ordinance shall take effect one year after approval.

INTRODUCED BY



COUNCIL MEMBER, COUNTY OF HAWAI‘I

 Hilo , Hawai‘i
Date of Introduction: December 20, 2023
Date of 1st Reading: December 20, 2023
Date of 2nd Reading: January 10, 2024
Effective Date: January 23, 2025

REFERENCE Comm. 496.62

OFFICE OF THE COUNTY CLERK
 County of Hawai'i
 Hilo, Hawai'i

COUNTY CLERK
 COUNTY OF HAWAII

2024 JAN 26 AM 11:10

(Draft 4)

Introduced By: Matt Kāneali'i-Kleinfelder
 Date Introduced: December 20, 2023
 First Reading: December 20, 2023
 Published: January 5, 2024

REMARKS: _____

Second Reading: January 10, 2024
 To Mayor: January 19, 2024
 Returned: January 26, 2024
 Effective: January 23, 2025
 Published: February 9, 2024


REMARKS: _____


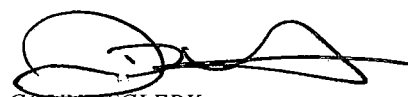
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Evans	X			
Galimba			X	
Inaba	X			
Kagiwada	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Villegas			X	
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(Draft 5)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Evans	X			
Galimba	X			
Inaba	X			
Kagiwada	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Villegas	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved Disapproved this 23rd day
 of January, 2024.

 MAYOR, COUNTY OF HAWAII


 COUNCIL CHAIRPERSON

 COUNTY CLERK

Bill No.: 82 (Draft 5)
 Reference: C-496.62/PCHSW-6
 Ord No.: 24 1