January 26, 2015

TO: ACHD Board of Commissioners &
    Bruce S. Wong, Director

FROM: Scott D. Spears, Assistant General Counsel


COMMISSION STATUS REPORT – February 4, 2015

Executive Summary:

Section 9011 of the ACHD Policy Manual provides procedures for winter maintenance. On January 14, 2015 a Public Hearing was held for proposed Ordinance No. 228 which proposes revisions to existing Section 9011.1 and 9011.2 and a new Section 9011.4 prohibiting private winter maintenance of public highways and public right-of-way with certain exceptions. During the Public Hearing members of the Commission expressed various concerns regarding the proposed new Section 9011.4 and the Commission voted to continue the Public Hearing to February 11, 2015 to allow ACHD staff opportunity address concerns raised in the Public Hearing. ACHD staff has revised proposed new Section 9011.4 in an effort to address the concerns of the Commission and hereby presents the revised Section 9011.4 for information in advance of the February 11, 2015 continued public hearing.

Revisions to Proposed Section 9011.4:

Revisions to proposed new Section 9011.4 eliminate “prohibited” and “prohibition” and instead, emphasize permitting. The proposed revisions to new proposed Section 9011.4 are as follows:

- The revisions indicate that persons wishing to engage in private snow or ice removal activities on or within a public highway or public right-of-way shall first obtain a Snow Removal Permit (“Permit”).

- The revisions clearly indicate that a Permit is not required for: 1. Snow or ice removal from sidewalks and driveways; 2. Clearing an access that is blocked by plowed snow; or 3. Removing snow from that portion of a public highway or public highway that is within 50 feet of a driveway so long as the public highway or right-of-way is not platted and is not located within any duly designated city limits.

- The revisions provide for a permit fee of $50.00, a required bond of $10,000 and proof of liability insurance of not less than $100,000.00.
The revisions provide an important exception from the Permit fee and bonding requirements where a person intends to remove snow or ice from a public highway or right-of-way adjacent to five or fewer properties and without expectation of remuneration.

The revisions provide that any permit that is not denied by ACHD within two working days of its receipt will be deemed granted, subject to applicable conditions and standards.

The proposed revisions to 9011.4 (attachment No.1) are for information and discussion on February 4, 2015 as a status report.

Fiscal Impact:

None

Recommendation:

No specific action by the Board of Commissioners is required with this status report. The Commission will take direct action on Ordinance No. 228 at the continued Public Hearing on February 11, 2015.

Attachment:

1. Proposed Revisions to New Section 9011.4. (The full text of revised Ordinance No. 228 will be made available prior to the Commission meeting on February 11, 2015.)
9011.4 Private Winter Maintenance of Public Highways and Right-of-Way

➢ Permit Required. Other than duly assigned District personnel and/or employees of an entity contracting with the District to provide winter maintenance services, all persons desiring to engage in snow or ice removal activities on or within a public highway or public right-of-way, including, not limited to: spreading sand or salt on or within a public highway or public right-of-way or use of any mechanized machine or instrumentality to remove or plow snow or ice from, or otherwise relocate snow or ice on or within a public highway or public right-of-way shall first obtain a Snow Removal Permit ("Permit") from the District.

➢ Permit Not Required. A Permit is not required for the use of shovels, snow blowers or bladed 4 wheelers or similar equipment to remove snow or ice from a public highway or public right-of-way in the following instances:
  o Sidewalks and driveways
  o Clearing an access that is otherwise blocked by plowed snow; or
  o Removal of snow or ice from that portion of a public highway or public right-of-way that is within 50 feet of a driveway or similar access so long as the public highway or public right-of-way is not platted and is not located within any duly designated city limits.

➢ Permit Application, Fee, Bonding and Insurance - Exception. In order to obtain a Permit, persons must apply to the District for a Permit pursuant to the applicable requirements set forth in Section 6007 of the District Code.
  o Pay an application fee in the amount of $50.00 and provide a bond or other suitable financial surety in the amount of $10,000.00 as well as proof of liability insurance in an amount not less than $100,000.00
  o Except that persons intending to remove snow or ice from a public highway or public right-of-way adjacent to five (5) or fewer properties and without expectation of remuneration for such activity shall not be required to pay an application fee or submit a bond as otherwise required and such persons shall only be required to provide proof of liability insurance in an amount not less than $100,000.00 along with their Permit application.
  o A Permit may be granted by the Deputy Director of Maintenance or their designee and any person granted a Permit shall comply with all conditions of the Permit as well as all applicable District standards for winter maintenance activities.
  o Any Permit that is not denied by the Deputy Director of Maintenance or their designee within 2 working days of its receipt by the District shall be deemed granted, subject to applicable conditions and standards.

➢ Notice of Violation – Penalty - Abatement. Any person acting in violation of this subsection following receipt of a notice of violation shall be subject to a penalty in the sum of one hundred fifty dollars ($150) per day, with accrual of the penalty beginning on the date that the notice of violation was first sent by the District and such person shall also be subject to a legal action for abatement and the District may recover costs and expenses incurred in the legal action.