

MEMORANDUM

July 29, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Action:** Expedited Bill 30-16, Streets and Roads – Amendments

Transportation, Infrastructure, Energy & Environment Committee recommendation (2-0): enact Bill 30-16.

Expedited Bill 30-16, Streets and Roads - Amendments, sponsored by Lead Sponsor Council President Floreen at the request of the County Executive, was introduced on July 12, 2016. A public hearing was held on July 19; a representative from the Executive was the only speaker (©10). A Transportation, Infrastructure, Energy, & Environment Committee worksession was held on July 21.

Bill 30-16 would clarify that a person may not exercise control over or otherwise occupy the public right-of-way and well as define certain terms in Chapter 49. According to the Executive memorandum, the bill clarifies who is responsible for a right-of-way obstructions. It clarifies that a person may not affect control over or otherwise occupy the right-of-way with a structure, regardless of who erected the structure. The bill would also modify certain definitions to clarify that a sidewalk and other pedestrian paths are part of the right-of-way.

At the public hearing, Councilmember Leventhal observed that this legislation could relate to Zoning Text Amendment 16-06, Prohibited Signs – Public Rights of Way, which would amend the Zoning Ordinance by deleting provisions for limited duration signs; revising the provisions concerning temporary signs and prohibited signs; and adding provisions concerning the treatment of prohibited signs in the right of way. While Bill 30-16 and ZTA 16-06 are similar in that they address obstructions in the right of way, the scope of ZTA 16-06 is limited to temporary signs, which are regulated under the Zoning Ordinance. Bill 30-16 is much broader and prohibits any objects or structures in the public right-of-way, which might also include signs.

The Committee recommended (2-0, Councilmember Hucker absent) enactment of Bill 30-16.

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Expedited Bill No. 30-16
Concerning: Streets and Roads --
Amendments
Revised: 6/6/2016 Draft No. 1
Introduced: July 12, 2016
Expires: January 12, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) clarify that a person may not exercise control over, or otherwise occupy, the public right-of-way;
- (2) define certain terms in Chapter 49; and
- (3) generally amend County law regarding rights-of-way and streets and roads.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Sections 49-10 and 49-26

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 49-10 and 49-26 are amended as follows:

49-10. Obstruction of public rights-of-way.

Except as provided in Section 49-11, in the public right-of-way, a person must not:

(a) place, maintain, use, or exercise control over, any object or structure in the public right-of-way;

(b) allow any object or structure owned by the person to occupy, obstruct, or encroach upon the public right-of-way;

[(a)] (c) [do] perform any reconstruction or maintenance work; or

[(b)] (d) allow the [erect] erection or [place] placement of any structure, fence, post, rock, or other object in the public right-of-way, except:

(1) mail boxes mounted on a support that will bend or break away on impact by a vehicle;

(2) individual residential newspaper boxes mounted on a support that will bend or break away on impact by a vehicle;

(3) street trees placed and maintained under Section 49-33(j);

(4) ground cover placed and maintained under Section 49-33(k);

(5) a temporary, removable obstruction or occupation of a right-of-way installed under a permit issued under Section 49-11; or

(6) as otherwise permitted by law.

Any object placed in the public right-of-way under [this subsection] Section 49-10(d) must not unreasonably impede use of a sidewalk or other right-of-way by pedestrians or persons in wheelchairs, or impede or endanger automobiles or other vehicles.

* * *

28 **49-26. Definitions.**29 *Bikeway*: any area expressly intended for bicycle travel, including any:30 (a) *Shared use path*: A paved path that abuts, is contiguous with, and is a
31 part of the right-of-way for a County road or street, that is typically 10
32 feet wide, but can vary between 8 feet and 14 feet wide, designated for
33 bicycles and pedestrians, and that is separated from motorized traffic
34 by a curb, barrier, or landscape panel.35 (b) *Shared use trail*: A paved or unpaved trail designated for bicycles and
36 pedestrians, that is not part of the right-of-way for a County road or
37 street because the trail does not abut and lie contiguous with the right
38 of way for a County road or street.39 [(b)] (c) *Bike lane*: A portion of a roadway designated by striping, signing, or
40 pavement markings for the preferential or exclusive use of bicycles, and
41 on which through-travel by motor vehicles is not allowed.42 [(c)] (d) *Shared use roadway*: A roadway open to both bicycle and motor
43 vehicle travel and which is designated as a preferred route for bicycle
44 use by warning or informational signs.45 [(d)] (e) *Separated bike lane*, also known as a protected bike lane or cycle
46 track: a bikeway that is physically separated from motor vehicles and
47 pedestrian facilities. The separation may be vertical, such as a curb;
48 horizontal, such as a landscape panel or parking lane; or a
49 combination. A separated bike lane may be in a one-way or two-way
50 configuration.51 [(e)] (f) *Buffered bike lane*: a bikeway separated from a motor vehicle travel
52 lane with an area of striped pavement.

53 * * *

54 *Road:* any road, street, highway, avenue, lane, alley, [or viaduct, or any segment
55 of any of them.] bridge, shared use path, sidewalk, viaduct, or any segment of any of
56 them, and any related storm drain and stormwater management facility.

57 * * *

58 *Sidewalk:* any portion of the right-of-way for a County road or street that is
59 expressly intended as a pedestrian walkway [that fronts a road].

60 * * *

61 **Sec. 2. Expedited Effective Date.**

62 The Council declares that this legislation is necessary for the immediate
63 protection of the public interest. This Act takes effect on the date on which it becomes
64 law.

65 *Approved:*

66
67

Nancy Floreen, President, County Council Date

68 *Approved:*

69

Isiah Leggett, County Executive Date

70 *This is a correct copy of Council action.*

71

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 30-16

Streets and Roads – Amendments

DESCRIPTION:	The bill clarifies who is responsible for a right-of-way obstruction and modifies various definitions in Section 49-26, including the definitions of “road” and “sidewalk.”
PROBLEM:	Chapter 49 prohibits obstructions in the public right-of-way by persons who erect the obstructions. Chapter 49 should be clarified to affect the intended prohibition on all structures, regardless of who erected them. Also, the definitions of “road” and “sidewalk” in Chapter 49 are too narrow. Chapter 49 should be clarified to explain that a sidewalk and other pedestrian paths are part of the road right-of-way.
GOALS AND OBJECTIVES:	To clarify the application and scope of the prohibition on right-of-way encroachments and the definitions of “road,” “sidewalk,” and other related definitions in Chapter 49.
COORDINATION:	Departments of Permitting Services and Transportation
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	N/A
SOURCE OF INFORMATION:	Christina Contreras, Permitting Services, (240) 777-6703 Joanna Conklin, Transportation, (240) 777-7195
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A violation.




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 15, 2016

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill No. XX-16E, Amendments to Montgomery County Code Chapter 49,
Streets and Roads, Sections 49-10 and 49-26

The purpose of this memorandum is to transmit, for the County Council's approval, Expedited Bill No. XX-16, Amendments to Chapter 49 of the Montgomery County Code relating to Streets and Road. This bill clarifies who is responsible for a right-of-way obstruction and modifies various definitions in Section 49, including the definitions of "road" and "sidewalk."

The proposed revisions to Section 49-10 clarify that a person may not affect control over or otherwise occupy the public-right-of-way with a structure, regardless of who erected the structure. The proposed revisions to Section 49-26 modify the definitions of "road," "sidewalk," and other related terms to clarify that a sidewalk and other pedestrian paths are part of the road right-of-way.

The amendments are transmitted for the Council's review and consideration. Please direct any questions to Emil Wolanin, Deputy Director of the Department of Transportation at 240-777-8788.

IL/ew

Attachments

6

Fiscal Impact Statement
Bill xx-16
Right-of-Way Obstructions—Streets and Roads—Definitions—Amendments

1. Legislative Summary

The proposed bill clarifies the application and scope of the prohibition on right-of-way encroachments and the definitions of "road," "sidewalk," and other related definitions in Chapter 49.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed bill does not have a fiscal impact. The proposed bill clarifies who is responsible for a right-of-way obstruction and modifies various definitions in Section 49-26, including the definitions of "road" and "sidewalk."

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See #2 above

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

None.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The legislation does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

There will be no additional staff time needed to implement the proposed bill.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

The proposed bill does not create new staff responsibilities.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Not applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

The proposed bill does not have a fiscal impact because it clarifies who is responsible for a right-of-way obstruction and modifies various definitions in Section 49-26, including the definitions of "road" and "sidewalk."

13. Other fiscal impacts or comments.

None.

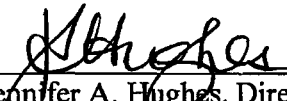
14. The following contributed to and concurred with this analysis:

Emil Wolanin, Department of Transportation

Diane Schwartz Jones, Department of Permitting Services

Christina Contreras, Department of Permitting Services

Brady Goldsmith, Office of Management & Budget



Jennifer A. Hughes, Director
Office of Management and Budget

6/3/16
Date

Economic Impact Statement
Bill #-16, Right-of-Way Obstructions – Streets and Road – Definitions -
Amendments

Background:

This legislation would clarify who is responsible for the right-of-way obstruction and modifies various definitions in Section 49-26 of the County Code, including the definitions of “road” and “sidewalk”. Chapter 49 currently prohibits obstructions in the public right-of way by person or persons who erect obstructions. The legislation clarifies Chapter 49 to “effect the intended prohibition on all structures, regardless of who erected them.”

1. The sources of information, assumptions, and methodologies used.

There are no sources of information, assumptions, or methodologies used in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

There are no variables that could affect the economic impact estimates. Bill #-16 clarifies responsibility for right-of-way obstructions. As such, the legislation would have no countywide economic impact on employment, spending, savings, investment, incomes, and property values.

3. The Bill’s positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill #-16 has no positive or negative effect on the County’s employment, spending, savings, investment, incomes, and property values.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph 3.

5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance;

FOR

Joseph F. Beach, Director
Department of Finance

Date

5/25/2016

**Testimony of County Executive Isiah Leggett
on
Expedited Bill 30-16**

July 19, 2016

Good afternoon, Council President Floreen and members of the Council. I am Emil Wolanin, Deputy Director of the Department of Transportation. I am here today to testify on behalf of County Executive Isiah Leggett on Expedited Bill 30-16, Streets and Roads – Amendments.

The Executive believes this bill is necessary in order to clarify who is responsible for a right-of-way obstruction and to modify the definitions of “road,” “sidewalk,” and other related terms to explain that a sidewalk and other pedestrian paths are part of the road right-of-way. These changes will strengthen the County’s ability to manage our public right-of-ways and ensure they are not used in manners other than for the intended transportation purpose.

Thank you for the opportunity to share the Executive’s perspective, and we look forward to working with the Council to finalize this bill.