



Montgomery  
County Council

**Committee:** Transportation & Environment  
**Committee Review:** At a future date  
**Staff:** Christine M.H. Wellons, Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #RightOfWayPermit

AGENDA ITEM #5B  
December 3, 2019  
**Introduction**

## SUBJECT

Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments  
Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Glass and Councilmember Jawando

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

## DESCRIPTION/ISSUE

Bill 38-19 would: (1) require the Executive to adopt certain regulations regarding permits to close curb lanes, sidewalks, or shared use paths in the public rights-of-way; (2) limit the circumstances in which the Department of Permitting Services may grant or extend a permit to close a curb lane, sidewalk, or shared use path; and (3) require the Director of Permitting Services to publish certain information regarding permits to close curb lanes, sidewalks, or shared use paths.

## SUMMARY OF KEY DISCUSSION POINTS

- N/A

### This report contains:

Staff Report	Pages 1
Bill 38-19	©1
Legislative Request Report	©8

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**MEMORANDUM**

November 27, 2019

TO: County Council

FROM: Christine M.H. Wellons, Legislative Attorney  
*C. Wellons*

SUBJECT: Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments<sup>1</sup>

PURPOSE: Introduction – no Council votes required

Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors Councilmembers Glass and Jawando, is scheduled to be introduced on December 3, 2019. A public hearing is tentatively scheduled for January 14, 2020 at 1:30 p.m.

Bill 38-19 would alter and clarify the circumstances in which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk or walkway in connection with repair work or construction.

**BACKGROUND**

The purposes of this bill are to increase pedestrian safety, and to assure that public sidewalks and walkways may be closed only for the minimum time periods necessary with minimum disruption and inconvenience to the public. In particular, the bill would:

- (1) require the Executive to adopt certain regulations regarding permits to close curb lanes, sidewalks, or shared use paths in the public rights-of-way;
- (2) limit the circumstances in which the Department of Permitting Services may grant a permit to close a curb lane, sidewalk, or shared use path in the public right-of-way; and
- (3) require the Director of Permitting Services to publish certain information regarding permits to close public-rights of way.

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<sup>1</sup> #RightOfWayPermit

## BILL DESCRIPTION

Under Bill 38-19, a temporary closure of a sidewalk or walkway in the right-of-way would be permitted only if several specific conditions are met, including but not limited to conditions necessary to:

- minimize inconvenience to the public;
- limit the duration of the closure to the minimum time period necessary; and
- assure public safety in the work area.

If a temporary closure would last beyond certain time periods (6 months in the case of sidewalk reconstruction, or 15 days in the case of all other closures), then the bill would require the permittee to provide a safe alternative pathway for pedestrians on the same side of the street as the closure. Extensions of these time periods would be allowed only in limited circumstances that are prescribed through Executive regulations.

The bill would require increased transparency by requiring the Director of Permitting Services to publish on the Department's website a copy of each application received and each permit granted to close sidewalks and walkways in the public right-of-way.

This packet contains:

Bill 38-19

Legislative Request Report

Circle #

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Bill No. 38-19  
Concerning: Streets and Roads – Permit  
to Obstruct Public Rights-of-Way -  
Amendments  
Revised: 11/19/2019 Draft No. 4  
Introduced: December 3, 2019  
Expires: June 3, 2021  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Glass and Councilmember Jawando

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### AN ACT to:

- (1) require the Executive to adopt certain regulations regarding permits to close curb lanes, sidewalks, or shared use paths in the public rights-of-way;
- (2) limit the circumstances in which the Department of Permitting Services may grant a permit to close a curb lane, sidewalk, or shared use path in a public right-of-way;
- (3) require the Director of Permitting Services to publish certain information regarding permits to close public rights-of-way; and
- (4) generally amend the law regarding permits to obstruct public rights-of-way.

By amending

Montgomery County Code  
Chapter 49, Streets and Roads  
Section 49-11

<b>Boldface</b>	<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. Section 49-11 is amended as follows:**

**49-11. Permit to obstruct public rights-of-way.**

(a) Definitions. In this section, the following terms have the meanings indicated.

(1) Temporary closure. Temporary closure means a temporary obstruction, blockage, or occupation of a right-of-way to:

- (A) reconstruct or repair a sidewalk, shared use path, driveway, curb, or other structure;
- (B) install, repair, locate, or replace underground utilities or infrastructure under a sidewalk or shared use path;
- (C) construct or reconstruct an abutting structure; or
- (D) otherwise install a temporary, removable obstruction or occupation of the right-of-way.

(2) Safe alternative path. Safe alternative path means an alternate walkway or shared use path that:

- (A) is on the same side of the street as a temporary closure; and
- (B) provides safe access and passage to pedestrians.

[(a)] (b) [Unless this Section prohibits the issuance of a permit] Notwithstanding Section 49-10, the Director of Permitting Services may issue a permit to:

- (1) [reconstruct or repair a sidewalk, shared use path, driveway, curb, or other structure;
- (2) install, repair, locate, or replace underground utilities or infrastructure under a sidewalk or shared use path; or
- (3) install a temporary, removable obstruction or occupation of a right-of-way;

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(4) close a curb lane, sidewalk, or shared use path in conjunction with the construction or reconstruction of an abutting structure] create a temporary closure that complies with subsection (c); or

[(5)] (2) install permanent, nonstandard structures in the right-of-way that were approved by the Planning Board, the City of Rockville, or the City of Gaithersburg in a site plan as a site element of streetscape. Streetscape includes street furnishings, fixtures and elements in connection with public use of the right-of-way but does not include enclosed structures or vaults or improvements for private use. The permit applicant must execute a declaration of covenants that runs with the land on which the project associated with the streetscape is being developed to perpetually maintain the permitted streetscape in a good and safe condition; return the right-of way to its condition before the permitted streetscape was installed if the nonstandard permitted streetscape is removed; and indemnify the County from any cost or liability associated with the construction, maintenance, use or removal of the nonstandard permitted streetscape.

[(b)] (c) Permits for temporary obstructions. The Director [must not] may issue a permit for [reconstruction or repair of a sidewalk or shared use path for more than 6 months, or to close a curb lane, sidewalk, or shared use path for work on an abutting structure, utilities, or infrastructure for more than 15 days, unless a safe alternate walkway or shared use path is provided on the same side of the street] a temporary closure under subsection (b)(1) only if:

- 52 (1) [in a Metro Station Policy Area, Town Center Policy Area, or other  
 53 area expressly identified in a Council resolution] the permit has  
 54 conditions necessary to:  
 55 (A) minimize inconvenience to the public;  
 56 (B) limit the duration of the closure to the minimum time period  
 57 necessary; and  
 58 (C) assure public safety in the work area;  
 59 (2) [within 20 feet of a bus stop or mass transit station entrance; or]  
 60 the Director of Transportation approves a temporary traffic control  
 61 plan under subsection (g);  
 62 (3) [on a road:  
 63 (A) designated as a major or arterial highway;  
 64 (B) of 4 lanes or more; or  
 65 (C) designated as a business district street.] the area subject to  
 66 the temporary closure is not used for vehicle parking or storage  
 67 of construction materials;  
 68 (4) the permittee has any franchise required under Section 49-20; and  
 69 (5) the duration of the permit complies with subsection (d).

70 [The Director may allow a covered walkway to serve as an alternate  
 71 walkway.]

72 [(c)] (d) [The Director may issue a permit to rebuild or repair a sidewalk or  
 73 shared use path for more than 6 months, or to close a curb lane, sidewalk,  
 74 or shared use path for work on abutting structures, utilities, or  
 75 infrastructure for more than 15 days, without requiring that a safe  
 76 alternate sidewalk or shared use path be provided on the same side of the

77 street,] Time limits for temporary closures without safe alternative paths.

78 Except as provided in subsections (e) and (f):

79 (1) a temporary closure to reconstruct or repair a sidewalk or shared  
 80 use path must not exceed 6 months without the provision of a safe  
 81 alternative path; and

82 (2) any other temporary closure must not exceed 15 days without the  
 83 provision of a safe alternative path.

84 (e) Extensions – in general. The Director may extend a time period under  
 85 subsection (d), for a time period designated by the Director, if the Director  
 86 finds that:

87 (1) (A) based on a certification submitted by a professional  
 88 engineer, construction of [such a sidewalk or shared use] a  
 89 safe alternative path is not possible; or

90 [(2)] (B) the street is closed[.]; and

91 (2) the extension meets minimum requirements established under  
 92 Method (2) regulations, including requirements that the permit  
 93 must:

94 (A) limit the temporary closure to the minimum time necessary;

95 (B) be subject to regular review by the Director to determine  
 96 whether the temporary closure without a safe alternative  
 97 path remains necessary; and

98 (C) if the Director determines that the temporary closure  
 99 without a safe alternative path is no longer necessary,  
 100 require the permittee immediately to:

101 (i) provide a safe alternative path; or

102 (ii) terminate the temporary closure.



103            [(d)] (f)        Short extensions for hardship.

104            (1)        The Director may grant one extension of a time period under  
 105            subsection (d), for no more than 15 days, [of a permit to close a  
 106            roadway lane, sidewalk, or shared use path for work on abutting  
 107            structures, utilities, or infrastructure without requiring that a safe  
 108            alternate walkway or shared use path be provided on the same side  
 109            of the street] on a showing of extreme hardship.

110            (2)        The Executive must adopt regulations under Method (2) to specify  
 111            the standards a permittee must meet to demonstrate extreme  
 112            hardship.

113            [(e)]        The Director must not issue or extend in duration or area any permit to  
 114            close a sidewalk or shared use path to use the area for vehicle parking or  
 115            storage of construction materials.

116            (f)        The Director must include conditions in each permit to assure public  
 117            safety in the work area.]

118            (g)        [Before the Director issues a permit under this Section to close a  
 119            sidewalk, curb lane, or shared use path, the Director of Transportation  
 120            must approve a] Temporary traffic control plan. A temporary traffic  
 121            control plan under subsection (c) must meet standards established by the  
 122            Executive under Method (2) regulations, including that[.]:

123            (1)        [A] a professional engineer must certify for the applicant that the  
 124            plan minimizes inconvenience to the public, provides necessary  
 125            warnings, and includes safe and reasonable pedestrian alternatives  
 126            in accordance with accepted engineering standards[.]; and

127            (2)        [The] the permit and the traffic control plan must require signage  
 128            during construction to inform pedestrians about the duration of the

129 obstruction, the permit number, and the County contact telephone  
130 number to call.

131 (h) [A permittee must have a valid franchise, as defined in Section 49-20,  
132 before the permittee installs, repairs, or maintains any utility or  
133 infrastructure in the public right-of- way.] Public access to permit  
134 information. The Director must publish on the Department's website a  
135 copy of each application received and permit granted under this section.

## LEGISLATIVE REQUEST REPORT

Bill 38-19

*Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments*

**DESCRIPTION:** Permit to Obstruct Public Rights-of-Way - Amendments

**PROBLEM:** Assure pedestrian safety; minimize inconvenience to the public related to sidewalk closures; increase transparency about permits to close sidewalks.

**GOALS AND OBJECTIVES:** Bill 38-19 would require the Executive to adopt certain regulations regarding permits to close curb lanes, sidewalks or shared use paths in the public rights-of-way; limit the circumstances in which the Department of Permitting Services may grant a permit to close a curb lane, sidewalk or shared use path in the public rights-of-way; and require the Director of Permitting Services to publish certain information about permits on the Department's website.

**COORDINATION:** Department of Permitting Services

**FISCAL IMPACT:** OMB

**ECONOMIC IMPACT:** Department of Finance

**EVALUATION:** To be done.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Christine M.H. Wellons, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A