



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

AGENDA ITEM #11
January 14, 2020
Public Hearing

SUBJECT

Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments

Lead Sponsor: Councilmember Friedson

Co-Sponsors: Councilmembers Glass, Jawando, Riemer, Albornoz, Council Vice-President Hucker, Councilmember Rice and Council President Katz

EXPECTED ATTENDEES

Department of Permitting Services
Members of the Public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Receive public testimony.

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; Receive public testimony.

This report contains:

Staff Report	Pages 1-2
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MEMORANDUM

January 9, 2020

TO: County Council

FROM: Christine M.H. Wellons, Legislative Attorney

SUBJECT: Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments¹

PURPOSE: Public Hearing – 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, Jawando, Riemer, Albornoz, Council Vice-President Hucker, Councilmember Rice and Council President Katz, was introduced on December 3, 2019. A Transportation and Environment Committee worksession is tentatively scheduled for March 12, 2020.

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.

¹ #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:	<u>Circle #</u>
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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

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmembers Glass, Jawando, Riemer, Alborno, Council Vice-President Hucker,
Councilmember Rice and Council President Katz

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

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:

1 **Sec. 1. Section 49-11 is amended as follows:**

2 **49-11. Permit to obstruct public rights-of-way.**

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

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

7 (A) reconstruct or repair a sidewalk, shared use path, driveway,
 8 curb, or other structure;

9 (B) install, repair, locate, or replace underground utilities or
 10 infrastructure under a sidewalk or shared use path;

11 (C) construct or reconstruct an abutting structure; or

12 (D) otherwise install a temporary, removable obstruction or
 13 occupation of the right-of-way.

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

16 (A) is on the same side of the street as a temporary closure; and

17 (B) provides safe access and passage to pedestrians.

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

21 (1) [reconstruct or repair a sidewalk, shared use path, driveway, curb,
 22 or other structure;

23 (2) install, repair, locate, or replace underground utilities or
 24 infrastructure under a sidewalk or shared use path; or

25 (3) install a temporary, removable obstruction or occupation of a right-
 26 of-way;

27 (4) close a curb lane, sidewalk, or shared use path in conjunction with
 28 the construction or reconstruction of an abutting structure] create a
 29 temporary closure that complies with subsection (c); or
 30 [(5)] (2) install permanent, nonstandard structures in the right-of-
 31 way that were approved by the Planning Board, the City of
 32 Rockville, or the City of Gaithersburg in a site plan as a site
 33 element of streetscape. Streetscape includes street furnishings,
 34 fixtures and elements in connection with public use of the right-of-
 35 way but does not include enclosed structures or vaults or
 36 improvements for private use. The permit applicant must execute
 37 a declaration of covenants that runs with the land on which the
 38 project associated with the streetscape is being developed to
 39 perpetually maintain the permitted streetscape in a good and safe
 40 condition; return the right-of way to its condition before the
 41 permitted streetscape was installed if the nonstandard permitted
 42 streetscape is removed; and indemnify the County from any cost
 43 or liability associated with the construction, maintenance, use or
 44 removal of the nonstandard permitted streetscape.

45 [(b)] (c) Permits for temporary obstructions. The Director [must not] may
 46 issue a permit for [reconstruction or repair of a sidewalk or shared use
 47 path for more than 6 months, or to close a curb lane, sidewalk, or shared
 48 use path for work on an abutting structure, utilities, or infrastructure for
 49 more than 15 days, unless a safe alternate walkway or shared use path is
 50 provided on the same side of the street] a temporary closure under
 51 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

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

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

- (1) a temporary closure to reconstruct or repair a sidewalk or shared use path must not exceed 6 months without the provision of a safe alternative path; and
- (2) any other temporary closure must not exceed 15 days without the provision of a safe alternative path.

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

- (1) (A) based on a certification submitted by a professional engineer, construction of [such a sidewalk or shared use] a safe alternative path is not possible; or
 [(2)] (B) the street is closed[.]; and
- (2) the extension meets minimum requirements established under Method (2) regulations, including requirements that the permit must:
 - (A) limit the temporary closure to the minimum time necessary;
 - (B) be subject to regular review by the Director to determine whether the temporary closure without a safe alternative path remains necessary; and
 - (C) if the Director determines that the temporary closure without a safe alternative path is no longer necessary, require the permittee immediately to:
 - (i) provide a safe alternative path; or
 - (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