

Bill No. 38-19
Concerning: Streets and Roads – Permit to Obstruct Public Rights-of-Way - Amendments
Revised: 03/17/2020 Draft No. 6
Introduced: December 3, 2019
Enacted: March 24, 2020
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, Albornoz, 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]] Sections 49-11 and 49-12

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]] Sections 49-11 ~~[[is]]~~ and 49-12 are 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 Public includes pedestrians, bicyclists, and transit users.

6 Safe alternative path means an alternate walkway or shared use path that:

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

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

9 ~~[[1]]~~ Temporary closure~~[[. Temporary closure]]~~ means a temporary
 10 obstruction, blockage, or occupation of a right-of-way ~~[[to:~~

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

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

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

16 (D) otherwise install a temporary, removable obstruction or
 17 occupation of the right-of-way]] under a permit issued by
 18 the Director of Permitting Services under this Section.

19 ~~[[2]]~~ Safe alternative path. Safe alternative path means an alternate
 20 walkway or shared use path that:

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

22 (B) provides safe access and passage to pedestrians.]]

23 ~~[[a]]~~ (b) [Unless this Section prohibits the issuance of a permit]

24 Notwithstanding Section 49-10, and subject to subsections (c) and (d) of
 25 this Section, the Director of Permitting Services may issue a permit to:

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

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

55 or liability associated with the construction, maintenance, use or
 56 removal of the nonstandard permitted streetscape.

57 ~~[(b)]~~ (c) Permits for temporary obstructions. ~~[[The]]~~ If a permit under
 58 subsection (b)(1) involves a temporary closure located in a Central
 59 Business District planning policy area, a Bicycle-Pedestrian Priority
 60 Area, an area within 1/2 mile of a Purple Line Station, or an area within 1/2
 61 mile of a Bus Rapid Transit Station Area, the Director [must not] may
 62 issue [[a]] the permit [[for]] [reconstruction or repair of a sidewalk or
 63 shared use path for more than 6 months, or to close a curb lane, sidewalk,
 64 or shared use path for work on an abutting structure, utilities, or
 65 infrastructure for more than 15 days, unless a safe alternate walkway or
 66 shared use path is provided on the same side of the street] [[a temporary
 67 closure under subsection (b)(1)]] only if:

68 (1) [in a Metro Station Policy Area, Town Center Policy Area, or other
 69 area expressly identified in a Council resolution] the permit has
 70 conditions necessary to:

- 71 (A) minimize inconvenience to the public;
- 72 (B) limit the duration of the temporary closure to the minimum
 73 time period necessary; and
- 74 (C) assure public safety in the work area;

75 (2) [within 20 feet of a bus stop or mass transit station entrance; or]
 76 the Director of Transportation approves a temporary traffic control
 77 plan under subsection (g);

- 78 (3) [on a road:
- 79 (A) designated as a major or arterial highway;
 - 80 (B) of 4 lanes or more; or
 - 81 (C) designated as a business district street.] the area subject to

- 82 the temporary closure is not used for vehicle parking ~~[[or storage~~
- 83 of construction materials]];
- 84 (4) the permittee has any franchise required under Section 49-20; and
- 85 (5) the duration of the ~~[[permit]]~~ temporary closure complies with
- 86 subsection (d).

87 [The Director may allow a covered walkway to serve as an alternate

88 walkway.]

89 [(c)] (d) [The Director may issue a permit to rebuild or repair a sidewalk or

90 shared use path for more than 6 months, or to close a curb lane, sidewalk,

91 or shared use path for work on abutting structures, utilities, or

92 infrastructure for more than 15 days, without requiring that a safe

93 alternate sidewalk or shared use path be provided on the same side of the

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

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

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

101 (e) Extensions – in general. The Director may extend a time period under

102 subsection (d), for a time period designated by the Director, if the Director

103 finds that:

- 104 (1) (A) based on a certification submitted by a professional
- 105 engineer, construction of [such a sidewalk or shared use] a
- 106 safe alternative path is not possible; or
- 107 [(2)] (B) the street is closed[.]; and

108 (2) the extension meets minimum requirements established under
 109 Method (2) regulations, including requirements that the permit
 110 must:

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

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

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

118 (i) provide a safe alternative path; or

119 (ii) terminate the temporary closure.

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

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

127 (2) The Executive must adopt regulations under Method (2) to specify
 128 the standards a permittee must meet to demonstrate extreme
 129 hardship.

130 (e) The Director must not issue or extend in duration or area any permit to
 131 close a sidewalk or shared use path to use the area for vehicle parking or
 132 storage of construction materials.

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

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

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

144 (2) [The] the permit and the traffic control plan must require signage
 145 during construction to inform pedestrians about the duration of the
 146 obstruction, the permit number, and the County contact telephone
 147 number to call.

148 (h) [A permittee must have a valid franchise, as defined in Section 49-20,
 149 before the permittee installs, repairs, or maintains any utility or
 150 infrastructure in the public right-of- way.] Public access to permit
 151 information. The Director of Permitting Services must publish on the
 152 Department’s website a copy of each application received and permit
 153 granted under this section.

154 * * *

155 **49-12. Exemptions from Sections 49-10 and 49-11.**

156 (a) Subject to paragraphs (1) and (2), Sections 49-10 and 49-11 do not apply
 157 to, and no permit under those Sections is required of, any municipality,
 158 special taxing district or government agency authorized by law to
 159 construct streets, roads, sewers, or drainage facilities in the
 160 County. However[.,,];

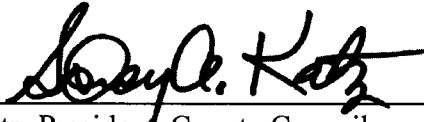
161 (1) Sections 49-10 and 49-11 apply to any road that is located in a
162 municipality and owned or maintained by the County[[.]]; and

163 (2) if the County owns or maintains a right-of-way, Section 49-11
164 applies to any temporary closure of the right-of-way in connection
165 with construction or reconstruction on abutting property owned by
166 the County.

167 * * *

168 Sec. 2. Transition. The requirements of this Act must not apply to a permit
169 application submitted to the County prior to the effective date of the Act. The
170 requirements of this Act must apply to a permit application submitted to the County on
171 or after the effective date of the Act.

Approved:



3/25/2020

Sidney Katz, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

Date