



Committee: T&E

Committee Review: At a future date

Staff: Ludeen McCartney-Green, Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #RightofWayPermit

AGENDA ITEM #14B

March 16, 2021

Introduction

SUBJECT

Expedited Bill 13-21, Streets and Roads – Permit to Obstruct Public Rights-of-Way and Franchising - Amendments

Lead Sponsor: Council President Hucker at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

DESCRIPTION/ISSUE

Bill 13-21 would expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations and clarify the exemption of “franchise” requirements.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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M E M O R A N D U M

March 11, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Expedited Bill 13-21, Streets and Roads – Permit to Obstruct Public Rights-of-Way and Franchising - Amendments

PURPOSE: Introduction – no Council votes required

Expedited Bill 13-21, Streets and Roads – Permit to Obstruct Public Rights-of-Way and Franchising - Amendments, sponsored by Lead Sponsor Council President Hucker at the request of the County Executive, is scheduled to be introduced on March 11, 2021.¹ A public hearing is tentatively scheduled for April 6, 2021 at 1:30 p.m.

Bill 13-21 would expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations and clarify the exemption of “franchise” requirements.

BACKGROUND

This purpose of this bill is to expand the Department of Permitting Services (DPS) authority to approve permits for private property owners who need to install non-commercial structures that are accessory to a residential use, such as an Electronic Vehicle (EV) charging device, private storm drain pipes with access to the public sewer system, roof drains, and other non-standard facilities or accessories encroached in the County’s rights-of-way, as approved by DPS. The permittee would be required to execute a maintenance and liability agreement to hold the County harmless for any risk, danger, injury, or damages to private property or of another party. A permittee would be exempt from the current requirement to obtain a franchise approval through the County Council. Specifically, the bill will seek to implement the following:

- (1) expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations;
- (2) require a permittee to execute a certain agreement for private installation of non-commercial structures that are accessory to residential use in the public rights-of-way;

- (3) clarify the exemption of “franchise” requirements;
- (4) generally amend the law regarding permits to obstruct public rights-of-way.

This packet contains:

Expedited Bill 13-21
Legislative Request Report
County Executive Memorandum
Fiscal Impact Statement

Circle #

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F:\LAW\BILLS\2113 Streets And Road-Permit To Obstruct Public R-O-W\Intro Memo.Docx

Expedited Bill No. 13-21
Concerning: Streets and Roads – Permit
to Obstruct Public Rights-of-Way and
Franchising - Amendments
Revised: 3/11/2021 Draft No. 2
Introduced: March 16, 2021
Expires: September 16, 2022
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) expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations;
- (2) require a permittee to execute a certain agreement for private installation of non-commercial structure that are accessory to residential use in the public rights of way
- (3) clarify the exemption of “franchise” requirements;
- (4) generally amend the law regarding permits to obstruct public rights-of-way.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Sections 49-11 and 49-20

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 49-11 and 49-20 are amended as follows:

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

* * *

(b) Notwithstanding Section 49-10, and subject to subsections (c) and (d) of this Section, 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;
- (3) install a temporary, removable obstruction or occupation of a right-of-way;
- (4) close a curb lane, sidewalk, or shared use path in conjunction with the construction or reconstruction of an abutting structure; [or]
- (5) 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,

27 maintenance, use or removal of the nonstandard permitted
 28 streetscape[.]; or

29 (6) install a private, non-commercial structure that is accessory to a
 30 residential use. The permittee must execute a maintenance and
 31 liability agreement that is approved by the Director of the
 32 Department of Permitting Services.

33 * * *

34 **Sec. 49-20. Franchises for use of street; procedure for granting; notice and**
 35 **hearing.**

36 * * *

37 (e) As used in this Chapter, “franchise” includes any franchise, lease, license,
 38 contract, or other right or permission to use or occupy a County right-of-way.
 39 However, “franchise” does not include [a temporary, removable obstruction or] an
 40 occupation of a right-of-way for which the Department of Permitting Services has
 41 issued a permit under Section 49-11.

42 (f) The Director of Permitting Services must issue a permit under this Article
 43 before a franchisee may occupy or obstruct the right-of-way.

44 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation is
 45 necessary for the immediate protection of the public interest. This Act takes effect on
 46 the date on which it becomes law

LEGISLATIVE REQUEST REPORT

Expedited Bill 13-21

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

DESCRIPTION: This Bill revises Chapter 49 to allow for the installation in the public right-of-way of non-commercial structures that are accessory to a residential use. The permittee will be required to execute a maintenance and liability agreement.

PROBLEM: Residents sometimes need to install non-commercial facilities that encroach upon the County's right-of-way. Under current law, those facilities would need a franchise approved by the County Council.

OBJECTIVE: Allow, by permit, non-commercial, accessory structures to encroach upon the public right-of-way.

COORDINATION: Department of Transportation and Department of Permitting Services.

FISCAL IMPACT: Office of Management and Budget.

**ECONOMIC
IMPACT:** Department of Finance.

EVALUATION: To be requested.

**EXPERIENCE
ELSEWHERE:** Inapplicable.

**SOURCES OF
INFORMATION:** Maricela Cordova
Purple Line Implementation Manager
Department of Transportation
240-777-7235

Linda Kobylski, Division Chief
Department of Permitting Services
240-777-6346

**APPLICATION
WITHIN**

MUNICIPALITIES: Varies. Applicable to municipalities governed by Chapter 49.

PENALTIES: Inapplicable.




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

February 23, 2021

TO: Tom Hucker, Council President

FROM: Marc Elrich, County Executive 

SUBJECT: Proposed Amendment to County Code; Chapter 49
Streets and Roads – Permit to Obstruct Public Rights-of-Way

I hereby request that you introduce the attached Chapter 49 Amendment. The intent of this proposed amendment is to allow for the installation in the public right-of-way of non-commercial structures that are accessory to a residential use. The permittee will be required to execute a maintenance and liability agreement.

Residents sometimes need to install non-commercial facilities that encroach upon the County's right-of-way. Under current law, those facilities would need a franchise approved by the County Council. This bill will exempt from the franchise requirement certain infrastructure, such as private storm drain pipes connecting to the public system, roof drains, sump pumps within the public right-of-way, driveway and parking pavement, playgrounds, fences over storm drain easements, monumental mail boxes, non-standard driveway aprons, retaining walls and steps, and other nonstandard items approved by the Department of Permitting Services (DPS) under a maintenance and liability agreement signed by property owners. This proposed amendment would also allow for the permanent implementation of the new Residential Electric Vehicles (EV) Charging Permitting Guidelines, which are currently being implemented under a pilot program.

This process will be streamlined by allowing, by permit, non-commercial, accessory structures to encroach upon the public right-of-way.

Fiscal Impact Statement
Bill XX Streets and Roads – Permit to Obstruct Public Rights-of-Way

1. Legislative Summary

This bill allows for the installation in the public right-of-way of non-commercial structures that are accessory to a residential use. The permittee will be required to execute a maintenance and liability agreement. Residents sometimes need to install non-commercial facilities that encroach upon the County's right-of-way. Under current law, those facilities would need a franchise approved by the County Council. This process will be streamlined by allowing, by permit, non-commercial, accessory structures to encroach upon the public right-of-way.

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.

Not applicable

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

Not applicable

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.

Not applicable

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

Not applicable

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

This bill will exempt from the franchise requirement certain infrastructure, such as private storm drain pipes connecting to the public system, roof drains, sump pumps within the public right-of-way, driveway and parking pavement, playgrounds, fences over storm drain easements, monumental mail boxes, non-standard driveway aprons, retaining walls and steps, and other nonstandard items approved by DPS under a maintenance and liability agreement signed by property owners. This proposed amendment would also

allow for the permanent implementation of the new Residential Electric Vehicles (EV) Charging Permitting Guidelines, which are currently being implemented under a pilot program.

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

No additional staff required

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.

None

12. Other fiscal impacts or comments.

None

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

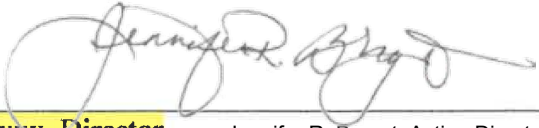
Brady Goldsmith, Office of Management of Budget

Maricela Cordova, Department of Transportation

Emil Wolanin, Department of Transportation

Atiq Panjshiri, Department of Permitting Services

Linda Kobylski, Department of Permitting Services


~~xxxx~~ Director ----- Jennifer R. Bryant, Acting Director
Office of Management and Budget

1/28/21

Date