

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Introduction:** Bill 41-12, Streets and Roads – Roadside Trees - Protection

Bill 41-12, Streets and Roads – Roadside Trees - Protection, sponsored by Councilmembers Berliner and Elrich, is scheduled to be introduced on December 11, 2012. A public hearing is tentatively scheduled for January 17, 2013 at 7:30 p.m., along with Bill 35-12, Trees – Tree Canopy Conservation.

Bill 41-12 would require certain applicants to obtain a permit for certain roadside tree activities as part of the existing right-of-way permit that the Department of Permitting Services issues, would authorize the Department of Transportation to create a tree replacement fund to pay for needed roadside trees, and would direct the County Executive to adopt regulations further specifying roadside tree work standards.

This Bill would implement a 2009 state law (2009 Laws of Maryland Chapter 289, codified at Maryland Code, Nat. Res. Art. §5-403(d)-(e)), which gave counties the authority to supplement state laws governing roadside trees. It has been the subject of extensive pre-introduction discussions with staff from relevant County Departments and other stakeholders.

This packet contains:	<u>Circle #</u>
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Bill No. 41-12
Concerning: Streets and Roads --
Roadside Trees - Protection
Revised: 12-6-12 Draft No. 11
Introduced: December 11, 2012
Expires: June 11, 2014
Enacted: _____
Executive: _____
Effective: _____
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner and Elrich

AN ACT to:

- (1) require a permit for certain activities affecting roadside trees;
- (2) require certain persons to pay into a roadside tree replacement fund under certain circumstances;
- (3) require the County Executive to adopt regulations specifying certain roadside tree protection, conservation, and replacement standards; and
- (4) generally amend the law regarding streets and roads.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Sections 49-35 and 49-36

By adding

Chapter 49, Streets and Roads
Section 49-36A.

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:

28 met those requirements.

29 [(f)] (g) * * *

30 [(g)] (h) * * *

31 **49-36A. Roadside tree work.**

32 (a) Definitions. In this Section, the following words have the meanings
33 indicated:

34 Certified arborist means a person who is certified as an arborist by the
35 International Society of Arboriculture or who the Director finds has an
36 equivalent level of experience and training.

37 Critical root zone means the minimum area beneath a tree (typically a
38 concentric circle not less than 1.5 feet per diameter/inch of the tree,
39 measured at 4.5 feet above ground level) that must be protected to
40 preserve sufficient root mass to give the tree a reasonable chance of
41 long-term survival.

42 Licensed tree expert means a person licensed under Title 5, Subtitle 4 of
43 the Natural Resources Article of the Maryland Code or any successor
44 provision.

45 Pesticide means a:

46 (1) chemical or biological preparation used to kill, inhibit, or regulate
47 growth on a targeted plant, plant spore, or plant seed, including:

- 48 (A) an herbicide;
- 49 (B) an insecticide;
- 50 (C) a tree growth regulator; and
- 51 (D) a fungicide; or

52 (2) substance or mixture of substances intended:

- 53 (A) to prevent, destroy, repel, or mitigate a pest;
- 54 (B) for use as a plant regulator, defoliant, or desiccant; or

55 (C) for use as a spray adjuvant, such as a wetting agent or
 56 adhesive.

57 Recommended County tree list means a list of trees approved by the
 58 Director after consulting the Chief of Tree Maintenance in the
 59 Department of Transportation. The recommended tree list must include
 60 each tree that the Department identifies as suitable for planting on
 61 specific sites and conditions in the right-of-way of a public road.

62 Roadside tree means any single-stem plant that has a woody stem or
 63 trunk that grows all, or in part, in the right-of-way of any County or
 64 State public road or shared use trail. Roadside tree includes the tree's
 65 critical root zone.

66 Tree work means any activity affecting a roadside tree, including:

- 67 (1) removal of a roadside tree or a remaining stump;
 68 (2) planting pruning, root-pruning, or trimming a roadside tree;
 69 (3) application of pesticide directly to or in the critical root zone of a
 70 roadside tree;
 71 (4) protection of a roadside tree; or
 72 (5) treatment that may adversely affect the health or growth of a
 73 roadside tree.

74 (b) Applicability; exceptions.

75 (1) The following activities do not require a right-of-way and
 76 roadside tree work permit:

- 77 (A) cutting or clearing a public utility right-of-way or land for
 78 an electric generating station licensed under Sections 7-
 79 204, 7-205, 7-207, or 7-208 of the Public Utilities Article
 80 of the Maryland Code, or any successor provision, if:

- 81 (i) any required certificate of public convenience and
 82 necessity has been issued under Section 5-1603(f) of
 83 the Natural Resources Article of the Maryland Code
 84 or any successor provision; and
- 85 (ii) the cutting or clearing is conducted in a way that
 86 minimizes the loss of forest;
- 87 (B) routine maintenance of a public utility right-of-way; or
 88 (C) cutting or clearing a public utility right-of-way or land for
 89 a new transmission or distribution line.
- 90 (2) A licensed tree expert need not obtain a permit for work
 91 performed on:
- 92 (A) a tree that is uprooted or truncated because of a storm or
 93 vehicular collision;
- 94 (B) a tree branch that is broken and contacts a telephone, cable
 95 television, electric power, or other wire carrying electric
 96 current; or
- 97 (C) a tree or tree branch that a certified arborist or licensed tree
 98 expert finds is endangering a person or property.
- 99 (3) A certified arborist or licensed tree expert who provides tree
 100 work under paragraph (2) must, within one week after an action
 101 is taken, give the Department:
- 102 (A) notice of the property address, if available, and general
 103 area where the action was taken; and
- 104 (B) a proposed plan to upgrade the work, if necessary, to the
 105 tree work standards in this Section and applicable
 106 regulations.

107 The Department must approve, modify, or reject the proposed
108 plan, after reviewing the actions taken, within 14 days after
109 receiving the information. If the Department does not act on the
110 proposed plan within 14 days, the plan is approved by default.
111 The Department may require further information, and may extend
112 this deadline once for an additional 15 days in extenuating
113 circumstances. The Director also may extend this deadline at the
114 request of the applicant.

115 (c) Right-of-way and roadside tree work permit required.

116 (1) The Department must not issue a building or related permit to an
117 applicant for any demolition, clearing, pre-construction activity,
118 construction, or development that is likely to result in the
119 trimming, pruning, root-pruning, cutting, removal, or injury of a
120 roadside tree unless the applicant first obtains a right-of-way and
121 roadside tree work permit from the Department.

122 (2) A right-of-way and roadside tree work permit is required for any
123 tree work on a utility located in a right-of-way, such as a:

124 (A) sewer;

125 (B) water or gas pipe;

126 (C) storm drain;

127 (D) electric, telephone, or television cable or conduit;

128 (E) sidewalk;

129 (F) driveway;

130 (G) sewer pump;

131 (H) gutter outflow line; or

132 (I) roadway or similar structure.

133 (3) A person may receive a right-of-way and roadside tree work

- 134 permit to perform tree work if the person:
- 135 (A) holds title to the land where the roadside tree is located;
- 136 (B) owns property abutting the right-of-way at the point where
- 137 the tree is located
- 138 (C) is a government agency that has an easement for the public
- 139 right-of-way where the tree is located;
- 140 (D) is responsible for providing tree care to the tree; or
- 141 (E) is an authorized agent of any of these.

142 (d) Permit issuance and administration.

- 143 (1) After receiving an application for a right-of-way and roadside
- 144 tree work permit, the Department may meet with the applicant
- 145 and conduct an on-site examination of the proposed tree work.
- 146 (2) The Department should consult with the Chief of Tree
- 147 Maintenance in the Department of Transportation regarding any
- 148 application under which the applicant would perform tree work.
- 149 (3) The Department may issue a permit if the applicant shows that
- 150 the proposed tree work is necessary to:
- 151 (A) protect the health of the tree;
- 152 (B) eliminate or reduce a hazard to property, public safety, or
- 153 health;
- 154 (C) improve or prevent a deteriorated tree condition;
- 155 (D) improve the overall appearance of the right-of-way; or
- 156 (E) carry out a development which has received all other
- 157 applicable development approvals.
- 158 (4) The Department may issue:

- 159 (A) a permit for a specific tree or group of trees for specific
 160 tree work for a term not to exceed 1 year after the permit is
 161 issued; and
- 162 (B) a permit for a comprehensive and continuing program of
 163 general tree work.
- 164 (5) A permit issued under paragraph (4)(B) must specify the types of
 165 tree work it covers, as allowed by the license of the person who
 166 will supervise the program.
- 167 (6) If the Department denies a permit application, the Department
 168 must notify the applicant of the reason.
- 169 (7) The Department may:
- 170 (A) modify any term or condition of a permit to best achieve
 171 the objectives of this Article; or
- 172 (B) suspend or revoke a permit if the holder violates a
 173 condition of the permit or a provision of this Section or the
 174 Natural Resources Article of the Maryland Code.
- 175 (e) Tree work performance; inspection; replacement.
- 176 (1) Each permittee must take all necessary measures to protect a
 177 roadside tree from damage during all phases of clearing,
 178 construction, or development of a building or other structure,
 179 including installing protective fencing, avoiding soil compaction,
 180 and protecting critical root zones.
- 181 (2) A permittee must repair any damage a tree sustains during
 182 construction or development, including any broken limb, root, or
 183 scarred trunk, and any damage caused by soil compaction.
- 184 (3) (A) Before any bond filed with the Department under this
 185 Chapter is released, or (if no bond has been filed) before

186 any certificate of occupancy or similar final approval is
187 issued, the Department must inspect each affected roadside
188 tree to determine, after consulting the Chief of Tree
189 Maintenance in the Department of Transportation, whether
190 the tree has a reasonable chance of achieving the typical
191 maximum age of a roadside tree in that location.

192 (B) If the Department does not find that an affected tree has a
193 reasonable chance of achieving the typical maximum age
194 of a roadside tree in that location, or if the permittee has
195 removed a roadside tree, the Department must require the
196 permittee to pay an amount set by regulation into a tree
197 replacement fund maintained by the Department of
198 Transportation.

199 (C) The amount of payment must be set by Method 3
200 regulation; must be proportionate to the cost of replacing
201 each affected tree, using a replacement ratio specified by
202 regulation that takes into account the survival rate of
203 newly-planted trees; must be computed according to the
204 size of the affected tree; may consider the species, age,
205 rarity, and historical value (if any) of the affected tree; and
206 must not be less than \$35 per circumference/inch of the
207 affected tree.

208 (D) The permittee must pay the required amount within 30
209 days after the Director notifies the permittee that the
210 payment is required. The Director may treat any unpaid
211 funds as a lien on the property where the affected tree is
212 located, and must not issue a certificate of occupancy or

213 similar final approval for the site until full payment is
214 received.

215 (f) Use of pesticides.

216 (1) Any permittee who applies a pesticide directly to a roadside tree
217 must be certified and licensed as required by the State
218 Department of Agriculture, and must comply with applicable
219 state regulations.

220 (2) Any permittee who applies a pesticide must only use a pesticide
221 that is registered for that use by the U.S. Environmental
222 Protection Agency and the State Department of Agriculture. Any
223 permittee who applies a pesticide must follow the manufacturer's
224 label directions for proper use.

225 (3) Before applying a pesticide, a permittee must notify the
226 Department of the approximate time and place of application.

227 (4) Unless the Department directs otherwise, a permittee must not
228 apply an herbicide to a tree if the tree is 6 feet tall or higher.

229 (5) A permittee must remove dead plant material resulting from the
230 application of an herbicide if removal is necessary for safety
231 reasons.

232 (6) A permittee must take reasonable precautions in selecting and
233 applying a pesticide on or near a roadside tree to:

234 (A) avoid the use of an herbicide on vegetation that contributes
235 to soil retention, especially at a highway cut or fill and any
236 other area with a steep slope; and

237 (B) prevent stream pollution and damage to any adjoining
238 property.

239 (g) Roadside tree planting.

- 240 (1) Any tree that is planted on a public right-of-way must be of a
241 species and variety from the recommended County tree list and
242 must conform to the American Standard for Nursery Stock or
243 standards that the Director identifies as equivalent.
- 244 (2) Each roadside tree planting must comply with a planting plan
245 approved by the Department after consulting the Chief of Tree
246 Maintenance in the Department of Transportation. The planting
247 plan must cover:
- 248 (A) stump removal, including a requirement to fill in any
249 resulting hole;
- 250 (B) size and type of planting stock;
- 251 (C) planting specifications;
- 252 (D) spacing;
- 253 (E) species;
- 254 (F) proximity to overhead wires;
- 255 (G) care and maintenance; and
- 256 (H) any other site consideration.
- 257 (h) Regulations. The County Executive must adopt regulations under
258 Method 2 that are at least as stringent as applicable state roadside tree
259 standards and requirements. These regulations may specify further:
- 260 (1) criteria for right-of-way and roadside tree work permit issuance;
261 (2) roadside tree work standards and practices, including
262 construction practices that will minimize damage to roadside
263 trees;
- 264 (3) criteria for the use of pesticides; and
- 265 (4) roadside tree planting requirements.

LEGISLATIVE REQUEST REPORT

Bill 41-12

Streets and Roads – Roadside Trees - Protection

DESCRIPTION: Would require certain applicants to obtain a permit for certain roadside tree activities as part of the existing right-of-way permit that the Department of Permitting Services issues; would authorize the Department of Transportation to create a tree replacement fund to pay for needed roadside trees; and would direct the County Executive to adopt regulations further specifying roadside tree work standards

PROBLEM: Need to better protect and maintain roadside trees in County rights-of-way.

GOALS AND OBJECTIVES: To authorize the County to supplement state regulation and protection of roadside trees.

COORDINATION: Departments of Permitting Services, Transportation, Environmental Protection

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905; Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class A.