

MEMORANDUM

March 9, 2020

TO: Transportation and Environment Committee

FROM: Christine Wellons, Legislative Attorney
Wellons

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

PURPOSE: Worksession – Committee to make recommendations to Council

Expected Attendees: Chrissy Contreras, Manager, Right-of-Way Inspections,
Department of Permitting Services (DPS)
Atiq Panjshiri, Manager, Right of Way Plan Development, DPS
Eli Glazier, Planning Department

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 public hearing was held on January 14 at which four speakers testified on the bill.

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.

SUMMARY OF PUBLIC HEARING

On January 14, the Council held a public hearing on Bill 38-19. Written testimony provided during and subsequent to the public hearing is attached. (©18-26). Dale Tibbitts, on behalf of the County Executive, spoke in support of the bill. Three individuals supported the bill with amendments. (©18-24). One speaker raised concerns about the bill (©25). The League of Women Voters supported the bill (©26).

ISSUES FOR THE COMMITTEE'S CONSIDERATION

The Committee might wish to discuss the following issues.

1. Permissibility of Storage in the Temporarily Closed Right of Way

As currently drafted, Bill 38-19 (lines 65-67) would prohibit using a temporarily closed area for storage of construction materials. This prohibition is consistent with current law.

The Planning Board has recommended eliminating this prohibition, so that the Director of Permitting Services would have the flexibility to allow a permittee to store construction materials in the closed area. The Board's rationale is that, "In places where property owners can build to the lot line, it is often not feasible for construction to take place entirely within the property." (©17). Staff of DPS have confirmed that in some circumstances, temporary storage in the right-of-way is unavoidable.

If the Committee wishes to eliminate the prohibition against storage, it could amend lines 65-67 of the bill as follows:

the area subject to the temporary closure is not used for vehicle parking [[or storage of construction materials]];

2. Permissibility of Parking in the Temporarily Closed Right of Way

As currently drafted, Bill 38-19 (lines 65-67) would prohibit using a temporarily closed area for parking. This prohibition is consistent with current law. According to DPS staff, however, there are circumstances in which a construction vehicle must park in a portion of the closed right-of-way. To account for these circumstances, the Committee might wish to allow the DPS Director to permit limited parking where necessary.

If the Committee wishes to eliminate the prohibition against parking in all circumstances, it could amend lines 65-67 as follows:

the area subject to the temporary closure is not used for [[vehicle parking or]] storage of construction materials;

Alternatively, the Committee might wish to delete lines 65-67 in their entirety so that the DPS Director may allow parking *and* storage to occur when necessary and appropriate.

3. Geographic Scope of the Safe Alternative Path Requirements

The bill would apply a consistent approach to temporary closures and alternative paths Countywide. This would be a change from current law, which requires safe alternative paths only: “(1) in a Metro Station Policy Area, Town Center Policy Area, or other area expressly identified in a Council resolution; (2) within 20 feet of a bus stop or mass transit station entrance; or (3) on a road: (A) designated as a major or arterial highway; (B) of 4 lanes or more; or (C) designated as a business district street.”

The Planning Board has indicated its support for the bill’s Countywide approach. (©15). Some speakers at the public hearing, however, suggested limiting the bill’s scope to Central Business Districts. (CBDs) (©18-22).

Benefits of a Countywide approach would be that there would be a consistent approach to the provision of safe alternative paths throughout the County. An argument in favor of limiting the bill to CBDs would be that CBDs are where the safe alternative paths are needed because pedestrian and vehicular traffic is greatest in those areas.

Another approach would be to limit the requirements to certain areas beyond CBDs, but not inclusive of the entire County. If the Committee wishes to limit the geographic scope of the requirements regarding alternative paths, it might want to consider the following amendment to line 45.

[(b)] (c) Permits for temporary obstructions. ~~[[The]]~~ In a Central Business District planning policy area, a Bicycle-Pedestrian Priority Area, a Purple Line Station Area, or a Bus Rapid Transit Station Area, the Director [must not] may....

4. Consideration of Bicyclists

Under the bill, “safe alternative path” is defined as: (1) being on the same side of the street as the temporary closure; and (2) providing safe access to *pedestrians*. The Planning Board has made two recommendations intended to increase safety for bicyclists. First, the Planning Board suggests that safe alternative paths should be provided for bicyclists if a bikeway in the public right-of-way is closed. Second, the Planning Board suggests that line 55 of the bill – which requires permits to “minimize inconvenience to the public” – should define “public” to include “pedestrians, bicyclists, and transit users.”

The Committee might wish to ask DPS and the Department of Transportation (DOT) to comment upon these potential amendments.

5. Maximum Time Periods of a Temporary Closure Without a Safe Alternative Path

Consistent with current law, the bill (lines 77-83) would mandate safe alternative paths when temporary closures exceed 6 months for purposes of sidewalk reconstruction or repair, and 15 days for any other temporary closure. The Planning Board recommends shortening these time periods, and cites that Alexandria requires alternative paths when a closure is for 7 or more days. However, the Planning Board did not make a specific recommendation regarding the lengths of the closures.

The Committee might wish to ask DPS, DOT, and Planning staff to comment upon the appropriate time periods.

6. Audio Messaging Devices

In its recommendations, the Planning Board raises the issue of whether audio messaging devices should be required for temporary closures to ensure that pedestrians with low or no vision can navigate along pathways with closures. This is an issue that could be addressed in the bill itself, or it could be addressed via regulations.

Additional considerations raised by the Planning Board – regarding intersections and covered walkways – might be better addressed in regulations, although the Committee may address these issues in the text of the bill if it wishes to do so. The Planning Board did not offer a specific amendment.

7. Existing Projects

Multiple speakers at the public hearing requested that the bill “grandfather” existing projects. This could be accomplished by adopting an uncodified section to the bill to clarify that

the bill applies prospectively to any permit application received on or after the effective date of the bill, and that the bill does not apply to existing permits before their expiration.

8. Applicability of the Bill's Requirements to County Projects

Currently, the requirements of Chapter 49 of the Code do not necessarily apply to County construction projects, such as the reconstruction of County parking lots. If the Committee wishes to ensure that County projects are subject to Section 49-11, it could add to the bill the following amendments to Section 49-12:

Sec. 49-12. Exemptions from Sections 49-10 and 49-11.

- (a) Subject to paragraphs (1) and (2), Sections 49-10 and 49-11 do not apply to, and no permit under those Sections is required of, any municipality, special taxing district or government agency authorized by law to construct streets, roads, sewers, or drainage facilities in the County. However[,]:
 - (1) Sections 49-10 and 49-11 apply to any road that is located in a municipality and owned or maintained by the County[.]; and
 - (2) if the County owns or maintains a right-of-way, the permitting requirements of Section 49-11 apply to any temporary closure of the right-of-way in connection with construction or reconstruction on abutting property owned by the County.
- (b) Sections 49-10 and 49-11 do not apply to any vehicle operated by a fire department, public utility, or first aid provider, while that vehicle is being used to provide emergency services.

9. Potential Clarifying Amendments

After consultation with DPS and its counsel, staff recommends adopting the following clarifying amendments to lines 5-13 and lines 19-51 of the bill.

- (1) Temporary closure. Temporary closure means a temporary obstruction, blockage, or occupation of a right-of-way under a permit issued by the director under this Section. [[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.]]

* * *

[(a)] (b) [Unless this Section prohibits the issuance of a permit] Notwithstanding Section 49-10, and subject to subsections (c) and (d), 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;

(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]]

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 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)] ~~[(2)]~~ (5) install permanent, nonstandard structures in the right-of-way....

* * *

~~[(b)] (c)~~ Permits for temporary obstructions. If a permit under subsection (b)(1) involves a temporary closure, ~~[[The]]~~ the Director ~~[must not] may~~ issue ~~[[a]]~~ the 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:

* * *

These clarifying amendments would accomplish two purposes. First, the amendments would clarify that the Director may permit the installation of a “removable obstruction or occupation of the right-of-way” – whether the obstruction is temporary or indefinite. The reason for this amendment would be that, as explained by DPS, there are situations in which a relatively permanent, yet removable structure might be placed in the right-of-way pursuant to an easement. An example would be a sump pump. Once work on the sump pump was completed, there would no longer be an above-ground obstruction of the right-of-way but, technically, the sump pump itself would indefinitely occupy the right-of-way underground.

Second, the amendments would clarify that DPS does not issue permits to close the right-of-way per se. Rather, it issues permits for construction or other work in the right-of-way that involves a closure.

NEXT STEPS

The question before the Committee is whether to recommend approval of Bill 38-19 to the full Council. If the Committee chooses to recommend approval of the bill, staff recommends that the Committee adopt the clarifying amendments described under section #9 above.

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

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

B 38-19



ROCKVILLE, MARYLAND

CW
CC
MM
SS

MEMORANDUM

January 8, 2020

TO: Sidney Katz, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
 Michael Coveyou, Acting Director, Department of Finance *MC*

SUBJECT: FEIS for Bill 38-19, Street and Roads – Permit to Obstruct Public Rights-of-Way - Amendments

Please find attached the Fiscal and Economic Impact Statements for the above-referenced legislation.

RSM:cm

- c: Andrew Kleine, Chief Administrative Officer
- Fariba Kassiri, Deputy Chief Administrative Officer
- Caroline Sturgis, Assistant Chief Administrative Officer
- Debbie Spielberg, Special Assistant to the County Executive
- Dale Tibbitts, Special Assistant to the County Executive
- Lisa Austin, Office of the County Executive
- Barry Hudson, Director, Public Information Office
- Hadi Mansouri, Acting Director, Department of Permitting Services
- Michael Paylor, Division Chief, Traffic Engineering and Operations, DOT
- Rob Hagedoorn, Department of Finance
- Dennis Hetman, Department of Finance
- David Platt, Department of Finance
- Monika Coble, Office of Management and Budget
- Chrissy Mireles, Office of Management and Budget
- Gary Nalven, Office of Management and Budget

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

1. Legislative Summary

Bill 38-19 would amend the circumstances in which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk or walkway related to repair or construction activity. It will assure that public sidewalks and walkways are closed for the minimum time necessary, with the least disruption and inconvenience to the public and increased pedestrian safety.

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 sources of information, assumptions, and methodologies used.

There will be little to no impact on expenditures or revenues. No additional expenditures are needed to implement these changes because no increase in staff resources is required and changes in departmental procedures and processes will be minimal. There are no new or increased revenue assumptions associated with the implementation of Bill 38-19.

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

There are no anticipated changes to expenditures beyond the normal personnel costs. DPS will continue to collect permit applications and fees for residential and commercial work permits and licenses, as well as other activities related to work approval and code enforcement. Any future adjustment to permitting fees will be based on a rate stabilization factor established under Executive Regulation 16-16, Method 3 Fees.

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.

This bill will require DPS to make a minor modification to its INFOR permitting management software to distinguish public right-of-way permits that include traffic control plans from other types of public right-of-way permits in order to properly publicize them on the web site. The IT programming time/costs can be absorbed in the normal workload.

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

Bill 38-19 does not authorize future spending.

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

There is no additional staff time needed to implement the bill; the work can be absorbed within the existing personnel complement.

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

The regulation will have little to no impact on staff responsibilities; any increase in the workload can be absorbed.

- 9. An estimate of costs when an additional appropriation is needed.**

No additional appropriation is needed to implement Bill 38-19.

- 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.**

Not applicable.

- 12. If a bill is likely to have no fiscal impact, why that is the case.**

See Question #2.

- 13. Other fiscal impacts or comments.**

Not applicable.

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

Christina Contreras, Manager, Land Development–Division of Land Development, DPS

Linda Kobylski, Division Chief of Land Development, DPS

Atiq Panjshiri, Manager, Land Development Right of Way Plan Review, DPS

Priscilla Wong, Senior IT Specialist, DPS

Gary Nalven, Fiscal and Policy Analyst, Office of Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget



Date

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

Background:

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. The purposes of the 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.

1. The sources of information, assumptions, and methodologies used.

There were no sources of information, assumptions, or methodologies needed in the formulation of this economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

Under the proposed bill, 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 also 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.

As noted in the fiscal impact statement for the bill, there are no anticipate impacts on County revenue or expenditures and DPS will continue to collect permit applications and fees for residential and commercial work permits, licenses, and other activities related to work approval and code enforcement. Any future adjustments to permitting fees will be based on the rate stabilization factor established under Executive Regulation 16-16, Method 3 fees. While the volume of closed sidewalks and walkways will be the primary variable affecting potential economic impact estimates for the bill, activity will fluctuate with the schedule of development activity and the associated costs to abide by the new regulations proposed are not anticipated to alter the volume or timing of future projects by any discernable margin.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

The bill's potential positive effects align with its intended goals including assuring pedestrian safety, minimizing inconvenience to the public related to sidewalk closures, and increasing transparency about permits to close sidewalks. The bill is not anticipated to have any measurable economic impact on County employment, spending, savings, investment, incomes, or property values.

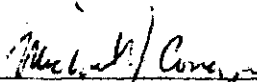
4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph 3.

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

5. **The following contributed to or concurred with this analysis:**

David Platt, Dennis Hetman – Department of Finance.



Michael Coyeyou, Acting Director
Department of Finance

1/8/20
Date



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

CW
cc
mm
SS

February 24, 2020

RECEIVED
MONTGOMERY COUNTY PLANNING BOARD

The Honorable Sidney Katz
President, Montgomery County Council
Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

Re: Planning Board Comments Regarding Bill 38-19

Dear President Katz:

At its February 20, 2020 meeting, the Montgomery County Planning Board discussed Bill 38-19, draft legislation that updates requirements for issuing permits to obstruct public rights-of-way, updates conditions under which rights-of-way can be obstructed and establishes criteria for providing alternative pathways. The Planning Board supports this legislation because it advances the goals of Vision Zero and the ongoing Pedestrian Master Plan. What follows are several comments that would improve this already strong legislation.

1. Maintain the scope of this legislation at the countywide level.

The major change this draft legislation proposes is expanding the requirement for same-side, safe alternative pathways from certain limited locations in the County to all County roads. It is important this legislation pertains to all County roads, as it is currently written, because someone walking in Long Branch or Olney or Montgomery Village should be no less safe or more inconvenienced than someone walking in Silver Spring or Bethesda.

2. Clarify that "minimize inconvenience to the public" refers to pedestrians and other vulnerable right-of-way users.

As written, Line 55 of the draft legislation stipulates that a permit for temporary closure must have conditions necessary to "minimize inconvenience to the public." "The public" should be defined for purposes of this legislation as pedestrians, bicyclists, and transit users. Closing sidewalks and bus stops without convenient alternatives should absolutely be a last resort decision, not the path of least resistance.

This legislation should be as explicit as possible that limiting the inconvenience of these vulnerable groups is more important than limiting that of those driving motor vehicles. Decisions about allocating limited right-of-way, even temporarily, should reflect this hierarchy. In practice, when choosing between converting a travel lane to a temporary sidewalk and requiring pedestrians to cross the street to detour around a closure, the travel lane should be converted.

3. Include safe alternate pathways for bicyclists when all bikeway types in the public right-of-way are closed temporarily.

In addition to providing a safe alternative path around temporary closures for pedestrians, in line with the County's Vision Zero policy, bicyclists should also be accommodated. While the legislation does address shared use paths, there are other types of bikeways that are not covered.

If a bikeway in the public right-of-way is temporarily closed, a safe alternative that meets or improves upon the comfort of the existing bikeway should be provided. When a bikeway is closed, the available routes should not be a circuitous detour or sharing the road with motor vehicle traffic. Washington, D.C. has adopted a safe accommodations policy that considers both pedestrians and bicyclists, and their approach is a national model for how vulnerable road users can be accommodated and prioritized through construction zones.

4. Reduce the length of time sidewalks and paths can be closed without a safe alternative pathway on the same side of the street.

Left unchanged by this draft legislation is the length of temporary public right-of-way closures that trigger a safe alternative pathway on the same side of the street as the closure. In the existing code, walkway repair and reconstruction projects can close walkways for six months before a safe alternative pathway on the same side of the street must be provided. For all other projects, a walkway can be closed 15 days before a safe alternative pathway must be provided.

Without a safe alternative pathway, pedestrians must detour around the closure by crossing the street multiple times, increasing their trip distance and the opportunities for conflict with motor vehicles. The 6-month and 15-day time limits for temporary closures without a safe alternative pathway on the same side of the street should be lowered significantly.

Alexandria requires a safe alternative pathway on the same side of the street if the temporary closure extends to seven days or more. Washington, DC requires a safe alternative pathway for temporary closures of any duration and specifically stipulates that detouring pedestrians to the opposite side of the street is “a last resort... in the absence of all other practicable routing options.” If there is an emergency project that requires a temporary closure without a safe alternative pathway on the same side of the street, that is understandable. However, for pre-planned temporary closures, it is not equitable or in the spirit of Vision Zero for pedestrians to increase their exposure to motor vehicles and travel out of their way for six months or two weeks respectively.

5. Provide audio messaging devices in addition to signage to ensure that pedestrians with low or no vision can navigate along pedestrian pathways with temporary closures.

Bill 38-19 maintains the Section 49-11 language stipulating that a temporary traffic control plan must meet standards established by the Executive, to include specifically that a professional engineer must certify that the plan minimizes public inconvenience, provides necessary warnings, and includes safe and reasonable pedestrian alternatives in accordance with accepted engineering standards. Additionally, the plan and closure permit must require signage during construction to share how long the closure will take place, the permit number, and a County contact phone number. Throughout Montgomery County, people with low or no vision use walkways to transact daily business. They may be unable to see signage notifying them of a sidewalk closure, and they should not have to rely on the kindness of other pedestrians in their vicinity to help them get around. To engage with these low/no-vision pedestrians, in addition to signage, audio messaging devices providing the same information should be located at the approaches of sidewalk closures. Current MCDOT Temporary Traffic Control Plan Guidelines do not require any audible notice. This inclusive approach is encouraged in Washington, D.C., preferred in the Virginia DOT Work Zone Bicycle Pedestrian Guidance and is discussed in the US Access Board’s Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG).

- 6. Provide audio messaging devices to ensure that pedestrians with low or no vision are informed when transit stops are closed temporarily.**
In addition to providing information about temporarily closed sidewalks to those with low or no vision, audio messaging devices should be used to share information about transit stops that may be closed temporarily and the closest location for pedestrians to access the transit routes that serve the closed stop.
- 7. Clarify how safe alternative pathways are to be provided for temporary sidewalk closures that affect intersections.**
In situations where a temporary closure requires removing access to a pedestrian curb ramp or the entire corner of an intersection, the legislation should require temporary traffic control to be installed, including curb ramps, crosswalk markings, and vehicular stop bars. It is not reasonable for pedestrians to have to backtrack down an entire block to cross the street because an intersection is closed.
- 8. Indicate a preference for covered walkways over other pedestrian detour strategies.**
While there are different ways to separate pedestrians from construction activity and from moving vehicles, where applicable, the Planning Board prefers the use of covered walkways – facilities that protect pedestrians from debris or other materials that may fall from above.
- 9. Allow use of temporary closure to store construction materials.**
In places where property owners can build to the lot line, it is often not feasible for construction to take place entirely within the property. The Planning Board is supportive of a restriction on using the temporary closure to park the private vehicles of construction workers if safe alternate parking for these vehicles is available but recommends allowing the storage of construction materials and specialized equipment.

Thank you for the opportunity to provide comments. If you have any questions or comments, please contact Eli Glazier at 301-495-4548.

Sincerely,



Casey Anderson
Chair

CA:EG:aj

cc: Tom Hucker, Chair, County Council Transportation and Environment Committee
Christopher Conklin, Director, Montgomery County Department of Transportation
Gwen Wright, Director, Planning Department
Jason Sartori, Chief, Functional Planning and Policy Division, Planning Department
Stephen Aldrich, Transportation Master Planner, Planning Department
David Anspacher, Transportation Supervisor, Planning Department
Eli Glazier, Project Manager, Pedestrian Master Plan

STONEBRIDGE

January 10, 2020

Montgomery County Council
100 Maryland Avenue, Fifth Floor
Rockville, Maryland 20850

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

Dear Councilmembers,

As a prominent Real Estate Development firm based in Bethesda who operates both in Montgomery County and the surrounding Washington Metropolitan area, we understand first hand the challenges associated with construction in an urban environment and the need to promote and prioritize pedestrian safety around construction sites. While we believe the safest pathway for a pedestrian is to be diverted away from construction sites, we understand the nuisance this is for the general public and the need to address this issue.

Overall, we support the efforts of the Council in addressing this through regulation, however we feel it necessary to provide the following commentary on the Bill as currently drafted.

Safe Alternate Pathway

We recognize that the specific intent of the bill is to the greatest extent possible, provide a safe alternate pathway on the same side of the street. Overall we agree, and support the language currently in the Bill regarding closures for utilities and temporary closures for the actual construction of the sidewalk area. We also want to note that there are instances that an alternate path would not work on the same side of the street and support that the Director has an opportunity to direct alternative solutions as outlined in the Bill in those cases.

Existing Permits

It takes a tremendous amount of time and forethought to plan the construction of a building especially in a downtown urban environment. The decisions on where to locate temporary power sheds, material delivery areas, material lifts, tower cranes, storage and testing sheds are all dependent on the available space around a project to service the needs of construction. If existing construction projects were required to now modify their plan and provide a safe alternate path along frontages that do not currently have one, it would be severely detrimental to the construction of these projects and virtually impossible to relocate certain types of equipment (tower cranes, material hoists, etc). We

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would therefore request that any existing approved ROW permits be “grandfathered” in under the current Regulations.

Storage of Construction Materials/Use of the Right of Way

The Bill as currently written would restrict the use of the ROW for the storage of construction materials. We understand that this restriction is also apparently in the current regulations, although not in practice.

Maryland National Capital Park & Planning Department (MNCPPC) in their Guidelines for CBD development require buildings be built to the Lot line. We agree with this concept for Urban Planning. However, the way the Bill currently reads, no other use can occur in the ROW other than the Safe Alternate Pathway. The ability to restrict use of the ROW and build to the Lot line will completely stop construction in the CBD.

If a safe alternate pathway is provided, the Developer should be able to use the remaining ROW for storage, hoists, tower cranes...effectively the ROW should be able to be used by the Developer to support the construction work.

We recommend to the Council that you use this opportunity to clean up the Regulations to allow for the storage of construction materials within the ROW when a safe alternate pathway is provided (or if a safe alternate pathway is not required as determined by the Director).

Use of Curb/Travel Lanes

The Bill emphasizes the need to provide a safe alternate pathway for pedestrians but does not provide much guidance on how to achieve this goal. In many situations especially within the CBDs, the sidewalk zones within the ROW are not wide enough to safely provide for a safe alternate pathway which is far enough from the construction zone as to not put pedestrians at risk, or are not wide enough to provide sufficient access to construct the building. Often in many other jurisdictions, pedestrians are diverted into parking lanes, bike lanes, or vehicle travel lanes to create an appropriate safety buffer between pedestrians and the construction area. Or, if pedestrians remain in the existing sidewalk area, the adjacent parking, bike, or vehicle travel lane is closed for construction use to allow for the delivery and storage of materials. Additionally, the volume of deliveries and vehicles used in the construction of CBD properties requires lane(s) closed for construction period. The cooperation of the Agencies regulating both pedestrian pathways and traffic lanes must be coordinated so that construction can actually occur. We recommend to the Council that provisions be made in the Bill outlining the use of adjacent curb and travel lanes for either a safe alternate pathway or construction staging.

Scope of the Regulations

The Bill as written emphasizes the desire for a safe alternate pathway to be provided at all time throughout the County. While the need for an alternate pathway is greatest in the dense urban areas within the County, we do not believe it is necessarily to enforce this requirement outside the central business districts where pedestrian traffic is

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much lower. As such, we would recommend that the requirement to provide a safe alternate pathway should pertain only to the central business district areas throughout the County.

We understand these regulations only pertain to County ROWs. Within the Bethesda CBD the major roadways which see the most pedestrian traffic are State ROWs. We understand the County will be working with the State to enforce similar regulations and support the County in this effort.

Convenience Parking

We recognize that often times when curb lanes are closed for construction use they are often used by construction personnel for the parking of personal vehicles. We are in complete agreement with the Council regarding the language included in the Bill to further emphasizing this restriction. However, we would request that the restriction be limited to "personal vehicles" and not broadly defined to just "vehicles" in the text. There are several different types of vehicles used throughout the course of construction which need to be parked in close proximity to the construction site, such as delivery trucks, tracker trailers, fuel/oil trucks, concrete pump trucks, etc. We believe the intent is not to limit the use of the temporary closure for construction related vehicles but to limit the parking of personnel vehicles within the temporary closure area, and ask that this clarification be made in the Bill.

Stonebridge has enjoyed working in Montgomery County and we strive for excellence in the projects we build in Montgomery County. We care greatly about safety of all our projects and the impact we have on the community. We have seen Bethesda and Wheaton particularly grow as urban centers. While we will continue to believe that the safest area for pedestrians is not to be on the same side of the street as the construction, we realize that it is an issue. We thank you for your time and we look forward to assisting in any way we can for the best regulations to allow both pedestrian safety and construction safety as well as economic ability to actually build these important economic opportunities for Montgomery County.

Respectfully,

Jane Mahaffie

Jane G. Mahaffie
Principal
Stonebridge Associates, Inc

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**Testimony of
Christopher Bruch
Bill 39-19
January 14, 2020**

Good afternoon,

My name is Chris Bruch I reside at 4410 Leland Street, Chevy Chase, Maryland and I work at the Donohoe Companies, a Montgomery County business with 1,400 employees which is in downtown Bethesda. I also recently joined the newly formed Pedestrian Advisory Group (PedAG).

I would like to thank Councilmember Friedson for introducing this legislation and Councilmembers Glass and Jawando for Co-Sponsoring.

I am here today in support of this legislation – it's time to put pedestrians first. I will offer a few suggestions that I think will strengthen this legislation:

CBD's

The legislation should apply to CBD's (not County-wide) where pedestrian and vehicular traffic volumes and incidents are the greatest.

SHA Needs to Follow

This legislation pertains to County roads only – whereas the real problems we are seeing today in Bethesda are predominantly on State, not County roadways. Therefore, it is imperative that SHA adopt identical policies otherwise this legislation will do nothing to improve pedestrian safety.

Grandfathering

Exiting permits and projects that are already underway should be grandfathered – site logistics plans, utility sequencing, tower crane placement, staging and storage areas are all determined well in advance of contractor mobilization and work commencement – many cannot be changed.

Professional Engineer Involvement

We agree that covered walkways should be stamped by a professional engineer however, temporary traffic control plans should only need to be prepared by a certified traffic control designer (i.e., ATSSA Certified).

over

Mandate Pedestrian Paths on all Projects

Safe pedestrian paths should be required on all CBD projects, and when warranted, they should be covered. So long as safe pedestrian paths are provided, the contractor should have full use of the public-right of way for project related equipment and staging – and convenience parking should be expressly prohibited.

Site constraints may warrant that sometimes safe pedestrian paths be in protected curb lanes. Yes, I said curb lane – some of you know that for years I have been highly critical of utilizing curbs for anything other than automobiles during peak rush hours. However, the frequency of pedestrian – car near misses that I personally and our employees have experienced in downtown Bethesda is frightening. It's time to put pedestrians first.

In conclusion, we agree something needs to be done and soon – there are currently separate competing rules and regs for County and State roads. The “problems” we see in Bethesda today are not on County Roads, they're on State Roads (Wisconsin Avenue) and without the State on board – this will have no impact.

Again, I would like to thank the Councilmembers for taking this initiative to improve pedestrian safety and to bring Montgomery County's and SHA's policies together under one coordinated and consistent guideline.

Thank you for your time and your consideration.

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

Commenter: David Kosterlitz, david.s.kosterlitz@gmail.com

Date: January 1, 2020

This bill is generally good and I support passage, but propose revisions to enhance it before the hearing on January 14, 2020 at 1:30 pm. The proposed revisions arise from, and are best understood by reading about My Bicycle Accident below.

My Bicycle Accident

About five years ago they were grooving and repaving all six lanes of Democracy Blvd. It was early evening, dusk. I was returning home on my bicycle from a moderate ride. I was coming east on Democracy using the shared use path on south side of Democracy and approached the bridge over I-270. No signs warned sidewalk users of any closure. Only when I got halfway across the bridge could I see a tripod blocking the sidewalk, with a sign saying "Uneven Lanes" showing a picture of a motorcycle going down a slope. This sign was directed at motorized transport in the roadway, not at sidewalk users.

I had to unclip from my pedals, lower bike to the concrete pavement of the bridge, then continued to the end of the bridge, onto the grooved pavement for a few yards. Then I veered right to go into the crosswalk on the 270-north exit off-ramp. I didn't notice that, because the off-ramp was not grooved, there was about a one-inch lip where its paving was higher than the grooved road. My skinny bike tire could not negotiate that lip at such an oblique angle. I fell, fracturing my pelvis in two places. The road repaving contractor was F.O. Day, which used a "signage subcontractor" out of Baltimore. I felt that the sign was negligently placed.

Suggested Revisions to Bill 38-19

(a)(1)(d) "removable obstruction" should be defined to include a tripod with a sign on it.

(b)(3). "removable obstruction" Same comment.

Note: "right-of-way" should be defined to include not just roads and streets, but also adjacent shared use paths.

(b)(4) "abutting structure" add "or road"

(c) In the "flush language" the term "abutting structure" same comment.

(c)(3)(A) does this include Democracy Blvd and similar roads?

(c)(3)(B) add after the term "more" this: "including both directions of travel" – that would cover Democracy Blvd and similar roads

(d)(1) after "shared use path" insert "or to repair a road adjacent thereto"

(f)(1) after "abutting structures" add "roads,"

(g)(1) after "pedestrian" add "and bicyclist"

(g)(2) after "pedestrians" add "and bicyclists"

Comment about "safe alternative" and "same side of the street"

In My Accident (above) if there had been barriers with "sidewalk closed, use _____" signs on the sidewalk/shared use path at each end (West and East) of the south side of the bridge over I-270, that would have been much safer and would have prevented my accident. The blank would have had to direct users to the "safe alternative." Since they were re-surfacing Democracy Blvd in both directions, although the bridge is a bit far from any cross-streets or crosswalks across Democracy Blvd, they might not have been able to say "please use other side" unless they did the job in stages, closing to vehicles the right-most lane on one side, and later the other side. That closed lane would be where they could place their tripod with its sign warning motor vehicles. Professional engineers and safety experts might have various ideas for "best practices" on how such situations should be handled.

Comment on supervision and enforcement

This good bill, hopefully enhanced with my suggested revisions, will only be as good as the supervision and enforcement of it. Please ensure that funding and requirements for supervision and enforcement are made administratively through the appropriate county department, and consider adding language about supervision and enforcement to the bill.

RE: Montgomery County Council Public Hearing: Bill 38-19, Streets and Roads - Permit to Obstruct Public Rights-of-Way - Amendments [Jan. 14, 2020]

Testimony from Andy Bartley representing Associated Builders and Contractors (ABC) Metro Washington:

Representing contractors, developers and subcontractors we take safety very seriously, for our company's employees and well as the public. We applaud any positive safety efforts.

I'm speaking on behalf of over 500 business members of ABC of Metro Washington. We are concerned that 38-19 is contradictory in that the goal is safety however the purpose of shutting down right of way is also in the name of safety (otherwise we'd leave it open). Our primary concern is whether this bill fully takes into account all the different permitting hurdles and timelines we face when trying to get our projects completed in a safe and efficient manner.

**Montgomery County Bill 38-19,
Streets and Roads - Permit to Obstruct Public Rights-of-Way**

Montgomery County Council
Public Hearing, January 14, 2020

Re: Support Bill 38-19

The reason that the League of Women Voters of Montgomery County (LWVMC) urges support for Bill 38-19 is that it fits with our positions favoring safety for pedestrians and bikers during times of construction.

Our positions clearly state that (1) "When building and rebuilding communities.... sustain education, engineering, and enforcement elements to encourage more people to walk and ride bikes", and (2) "Coordination is needed between municipal, county, and state agencies and among county departments to support increasing availability of safe pedestrian and bicycle options to vehicle trips."

LWVMC views this bill as important because it particularly enhances the use of sidewalks and bike lanes to make them safer for use during periods of construction.

Often the walker or biker is given less care than vehicles in roadways; consequently, the process outlined in this bill -- to be used during times of construction -- is a positive one for safety and encouraging pedestrians and bicyclists.

We therefore ask county councilmembers to please support Bill 38-19.

Diane Hibino and Kathy McGuire, co-presidents
Bee Ditzler, chair, Transportation & Land Use Committee