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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. [[Section]] Sections 49-11 [[is]] and 49-12 are amended as follows:


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

Public includes pedestrians, bicyclists, and transit users.

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

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

(B) provides safe access and passage to pedestrians.

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

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

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

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

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

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; 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; or

(5) [[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) 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, maintenance, use or removal of the nonstandard permitted streetscape.

[(b)] (c) Permits for temporary obstructions. [The] If a permit under subsection (b)(1) involves a temporary closure located in a Central Business District planning policy area, a Bicycle-Pedestrian Priority Area, an area within ½ mile of a Purple Line Station, or an area within ½ mile of a Bus Rapid Transit Station Area, 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:

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

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

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

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

(4) the permittee has any franchise required under Section 49-20; and

(5) the duration of the [[permit]] temporary closure complies with subsection (d).

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

[(c)] (d) [The Director may issue a permit to rebuild or repair 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 abutting structures, utilities, or infrastructure for more than 15 days, without requiring that a safe alternate sidewalk or shared use path be provided on the same side of the street.] Time limits for temporary closures without safe alternative paths. Except as provided in subsections (e) and (f):

(1) a temporary closure to reconstruct or repair a sidewalk or shared use path must not exceed 6 months without the provision of a safe alternative path; and

(2) any other temporary closure must not exceed 15 days without the provision of a safe alternative path.

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

(1) (A) based on a certification submitted by a professional engineer, construction of [such a sidewalk or shared use] a safe alternative path is not possible; or

[(2) (B) the street is closed[.]]; and
(2) the extension meets minimum requirements established under Method (2) regulations, including requirements that the permit must:

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

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

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

(i) provide a safe alternative path; or

(ii) terminate the temporary closure.

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

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

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

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

(f) The Director must include conditions in each permit to assure public safety in the work area.]
Before the Director issues a permit under this Section to close a sidewalk, curb lane, or shared use path, the Director of Transportation must approve a] **Temporary traffic control plan.** A temporary traffic control plan under subsection (c) must meet standards established by the Executive under Method (2) regulations, including that[.]:

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

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

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

* * *

**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, Section 49-11 applies to any temporary closure of the right-of-way in connection with construction or reconstruction on abutting property owned by the County.

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

Sidney Katz, President, County Council

Approved:

Marc Elrich, County Executive

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council