



Committee: Directly to Council
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #RightOfWay #DPS #Construction
#PublicSpaceUsageInWorkZones

AGENDA ITEM #13B
January 18, 2022
Action

SUBJECT

Executive Regulation 15-20, Public Space Usage in Work Zones
Lead Sponsor: Council President Albornoz at the request of the County Executive

EXPECTED ATTENDEES

Linda Kobylski, Division Chief, Land Development, DPS
Christina Contreras, Manager, Right-of-Way Inspections, DPS
Atiq Panjshiri, Manager, Right-of-Way Plan Review, DPS

COUNCIL DECISION POINTS

This regulation must be reviewed under Method (2) of Section 2A-15 of the County Code. Under Method (2), the Council must approve or disapprove the regulation or it automatically takes effect.

DESCRIPTION/ISSUE

Executive Regulation 15-20 adopts minimum standard requirements and conditions for work zone usage within the County's public right-of-way.

SUMMARY OF KEY DISCUSSION POINTS

- The proposed regulation provides standards by which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk, walkway, bicycle facility, or road lane related to repair or construction activity.
- The intent of the proposed regulation is to minimize public inconvenience, maximize consistency with use of the right of way, and promote public safety.
- The proposed regulation was advertised in in the December 2020 issue of the County Register, with a January 4, 2021 comment deadline.

This report contains:

Staff Report
County Executive transmittal
Fiscal Impact Statement
Exec. Reg. 15-20
Resolution

Pages

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January 18, 2022

Worksession/Action

M E M O R A N D U M

January 13, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Executive Regulation 15-20, Public Space Usage in Work Zones

EXPECTED ATTENDEES

- Linda Kobylski, Division Chief, Land Development, Department of Permitting Services (DPS)
- Christina Contreras, Manager, Right-of-Way Inspections, Department of Permitting Services (DPS)
- Atiq Panjshiri, Manager, Right-of-Way Plan Review (DPS)

OVERVIEW

Executive Regulation 15-20, Public Space Usage in Work Zones, lead sponsor Council President Albornozy at the request of the County Executive, was introduced on December 14, 2021. The proposed regulation was advertised in the December 2020 issue of the County Register, with a January 4, 2021 comment deadline. Only one comment was received. As a “Method 2” regulation under Sec. 2A-15 of the County Code, the Council has 60 days to approve or disapprove it. If the Council does not approve or disapprove the regulation before the deadline, then it is automatically approved.

Exec. Reg. 15-20 adopts minimum standard requirements and conditions for work zone usage within the County’s public right-of-way. The intent of the proposed regulation is to minimize public inconvenience, maximize consistency with use of the right-of-way, and promote public safety.

BACKGROUND

This executive regulation is a requirement of a change to Chapter 49 after the passage of Bill 38-19, Streets and Roads – Permit to Obstruct Public Rights-of-Way – Amendments, lead sponsor Councilmember Friedson, co-sponsors Councilmembers Glass, Jawando, Riemer, Albornozy, Rice, then-Vice President

Hucker, and then-President Katz.¹ The purpose of Bill 38-19, enacted March 24, 2020, was to increase pedestrian safety by assuring public sidewalks and walkways are closed for only the minimum time periods necessary, with minimum disruption and inconvenience to the public. Exec. Reg. 15-20 will provide standards by which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk, walkway, bicycle facility, or road lane related to repair or construction activity.

DESCRIPTION

Construction activities often encroach into the public right-of-way, which disrupts or obstructs the public's use of said right-of-way. When a construction work zone impacts the mobility or safety of a pedestrian, bicyclist, or transit user on a public right-of-way, then a temporary right-of-way closure is required to alter the existing conditions of the passageway. While these closures are considered a last resort, where permitted they can still lead to safety issues; for example, pedestrians may be forced to walk in the street when the sidewalk is closed. Exec. Reg. 15-20 will further the County's efforts to promote pedestrian safety by creating the following:

1. Minimum requirements that verify the proposed construction-related use of the County's public right-of-way does not adversely affect the public's usage; unreasonably impede the use of a sidewalk or other right-of-way by pedestrians, bicyclists, or persons with disabilities; impede or endanger automobiles or other vehicles; nor adversely affect public safety;
2. Standard conditions and procedures for permit applications and the use of public rights-of-way in construction work zones, including appropriate temporary traffic control measures; and
3. Enforcement measures necessary to maintain public safety.

Standards are provided regarding the right-of-way access by construction type; the height of construction and distance from the pedestrian walkway; the type of excavation; the width of passageways; the grade of the ground; the use of fences; covered walkways; pedestrian detour standards and signage; and the requirements for alternative paths. The regulation also includes guidelines regarding compliance with the Americans with Disabilities Act (ADA). One of the biggest changes is creation of a new permit for Maintenance of Traffic that will help DPS track duration of these closures and ensure the right-of-way is re-opened for public use as soon as is feasible. The Maintenance of Traffic permit may condition closures by limiting the closure to work hours only, requiring additional flaggers, or restricting closures to specific phases of construction.

DPS staff worked closely with the Department of Transportation (MCDOT) in drafting this regulation.

This packet contains:

County Executive transmittal
Fiscal Impact Statement
Executive Regulation 15-20
Resolution

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¹ The final action staff packet for Bill 38-19 can be found here:

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2636_1_10513_Bill_38-19_Action_20200324.pdf




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

November 29, 2021

TO: Tom Hucker, President
County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Executive Regulation 15-20 Adoption of standard requirements and condition for work zone usage within Montgomery County rights of way. It also establishes an annual permit and renewal fee for a Public Right of Way Maintenance of Traffic permit. – Method 2

The purpose of this memorandum is to submit proposed Executive Regulation 15-20 for approval. Executive Regulation 15-20 will adopt standards and guidelines for use of the public right of way related to construction activity. The standards will outline requirements to minimize public inconvenience and maximize consistency with use of the right of way, while promoting public safety. Executive Regulation 15-20 also enables the Department of Permitting Services to better monitor and enforce time constraints related to this type of usage.

The proposed regulation was advertised in the December 2020 issue of the Montgomery County Register Volume 27, Register 12 and the comment deadline was January 4, 2021. No testimonies were received. A copy of the fiscal impact statement is attached. The proposed regulation is being promulgated under Method 2 of Section 2A-15 of the Montgomery County Code. Attached are two copies (clean and marked up) of the executive regulation.

If you need any information, please contact Linda Kobylski, Division Chief, Department of Permitting Services at 240-777-6346.

Attachments:

Fiscal Impact Statement
Executive Regulation 15-20 Streets and Roads Obstruction of ROW

1. Summary

Executive Regulation 15-20 will provide standards and guidelines related to the circumstances in which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk, walkway, bicycle facility, or road lane related to repair or construction activity. It will assure that public rights of way are closed for the minimum time necessary, with minimum disruption and inconvenience to the public and increase 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.

The proposed regulation is not expected to impact 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 this executive regulation.

**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, and 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 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.

The proposed regulation will require minor changes to the INFOR permitting system to identify 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 DPS' web site. The IT programming time/costs can be absorbed within the normal workload.

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

Executive Regulation 15-20 does not authorize future spending.

7. An estimate of the staff time needed to implement the executive regulation.

There is no additional staff time needed to implement the executive regulation; the work can be absorbed within the Department's existing personnel complement.

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

The executive 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 Executive Regulation 15-20.

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 the proposed regulation is likely to have no fiscal impact, why that is the case.


See #2.

13. Other fiscal impacts or comments.

None.

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

Linda Kobylski, DPS
Atiq Panjshiri, DPS
Christina Contreras, DPS
Priscilla Wong, DPS IT
Dan Sanayi, DOT
Rafael Pumarejo Murphy, OMB



Jennifer R. Bryant, Director
Office of Management and Budget

7-9-21

Date

Clean Copy



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive, 101 Monroe Street, Rockville, Maryland 20850

Subject: Public Space Usage in Work Zones	Number: 15-20
Originating Department: Department of Permitting Services	Effective Date:

Montgomery County Regulation on:

COMCOR 49.11.01 USE OF PUBLIC RIGHTS-OF-WAY IN CONSTRUCTION

DEPARTMENT OF PERMITTING SERVICES

Issued by:
The County Executive
Regulation No. 15-20

Authority: Code Sections 49-1 and 49-11
Council Review: Method 2 under Code Section 2A-15
Register Vol. 37, Issue 12
Comment Deadline: January 4, 2021
Effective Date:
Sunset Date: None

SUMMARY: This Executive Regulation adopts minimum standard requirements and conditions for work zone usage within the County's public right-of-way.

ADDRESS: Department of Permitting Services
255 Rockville Pike, Second Floor
Rockville, Maryland 20850-4166

STAFF CONTACT: Linda Kobylski, Division Chief, Division of Land Development 240-777-6346
Christina Contreras, Manager, Division of Land Development 240-777-6307

BACKGROUND INFORMATION: The Department of Permitting Services oversees and issues permits for the use of public rights of way. Construction activities often encroach into the public right-of-way, disrupting or obstructing the public usage of the right-of-way. The purpose of this regulation is to adopt and clarify minimum standard requirements and conditions for usage of the public right-of-way during construction to minimize public inconvenience and to maximize consistency with the usage while promoting public safety.

This regulation is adopted pursuant to Sections 49-1 and 49-11 of the Montgomery County Code (MCC).



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Offices of the County Executive, 101 Monroe Street, Rockville, Maryland 20850

Subject: Public Space Usage in Work Zones	Number: 15-20
Originating Department: Department of Permitting Services	Effective Date:

COMCOR 49.11.01

49.11.01.01 Purpose

This regulation adopts minimum requirements, standard conditions and enforcement measures for use of the County's public rights-of-way in construction work zones:

(a) minimum requirements that verify the proposed construction related use of the County's public right-of-way does not adversely affect the public usage, unreasonably impede the use of a sidewalk or other right-of-way by pedestrians, bicyclists or persons with disabilities, impede or endanger automobiles or other vehicles, nor adversely affect public safety

(b) standard conditions and procedures for permit applications and the use of public rights-of-way in construction work zones, including appropriate temporary traffic control measures; and

(c) enforcement measures, necessary to maintain public safety.

49.11.01.02 Applicability

This regulation applies to construction work zones that are in or affect the County's public rights-of-way and any related public improvement easements. This regulation does not apply to work zones exclusively located on private property and do not affect the County's public rights-of-way.

49.11.01.03 General Administration

Except as provided in this regulation, procedures for application, implementation, review, approval, denial, and appeal are the same as the procedures for right-of-way permits under Chapter 49 of the County Code.

49.11.01.04 Definitions

BIKEWAY FACILITY includes bike lanes, cycle tracks, and any other facility intended for the explicit use of bicyclists.

COVERED WALKWAY means a wood or metal scaffolding-type structure constructed to protect pedestrians and bicyclists adjacent to a construction work zone that involves overhead work.

DETOUR means a temporary sidewalk closure, with clear signage, directing pedestrians and bicyclists to a PROWAG-compliant safe alternative path.

MAINTENANCE OF TRAFFIC ROW PERMIT means a right-of-way permit for a temporary closure caused by the relocation of pedestrian, bicyclist and transit user passage under an approved temporary traffic control plan.



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PASSAGEWAY includes a sidewalk, pedestrian walkway, bikeway facility and road intended for public passage.

SAFE ALTERNATIVE PATH means a PROWAG-compliant alternate walkway or shared use path in the right-of-way on the same side of the street as the temporary closure that provides safe access and passage to pedestrians, bicyclists and transit users. The preferred methods include the use of parking lanes, curb lanes or vehicular travel lanes to maintain this path.

SIDEWALK means any portion of the right-of-way of a County road or street that is expressly intended as a pedestrian walkway. Typically, a sidewalk is made of concrete, asphalt or streetscape brick paver pathway and is located between the road or street surface or curb line of a road or street and the abutting property.

TEMPORARY CLOSURE means a temporary obstruction, blockage, or occupation of a right-of-way.

49.11.01.05 Pedestrian and Bicyclist Mobility in and Around Construction Work Zones

Generally, it is the intent of Chapter 49 of the Montgomery County Code that passageways are to remain open for pedestrians, bicyclists and transit users. When a construction work zone impacts the mobility or safety of a pedestrian, bicyclist or transit user on a public right-of-way, then a temporary right-of-way closure permit is required in order to alter the existing conditions of a passageway.

The Montgomery County Department of Permitting Services (MCDPS) is responsible for reviewing plans and specifications for right-of-way permits and administering, interpreting, and enforcing construction codes, laws and regulations governing temporary occupations of the public rights-of-way. In evaluating whether to allow a safe alternative path to the existing passageway, MCDPS will consider the specific phase and type of construction activity that is occurring on the abutting property or right-of-way and the location of the construction activity. *See Table 1*

The closure of a passageway is deemed a last resort. Pedestrian and bicyclist mobility must be accommodated within the existing passageway unless the permittee can demonstrate that passage cannot be made safe.

When closure of an existing passageway is required for public safety, a Maintenance of Traffic ROW Permit is required. When a closure is authorized, the closure may be conditioned with specific requirements to mitigate the closure. Permit requirements may include limiting closures to work hours only, requiring additional flaggers to assist pedestrians, bicyclists, and transit users, or restricting closures to specific phases of construction.

1. **POTENTIAL HAZARD TO THE PUBLIC.** Limited duration closures may be granted for specific phases of a project unless allowing the existing passageway to remain open could present a hazard to the public. *See Table 1* for specific phase guidance.
2. **CONSIDERATION OF PROPOSED USE.** Limited duration closures may be granted during the construction of right-of-way infrastructure, including street improvements, utility service connections, and street and sidewalk restorations.



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TABLE 1

RIGHT-OF-WAY ACCESS BY CONSTRUCTION TYPE

PHASE OF CONSTRUCTION	OPEN PEDESTRIAN WALKWAY	SAFE ALTERNATIVE PATH	DETOUR
Demolition		Preferred	Alternative
Façade Demolition		Preferred	Alternative
Excavation, Sheet piling & Shoring	Preferred	Alternative	
Construction		Preferred	Alternative
Post Skin	Preferred	Alternative	
Pedestrian Walkway and Streetscape		Preferred	Alternative
Utility or Other Work Impacting Pedestrian Walkway		Preferred	Alternative

When the existing passageway remains open adjacent to a construction work zone, the following tables (Table 2 and Table 3) may be used as a guide for the minimum requirement for public safety abutting building demolition, excavation, and construction.

TABLE 2 - HEIGHT OF CONSTRUCTION AND DISTANCE FROM PEDESTRIAN WALKWAY

HEIGHT OF CONSTRUCTION	DISTANCE OF CONSTRUCTION FROM PEDESTRIAN WALKWAY	MINIMUM PROTECTION REQUIRED
Eight feet (8') or less	Less than five feet (<5')	Open walkway with secure construction fencing a minimum of six feet (6') in



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		height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.
	Five feet or more (>5')	Open walkway with secure construction fencing a minimum of forty-two inches (42") in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.
More than eight feet (>8')	One-quarter of the height of the construction or less	Fence and covered walkway
	More than one quarter height of construction	Open walkway with secure construction fencing a minimum of six feet (6') in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.

Table 3 – TYPE OF EXCAVATION AND DISTANCE FROM PEDESTRIAN WALKWAY

TYPE OF EXCAVATION	DISTANCE OF EXCAVATION FROM PEDESTRIAN WALKWAY	MINIMUM PEDESTRIAN PROTECTION REQUIRED
Trenching for utilities	The public must be kept a minimum of two feet (2') from excavation while maintaining 3 feet (3') minimum clear pedestrian walkway for short distances and six feet (6') minimum for extended distances.	Open walkway with secure construction barricade or fencing a minimum of forty-two inches (42") in height. No portion of the barricade or fencing may project into the clear pedestrian walkway or bikeway facility.
Mass excavation for utility structures or buildings	The public must be kept a minimum of four feet (4') from the excavation while maintaining six feet (6') minimum clear pedestrian walkway or bikeway facility	Open walkway with secure construction fencing a minimum of six feet (6') in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility



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The application must minimize the inconvenience to the public and assure public safety under the following rubric:

1. Provide the public with safe passage on the existing passageway using the following standards:

- a. **WIDTH.** The passageway should have a clear and unobstructed width of not less than six feet (6'). When pedestrian volumes are significant, a greater minimum width of unobstructed passage may be required. When pedestrian volumes are low pedestrian volumes, a minimum width of three feet (3') may be authorized for short distances in order to accommodate existing sidewalk width or such obstructions as trees, street furniture, pay stations, parking meters, fire hydrants, bicycle facilities and other permanent structures. ADA warnings for site obstructions, such as detectable kickboards around structures, must be installed. (2010 ADA Standards Section 403.5.1)
- b. **HEIGHT.** Passageways must have a clear and unobstructed height of not less than eight feet (8'). Objects projecting into the passageway with their leading edges between twenty-seven and eighty inches above the walkway may not protrude more than four inches (4") into the corridor. (2010 ADA Standards Section 307.2)
- c. **FLOOR.** Generally, the sidewalk or road surface may serve as the floor of the passageway. Structural floors are not required unless needed to cross an opening, mitigate a newly constructed obstruction in the passageway, or to comply with ADA and PROWAG requirements. The sidewalk, road surface, or structural floor must be solid, slip-resistant, and well drained so that the public does not travel through ponded water. If the road surface is uneven, it must be leveled using asphalt patching. The transition between the temporary passageway surface and the sidewalk must be without:
 - i. abrupt grade breaks or changes in elevation exceeding one-quarter inch (1/4");
 - ii. slope greater than 8 percent; and
 - iii. cross-slope no greater than 2 percent (one-quarter inch for every 1 foot).Changes in elevation between one-quarter inch (1/4") and one-half inch (1/2") must be beveled at a 45-degree angle.
- d. **FENCES.** Construction fences must meet the following minimum requirements:
 - i. **FENCES ON CONSTRUCTION FACING SIDE.** When required, fences must be continuous along the full length of the construction site where it abuts a County right-of-way. Fences must be properly anchored chain-link fencing (ground mounted preferred) or concrete or water-filled barriers with chain-link fencing. The fence must be at least six feet in height, unless otherwise specified in Tables 2 and 3.

If construction or demolition activity may create flying debris or otherwise affect the public, then chain-link fencing is not permitted. The fencing must be solid and tight.



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Protective screening is required at all points of entry and exit and at all view holes. If the fencing is within thirty feet (30') of a street intersection or corner, any portion of the fence over three feet (3') in height must be made of a material that protects against flying debris and other construction work zone dangers and allow for traffic visibility.

- ii. **OPEN WALKWAY WORKSITE FENCING.** Where the existing passageway abutting the worksite is a pedestrian walkway or bikeway facility, properly anchored chain link fencing (ground mounted preferred), concrete or water-filled barriers with chain-link fencing, or alternative as approved by MCDPS must be placed along the entire length of the walkway side abutting the worksite. See Table 2 and Table 3. If the requirements of these Tables cannot be met, a safe alternate route or detour may be authorized.
 - iii. **FENCE FOOTINGS.** It is the preferred method that fencing posts be ground mounted. Where fence footings are present, they must be oriented and demarcated so as not to create a tripping hazard or impede public passage. Footings must not protrude into the minimum free and clear passageway width as provided in this regulation.
 - iv. **GATE.** Any gate in the fence must swing away from the passageway and towards the construction work zone. Sliding gates may also be used. Gates must be securely fastened in a closed position when not in use.
2. If safe passage on the existing passageway is not practical, a safe alternative path on the same side of the street must be provided within the public right-of-way. This may require the closure of a curb lane or parking lane. The safe alternative path must replicate to the maximum extent possible the characteristics of the existing passageway as noted in subpart 1 and adhere to the following additional standards:
- a. **ELECTRICAL LIGHTING.** The public access area must be continuously well-lit between sunset and sunrise, and other times as necessary to illuminate the area. Additional lighting may be required at ADA transition points and crosswalks. An Electrical Permit may be required.
 - b. **SIGNAGE.** Advanced signage alerting the public of the available safe alternative pathway is required. The safe alternative path must be clearly marked, including advanced warning at crosswalks before the safe alternative path. If the safe alternative path or detour is less than eight feet (8') in width, signage must be placed at all ingress and egress transition tapers and contain appropriate directional arrows. The signage must also direct bicyclists to dismount from their bicycles. Signs must not be placed in a manner that obstructs public access. If sign stands are used for a period longer than 48 hours, they are to be cane-detectable and properly ballasted.
 - c. **SAFETY BARRIERS.** A passageway that abuts a vehicular travel lane must be protected by either water-filled or concrete barriers. Water-filled barriers may be used along roads with posted speeds of 25 MPH or less. Water filled barriers must be filled to manufacturer specifications. Concrete barriers must be used along roads with posted speeds above 25 MPH. Concrete barriers must have proper attenuation to protect blunt ends from vehicular traffic. All



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barriers must have delineation reflectors installed in accordance with MCDOT traffic control standards. (MCDOT Work Zone Temporary Traffic Control Standards, July 2014; Standards TCP-109.01 and TCP-109.02)

- d. **ADA COMPLIANCE.** All passageways constructed under this section must comply with the Americans with Disabilities Act (2010 ADA Standards for Accessible Design). This includes but is not limited to the following:

- i. **DETECTABLE SURFACES.** A continuous cane detectable surface or kickboard system must be provided on both sides of pedestrian walkway ingress and egress and for the length of the pedestrian access. Detectable guards must also be provided to warn of potential hazards and restricted access.
- ii. **MAINTAINING REACH.** Access to pedestrian crossing signal buttons must be maintained with an unobstructed high forward reach of forty-eight inches (48") maximum, and a low forward reach of fifteen inches (15") minimum above the ground. (ADA 2010 Chapter 3, section 308)
- iii. **ADA RAMPS.** Ramps must meet the most current ADA requirements, including the addition of detectable warning surfaces at the top and bottom of the ramp and installation of companion ramps where necessary.

Requirements include but are not limited to constructing ramps that are stable, slip resistant and are compliant in slope and counter slope. All ramps with a rise of greater than six inches must be constructed with handrails on both sides of the ramp. (2010 ADA Chapter 4, section 405.8).

Prefabricated curb ramps are the preferred standard. On-site designed curb ramps using wood or hot mix asphalt at ingress and egress locations may be approved by MCDPS as an alternative. Both prefabricated and on-site designed ramps must include the following:

1. Flush transition at the top and bottom of the ramp;
2. Detectable base boards and/or warning surfaces at the top and bottom of the ramp;
3. Uniform and slip resistant surface;
4. Handrail or board edge installed on inside edge, where the transition height exceeds six inches;
5. Slopes and landing to meet ADA requirements to the maximum extent feasible;
6. Ramp edges highlighted with reflectorized material. (2010 ADA Chapter 4, section 4.2.5); and
7. Nighttime visibility of the ramp with proper lighting must be maintained throughout the ramp's use.

- e. **TRANSIT ACCESS.** Passageways must be designed to maintain ADA-compliant access to any operating bus stop or bus shelter. (2010 ADA Chapter 8, section 810.2.3)



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If the safe alternative path abuts the construction work zone but is not on the existing passageway, the access must meet the minimum requirements of this regulation. Where a general-purpose parking lane exists in the right-of-way and abuts the worksite, the parking lane shall be the preferred safe alternative path unless another passageway is permitted by this regulation.

3. Where safe passage is not possible on the existing passageway or on a safe alternative path under subparts 1 and 2, MCDPS may authorize the temporary closure of the existing passageway with a detour across the street from the construction work zone. To direct the public to the detour, proper advance signage must be provided in good condition, and must not intrude into or obstruct the usable width of the passageway. Access to the detour should be from the nearest existing crosswalk. However, MCDPS may authorize mid-block crossings in certain circumstances. Special requests to temporarily close an existing passageway, and requests for mid-block crossings, will be determined on a case-by-case basis. Such requests must contain detailed, documented justification and will only be granted as a last resort.
 - a. Notice of Temporary Closure. If the temporary closure is required outside of the construction work hours as stated in the Maintenance of Traffic ROW Permit for a time period greater than fifteen (15) days, a legible and weather-resistant sign must be clearly posted at the closure indicating the Maintenance of Traffic ROW Permit number, the date the passageway is to be reopened, and to contact the MCDPS Work Zone Field Supervisor and the Construction Project Manager for the site for further information.
 - b. Mid-block Crosswalks. Directing the public to use the nearest crosswalk is recommended. If the distance to the nearest crosswalk is greater than 200 feet or land uses in the area make rerouting the public to the nearest crosswalk infeasible, a mid-block crossing may be considered. Where a mid-block crossing is permitted, the crossing must incorporate, at a minimum, all traffic control devices including signs, pedestrian markings, beacons or traffic signals recommended by MCDOT.
4. It is the intent of this regulation that all existing passageways remain open and meet PROWAG requirements. When determining whether it is practical to require either the protection of the existing passageway or to permit a safe alternative path or detour, the Director of MCDPS may evaluate the following factors, among others:
 - a. The purpose of the proposed use;
 - b. Pedestrian, bicycle, and vehicular traffic patterns;
 - c. The need to use the existing or abutting right-of-way;
 - d. The impact on public safety, health and welfare, or the provision of public services of using a protected existing passageway versus a safe alternative path versus a detour;
 - e. The impact on adjoining businesses, bus stop(s), or public transit route(s);



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- f. Active existing or proposed construction activity with pedestrian, bicyclist and transit user mobility impacts within a reasonable distance of the affected sidewalk or bike lanes/cycle tracks, as determined by the reviewer;
 - g. The nature and duration of the construction activity; and
 - h. The terrain and other site conditions.
5. The Director may require the applicant to revise plans to confine the proposed use of the passageway to an area the Director finds to be consistent with public safety and use of the street for travel and transportation.
 6. In cases where a proposed use of the right-of-way conflicts with another permitted activity in the right-of-way, the Director will require the various permittees to coordinate their use of the right-of-way in order to minimize the impact on public use and maximize safety. For example, the Director may delay the start date of a permit to lessen potential conflicts among various construction activities.

49.11.01.06 Pedestrian Detour Standards and Signage

Where a sidewalk is temporarily closed and the public is redirected to a pedestrian walkway that does not abut the construction work zone, the detour must meet the general requirements of this regulation. The following conditions also apply:

1. **DETOUR CHANNELIZATION AND BARRICADES.** Channelization and barricades must not impede sight distance at corners or block access to any pedestrian button, signal, or ADA infrastructure.
2. **DETOURS WITH CROSSWALK CLOSURES.** Where crosswalks are closed, water-filled barriers that extend the full width of the crosswalk with "CROSSWALK CLOSED" (24" x 12") signage attached is the preferred standard. Where space limitations or other conditions make a water-filled barrier impractical, MCDPS may authorize a properly ballasted cane-detectable Type III barricade that extends the full width of the sidewalk. A "CROSSWALK CLOSED" (24" x 12") sign must be attached to the Type III barricade.
3. **INTERSECTION DETOURS.** Intersection closures must not impede sight distance at the intersections. A "SIDEWALK CLOSED AHEAD, CROSS HERE" (24" x 18") sign mounted on a properly ballasted cane-detectable Type III barricade must be located in advance of the closure. The Type III barricade must not encroach on the minimum width for pedestrian access. A "SIDEWALK CLOSED" (24" x 12") sign must be attached to water-filled barrier or a properly ballasted cane-detectable Type III barricade at the point of closure.
4. **MID-BLOCK CLOSURES.** Where a mid-block closure is authorized, a "SIDEWALK CLOSED AHEAD, CROSS HERE" (24" x 18") sign on a properly ballasted cane-detectable Type III barricade must be located at the preceding crosswalk in advance of the mid-block closure. The type III barricade must not encroach on the minimum width for pedestrian access. A "SIDEWALK CLOSED" (24" x 12")



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sign must be attached to water-filled barrier or a properly ballasted cane-detectable Type III barricade at the point of closure. The "SIDEWALK CLOSED" barrier must extend the full width of the sidewalk.

49.11.01.07 Corner Work

Where safety or other conditions require closure of the existing passageway at an intersection, the closure must meet the minimum requirements set forth in this regulation. The following conditions also apply:

1. **CORNER WORK INTERSECTION CLOSURES.** Where intersections are closed, a safe alternate path must be established in the parking lane if one exists. The public must not be directed onto a closed crosswalk. The barrier must run the length of the safe alternative path. A "SIDEWALK CLOSED" (24" x 12") sign must be placed on a properly ballasted cane-detectable Type III barricade in advance at the preceding side of intersection and at the site.
2. **CORNER WORK CROSSWALK CLOSURES.** Where crosswalks are closed, except as described, water-filled barriers that extend the full width of the crosswalk must be used. However, where space limitations or other conditions make a water-filled barrier impractical, MCDPS may authorize a properly ballasted cane-detectable Type III barricade that extends the full width of the crosswalk. A "CROSSWALK CLOSED" (24" x 12") sign must be attached to each corner work crosswalk closure barrier.
3. **COVERED WALKWAY AT CORNERS.** A covered walkway must not impede the sight distance at corners or block access to any pedestrian button, signal, or ADA infrastructure. Additionally, a covered walkway must not impede bus and other heavy-vehicle mirror encroachments or a three-foot (3') door swing radius if adjacent parking is allowed.
4. **ADA LANDING ACCOMMODATION.** The ADA requires corner landings to be a minimum of five feet (5') in length and five feet (5') in width. The corner landing must remain clear and provide unobstructed access to all pedestrian crossing signals.

49.11.01.08 Covered Walkway Standards

Where safety or other conditions require a covered walkway, the covered walkway must meet the general requirements for walkway width, floor, signage, and ADA accessibility set forth in this regulation. The following minimum conditions also apply:

1. **SPECIFICATIONS AND DRAWINGS.** The application for a right-of-way permit must be accompanied by copies of specifications and plans drawn to scale, with sufficient clarity and detailed dimensions, to facilitate a structural review of the roofs and supporting structures of the covered walkways, which must not exceed two stories above grade. The covered walkway must be designed for seventy-five pounds per square foot (75 PSF) live load or the load imposed if used for staging, whichever is greater, and be of sufficient width to prevent persons and materials from falling. The specifications and plans must be designed, signed, and sealed by a professional engineer registered in the State of Maryland.



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When the building abutting the covered walkway is more than two stories, a Building Permit is required for the covered walkway. The loading for the covered walkway must be project specific and the specifications and plans must be designed, signed, and sealed by a professional engineer registered in the State of Maryland who is familiar with the abutting project. Covered walkways must be designed to support all imposed loads if used for staging, be of sufficient width to prevent persons and materials from falling, and in no case may the design live load be less than one hundred-fifty pounds per square foot (150 PSF). All imposed loads which are utilized in the design must be clearly stated in the structural documents along with the drawings showing the support system plan, sections, details, and anchorage to the ground (IBC 3306.2 and 3306.7). The structure must be braced sufficiently or anchored to the building so that it will not fall, be blown about, or otherwise collapse. The Maintenance of Traffic Plan must show the covered walkway footprint including the ingress and egress for the walkway.

2. **ADA COMPLIANCE.** All covered walkways must provide an ADA accessible pedestrian route in accordance with the Americans with Disabilities Act (2010 ADA Standards). This includes but is not limited to: constructing structural floors when required (See "FLOORS" below) that have a surface that is firm, stable, slip-resistant, and that is compliant in slope, counter slope, vertical clearances, turning radii, and surface irregularities; providing compliant ramps connecting the structural floor to an existing ADA accessible route; and implementing sufficient measure to ensure the safety and welfare of the pedestrians traversing the site. All ramps with a rise greater than six inches (6") must be constructed with handrails on both sides of the ramp.
3. **RAILING.** A continuous handrail must be installed along at least one side of the walkway to aid pedestrians. The handrail must comply with the requirements of ADA. The top of the railing must be between thirty-four inches and thirty-eight inches (34"-38") above the walkway floor and be capable of withstanding a fifty-pound (50 LBS) load per linear foot applied horizontally to the top rail.
4. **TRANSIT ACCESS.** The covered walkway must be designed to maintain ADA-compliant access from the sidewalk to any operating bus stop or bus shelter. (2010 ADA Section 810.2.3)
5. **ELECTRICAL LIGHTING.** The interior of the covered walkway area must be continuously well-lit between sunset and sunrise, and at other times as necessary to illuminate the area. Lighting must be one-hundred-watt (100W) bulbs or equivalent, enclosed in vandal-resistant fixtures, and spaced at a maximum of sixteen feet (16') on-center and eight feet (8') minimum above the floor level. If the ingress/egress of the covered walkway is within thirty feet (30') of a crosswalk, then additional lighting may be required to illuminate the crosswalk. An Electrical Permit is required when no lighting source is present.
6. **FLOOR.** Structural floors are not required unless needed to cross an opening or obstruction in the sidewalk, to comply with requirements of the ADA. Otherwise, the sidewalk or road may serve as the floor of the covered walkway. Any structural floor provided must be firm, treated with a non-slip coating, provide adequate drainage, and must comply with the ADA requirements (See ADA COMPLIANCE above).



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7. **ROOF.** The roof must be designed to carry the loads imposed upon it, provided the minimum live load to be used in design must not be less than seventy-five pounds per square foot (75 PSF) for buildings less than two stories above grade and one hundred-fifty pounds per square foot (150 PSF), uniformly loaded, for buildings of greater height. The roof must be tightly boarded with a covering of roofing paper or other material to prevent water from falling through. If materials are stored or work is done from the roof of the walkway, the roof must have sufficient strength to support the weight to be placed upon it, sufficient width to prevent persons and materials from falling, and the roadway side must have a barrier that extends one foot (1') above the roof or as high as needed to contain the material stored on the roof.
8. **HEIGHT.** Covered walkways must have a clear and unobstructed ceiling height of not less than eight feet (8') vertical above the walkway floor.
9. **WIDTH.** Covered walkways must have a clear unobstructed width of not less than five feet (5'). In urban areas, the minimum width is six feet (6'). The Director may increase the minimum widths depending on the existing pedestrian walkway and volume of users. Width is measured from wall to wall or handrail to handrail. Covered walkways must not allow unprotected passage along the sidewalk on either side of the covered walkway.
10. **ROADWAY-FACING SIDE.** If the walkway abuts upon or within the roadway area, the side of the covered walkway facing the travel lanes of the roadway must have either concrete barriers with proper attenuation or water-filled barriers. The wall of the covered walkway must rest on the roadbed inside of the concrete/water-filled barriers. The walkway must not be constructed within or on any tree box. Within thirty feet (30') of the intersection of two-streets, the sides facing the roadway must be constructed to maintain an unobstructed line of sight for drivers and bicyclists in the roadway and pedestrians using the covered walkway. The intersection of two streets is the point of intersection of the curb lines extended.
11. **CONSTRUCTION-FACING SIDE.** The side of the covered walkway facing the construction area must be completely enclosed with plywood, except the side may have openings, adequately protected by screening, that allow those persons interested to view the construction work site.
12. **STRUCTURAL MEMBERS.** Plans must show that the structural members of the covered walkway are adequately braced and connected to prevent displacement or distortion of the framework.
13. **BUILDING ENTRY.** If the construction work abuts an occupied building while the covered walkway is in place, the covered walkway must be designed to maintain an ADA-accessible entry to and from the building. Coordination with Fire Code Compliance must be done to ensure emergency access is not obstructed. The covered walkway must have signs advising people that businesses and residences can be accessed directly from the covered walkway. Handwritten signs are not allowed.
14. **ADVANCED SIGNAGE.** Advance signs must advise pedestrians and bicyclists that a pedestrian walkway is open ahead. These sign locations must not impede pedestrian, bicyclist or transit user mobility, ADA access, bus stops, or other similar sidewalk-related considerations and signage must be posted at the ingress and egress locations.
15. **POSTINGS, GRAFFITI, and ADVERTISING.** No postings other than signs permitted in accordance with Chapter 59 are allowed. The walls, roof, and floor of the covered walkway must be maintained free



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of postings, graffiti, or advertising of any type. Any such material must be removed or appropriately covered by the permit holder within 24 hours or the next business day.

16. **SIDEWALK FIXTURES.** The covered walkway must be designed to incorporate any existing sidewalk fixture including fire hydrants, light poles, traffic signal devices, parking meters, trash receptacles, bus stops and bus shelters, and benches. The covered walkway cannot cover or obstruct in any way traffic operation signage and signals, including those related to parking. If an existing sidewalk fixture must be removed to construct the covered walkway, the permittee must provide the following details: what fixtures are to be removed and by whom; where they are to be stored pending the work being completed; and how they will be restored and by whom after the covered walkway is removed. No sidewalk fixture may be removed without prior approval from the MCDPS Director.
17. **ROADSIDE TREE PROTECTION.** Roadside trees may not be removed, pruned, or disfigured for the construction or razing a covered walkway except under valid right-of-way tree removal permits issued by MCDPS and the Maryland Department of Natural Resources Forest Service. Roadside trees may not be used as an attachment point to support the covered walkway. Damage to any roadside tree caused by the construction or placement of the covered walkway subjects the permit holder to fines. The covered walkway must be constructed to provide adequate tree and critical root zone protection.
18. **MAINTENANCE.** The covered walkway must be maintained in good and safe condition for the duration of its use by the permittee.
19. **REMOVAL.** The covered walkway must be removed immediately after the permitted work is completed and the public right-of-way is restored in coordination with the MCDPS Right-of-Way Inspector and when any potential hazard to pedestrians, bicyclists and transit users no longer exists. The covered walkway must be removed without damage to any tree, the tree canopy, or critical root zone. A Temporary Traffic Control Plan for removing the covered walkway must be approved before the covered walkway is removed.
20. **COVERED WALKWAY VISIBILITY.** Generally, a covered walkway must provide openings above the barrier to the maximum extent practical on the non-construction side.
21. **ALTERNATE MATERIALS.** Steel or other materials having equivalent strength and suitability may be used in lieu of wood to construct a covered walkway. If alternate materials are selected, then they must satisfy the requirements of ADA and the International Building Code (IBC).
22. **OTHER COVERED WALKWAY CONDITIONS** – Covered walkway entrances must have detectable warnings; and the walkway must be designed to preclude access to any pedestrian hazard that may exist abutting the walkway. The walkway may be opened on the non-construction side if no hazard exists except for structural support.

Signs identifying "Covered Walkway Ahead" must be placed at the crosswalk immediately before both ends of the covered walkway. If the covered walkway begins at an intersection, a sign must be placed on the opposite side of the intersection to allow the public the opportunity to cross the street using the nearest crosswalk and avoid the covered walkway if desired.

49.11.01.09 Right-of-Way Permit for Temporary Closures



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When a Right-of-Way Permit for Temporary Closure is required, the applicant must submit a permit application to the MCDPS, along with filing fee. A Maintenance of Traffic Plan is required for the following situations:

1. Maintenance of Traffic Plans in Central Business Districts (CBD).
2. Rights-of way 80 feet or greater in width.
3. Work in any other area that is 2 weeks or greater in duration.
4. Any site specific non-standard work zone temporary traffic control plan.
5. A complete closure of a private road of any duration or partial closure of a private road of 15 or more days.

The applicant must also provide a Maintenance of Traffic Plan for review by MCDOT. This plan must show the safe routing of pedestrians, bicyclists, transit users and vehicles in, through and around construction work zones. The plan must identify those areas impacted by the proposed construction and provide for safe alternative paths and detours for passage of pedestrians, bicyclists, transit users and vehicles and must be prepared in accordance with the MCDOT TTC Guidelines and Requirements. The plan must include:

6. The location of any permitted construction work;
7. Vehicle access;
8. All affected parking spaces;
9. Storage and staging areas;
10. Construction access for deliveries;
11. A schedule for construction; and
12. Other types of proposed occupations of the right-of-way

MCDOT will approve a Maintenance of Traffic Plan if:

1. The plan protects the public with safe passage on the existing passageway.
2. If safe passage on the passageway is not practical, the plan protects the public with safe passage on a safe alternative path around the construction work area. This may require the closure of a curb lane or parking lane for this purpose. The safe alternative path must replicate to the maximum extent possible, the characteristics of the existing passageway. Care should be given to areas near schools and senior citizen locations.
3. Where safe passage is not possible on the existing passageway or on a safe alternative path under subparts 1 and 2 of this section, MCDPS may authorize the temporary closure of the existing sidewalk or bikeway facility with a detour across the street from the construction work zone. To direct the public to the detour, proper advance signage must be provided in good condition and must not intrude into or obstruct the usable width of the existing passageway. Access to the detour should be from the nearest existing crosswalk. However, MCDPS may authorize mid-block pedestrian crossings in certain circumstances. Special requests to temporarily close an existing passageway. Requests for mid-block crossings, will be determined on a case-by-case basis. Such requests must contain detailed, documented justification and will only be granted as a last resort. Any justification for a detour must address all



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phases of construction in accordance with Table 1 and detail why a Safe Alternative Path cannot be utilized. When a closure occurs, a Notice of Closure must be posted if the closure is required outside of work hours for a time period greater than fifteen (15) days.

4. It is the intent of this regulation that all existing passageways remain open and meet PROWAG requirements. When determining whether it is practical to require either the protection of the existing path of travel or to permit a safe alternative path or detour, the Director of MCDPS may evaluate the following factors, among others:
 - a. The purpose of the proposed use;
 - b. Potential hazards to the public;
 - c. The user's need for the control of the abutting right-of-way;
 - d. Pedestrian, bicycle, and vehicular traffic patterns;
 - e. The terrain;
 - f. The impact of a safe alternative path or detour on adjoining properties and businesses; and
 - g. The duration of the proposed closure.
5. The Director may require the applicant to revise plans to confine the proposed use of the public right-of-way to an area the Director finds to be consistent with public safety, minimize inconvenience to the public and limit the temporary closure of the right-of-way to the minimum time necessary.
6. The permittee may be required to coordinate construction activities with other permitted users to maximize pedestrian, bicyclist and transit user access. The Director may delay the start of the permit and construction until such time as appropriate with minimal conflicts of existing permitted construction activity.

49.11.01.10 Standard Requirements and Conditions

1. Any Maintenance of Traffic Plan must adhere to this regulation.
2. When any temporary closure of a passageway also requires the occupation of another passageway as a safe alternative path or detour, a temporary closure or Maintenance of Traffic permit is required for the second temporary closure.
3. A plan dimensioned to appropriate scale prepared in accordance with the MCDOT TTC Guidelines and Requirements also showing the following:
 - a. The developer and general contractor name, address, and telephone number. Traffic Control Manager contact name and number of the responsible party. Contact name and number of property owner.
 - b. Streets shown and labeled in front of and/or abutting the property.
 - c. All existing sidewalk and proposed safe alternative path dimensions from building face to face of curb.
 - d. The proposed handicapped accessible facilities and accessible travel route to these facilities from the sidewalk and any safe alternative path.



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4. Show all existing obstructions with dimensions including but not limited to traffic/Pedestrian Signals and Associated Equipment Street Lights, Utility Poles, Fire Hydrants, Parking Meters, sign posts, tree pits/Planters, Building entrances/Door Swing, Emergency exits, Roadway curb and Gutter, Storm Drain Facilities, Stormwater Management Facilities, Bus Stops, Taxi Stands, Crosswalks, Pedestrian Curb Ramps, Loading Zones, Shared Use Facilities, Bikeshare Stations, Bicycle Parking Facilities, Steps and/or Retaining Walls, Streetscape, Benches, Artwork or Similar Features
5. The proposed location of barriers, size and location of opening for ingress/egress, and a detail of the barrier design.
6. A copy of the Certified Site Plan (if applicable) approved by M-NCPPC.
7. The permittee and the permittee's agents, employees, and subcontractors must comply with all approved plans, written requirements, and permit conditions that the Director specifies, either before or during the construction that the Director finds necessary to protect public safety or avoid unnecessary inconvenience to the public during construction.
8. A permittee must notify MCDPS 48 hours before beginning construction for any work associated with this permit for a preconstruction meeting.
9. If the Director finds that a person has violated the conditions of the permit, the Director may order the permittee to stop construction and abate the violation. Each day the permittee fails to stop construction and abate the violation is a separate violation.

49.11.01.11 Permit Expiration and Renewal

A temporary closure to reconstruct or repair a passageway may not exceed 6 months without a safe alternative path. All other temporary closures may not exceed 15 days without the provision of a safe alternative path. Temporary closures may be extended under the following circumstances:

1. Extensions Generally:

The Director may extend the time period for the temporary closure for an additional time period designated by the Director if the Director finds that:

- A. Based on certification submitted by a professional engineer, construction of the safe alternative path is not possible, or the street is closed; and
- B. The permittee provides full justification or hardships as to the need for permit extension, and the Director finds that the temporary closure is:
 - i. Limited to the minimum time necessary;
 - ii. The permit is subject to regular review (at least once every 6 months) by MCDPS to determine whether the temporary closure without a safe alternative path remains necessary; and
 - iii. If the Director determines that the temporary closure without a safe alternative path is no longer necessary, the Director requires the permittee to immediately:
 - a. Provide a safe alternative path; or



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b. Terminates the temporary closure.

2. The Director may grant a short permit extension of no more than 15 days if the Director finds that extreme hardship exists. Examples of extreme hardship situations include:

- A. Weather related impacts;
- B. Traffic related impacts;
- C. Unusual site conditions;
- D. Unanticipated conditions; and
- E. Emergency situations.

The Director may impose additional standards and/or requirements or require a plan modification as part of any extension.

49.11.01.12 Penalty for Violations

The Director may enforce any Public Right-of-Way Permit and the Maintenance of Traffic Permit by issuing notices of violations and/or civil citations for:

- 1. Violation of the plan or any condition of the permit;
- 2. Violation of this regulation or any other applicable law or regulation relating to the work; or
- 3. Any condition or act creating a nuisance or hazard or endangering human life.

The Director may issue a citation without warning where:

- 1. Work has begun without a Maintenance of Traffic Permit.
- 2. The required temporary traffic control measures have not been placed in accordance with the approved plan or permit.
- 3. Any condition or act creating a nuisance or hazard or endangering human life.

Any violation of a permit issued under Section 49-11 of the Montgomery County Code or this regulation is a Class A violation. Each day that a violation continues is a separate offense and subject to a separate citation.



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49.11.01.13 Severability

The provisions of this regulation are severable. If a court of competent jurisdiction holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

Mark Elrich, County Executive

Date

Approved as to form and legality

Charles L. Frederick

16 November 2020

Date

Mark Up Copy



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Montgomery County Regulation on:

COMCOR 49.11.01 USE OF PUBLIC RIGHTS-OF-WAY IN CONSTRUCTION

DEPARTMENT OF PERMITTING SERVICES

Issued by:
The County Executive
Regulation No. 15-20

Authority: Code Sections 49-1 and 49-11
Council Review: Method 2 under Code Section 2A-15
Register Vol. 37, Issue 12
Comment Deadline: January 4, 2021
Effective Date:
Sunset Date: None

SUMMARY: This Executive Regulation adopts minimum standard requirements and conditions for work zone usage within the County's public right-of-way.

ADDRESS: Department of Permitting Services
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BACKGROUND INFORMATION: The Department of Permitting Services oversees and issues permits for the use of public rights of way. Construction activities often encroach into the public right-of-way, disrupting or obstructing the public usage of the right-of-way. The purpose of this regulation is to adopt and clarify minimum standard requirements and conditions for usage of the public right-of-way during construction to minimize public inconvenience and to maximize consistency with the usage while promoting public safety.

This regulation is adopted pursuant to Sections 49-1 and 49-11 of the Montgomery County Code (MCC).



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49.11.01.01 Purpose

This regulation adopts minimum requirements, standard conditions and enforcement measures for use of the County's public rights-of-way in construction work zones:

(a) minimum requirements that verify the proposed construction related use of the County's public right-of-way does not adversely affect the public usage, unreasonably impede the use of a sidewalk or other right-of-way by pedestrians, bicyclists or persons with disabilities, impede or endanger automobiles or other vehicles, nor adversely affect public safety

(b) standard conditions and procedures for permit applications and the use of public rights-of-way in construction work zones, including appropriate temporary traffic control measures; and

(c) enforcement measures, necessary to maintain public safety.

49.11.01.02 Applicability

This regulation applies to construction work zones that are in or affect the County's public rights-of-way and any related public improvement easements. This regulation does not apply to work zones exclusively located on private property and do not affect the County's public rights-of-way.

49.11.01.03 General Administration

Except as provided in this regulation, procedures for application, implementation, review, approval, denial, and appeal are the same as the procedures for right-of-way permits under Chapter 49 of the County Code.

49.11.01.04 Definitions

BIKEWAY FACILITY includes bike lanes, cycle tracks, and any other facility intended for the explicit use of bicyclists.

COVERED WALKWAY means a wood or metal scaffolding-type structure constructed to protect pedestrians and bicyclists adjacent to a construction work zone that involves overhead work.

DETOUR means a temporary sidewalk closure, with clear signage, directing pedestrians and bicyclists to a PROWAG-compliant safe alternative path.

MAINTENANCE OF TRAFFIC ROW PERMIT means a right-of-way permit for a temporary closure caused by the relocation of pedestrian, bicyclist and transit user passage under an approved temporary traffic control plan.



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PASSAGEWAY includes a sidewalk, pedestrian walkway, bikeway facility and road intended for public passage.

SAFE ALTERNATIVE PATH means a PROWAG-compliant alternate walkway or shared use path in the right-of-way on the same side of the street as the temporary closure that provides safe access and passage to pedestrians, bicyclists and transit users. The preferred methods include the use of parking lanes, curb lanes or vehicular travel lanes to maintain this path.

SIDEWALK means any portion of the right-of-way of a County road or street that is expressly intended as a pedestrian walkway. Typically, a sidewalk is made of concrete, asphalt or streetscape brick paver pathway and is located between the road or street surface or curb line of a road or street and the abutting property.

TEMPORARY CLOSURE means a temporary obstruction, blockage, or occupation of a right-of-way.

49.11.01.05 Pedestrian and Bicyclist Mobility in and Around Construction Work Zones

Generally, it is the intent of Chapter 49 of the Montgomery County Code that passageways are to remain open for pedestrians, bicyclists and transit users. When a construction work zone impacts the mobility or safety of a pedestrian, bicyclist or transit user on a public right-of-way, then a temporary right-of-way closure permit is required in order to alter the existing conditions of a passageway.

The Montgomery County Department of Permitting Services (MCDPS) is responsible for reviewing plans and specifications for right-of-way permits and administering, interpreting, and enforcing construction codes, laws and regulations governing temporary occupations of the public rights-of-way. In evaluating whether to allow a safe alternative path to the existing passageway, MCDPS will consider the specific phase and type of construction activity that is occurring on the abutting property or right-of-way and the location of the construction activity. See Table 1

The closure of a passageway is deemed a last resort. Pedestrian and bicyclist mobility must be accommodated within the existing passageway unless the permittee can demonstrate that passage cannot be made safe.

When closure of an existing passageway is required for public safety, a Maintenance of Traffic ROW Permit is required. When a closure is authorized, the closure may be conditioned with specific requirements to mitigate the closure. Permit requirements may include limiting closures to work hours only, requiring additional flaggers to assist pedestrians, bicyclists, and transit users, or restricting closures to specific phases of construction.

1. POTENTIAL HAZARD TO THE PUBLIC. Limited duration closures may be granted for specific phases of a project unless allowing the existing passageway to remain open could present a hazard to the public. See Table 1 for specific phase guidance.
2. CONSIDERATION OF PROPOSED USE. Limited duration closures may be granted during the construction of right-of-way infrastructure, including street improvements, utility service connections, and street and sidewalk restorations.



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TABLE 1

RIGHT-OF-WAY ACCESS BY CONSTRUCTION TYPE

<u>PHASE OF CONSTRUCTION</u>	<u>OPEN PEDESTRIAN WALKWAY</u>	<u>SAFE ALTERNATIVE PATH</u>	<u>DETOUR</u>
<u>Demolition</u>		<u>Preferred</u>	<u>Alternative</u>
<u>Facade Demolition</u>		<u>Preferred</u>	<u>Alternative</u>
<u>Excavation, Sheeting & Shoring</u>	<u>Preferred</u>	<u>Alternative</u>	
<u>Construction</u>		<u>Preferred</u>	<u>Alternative</u>
<u>Post Skin</u>	<u>Preferred</u>	<u>Alternative</u>	
<u>Pedestrian Walkway and Streetscape</u>		<u>Preferred</u>	<u>Alternative</u>
<u>Utility or Other Work Impacting Pedestrian Walkway</u>		<u>Preferred</u>	<u>Alternative</u>

When the existing passageway remains open adjacent to a construction work zone, the following tables (Table 2 and Table 3) may be used as a guide for the minimum requirement for public safety abutting building demolition, excavation, and construction.

TABLE 2 - HEIGHT OF CONSTRUCTION AND DISTANCE FROM PEDESTRIAN WALKWAY

<u>HEIGHT OF CONSTRUCTION</u>	<u>DISTANCE OF CONSTRUCTION FROM PEDESTRIAN WALKWAY</u>	<u>MINIMUM PROTECTION REQUIRED</u>
<u>Eight feet (8') or less</u>	<u>Less than five feet (<5')</u>	<u>Open walkway with secure construction fencing a minimum of six feet (6') in</u>



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		height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.
	Five feet or more (>5')	Open walkway with secure construction fencing a minimum of forty-two inches (42") in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.
	More than eight feet (>8')	Fence and covered walkway
	One-quarter of the height of the construction or less	
	More than one quarter height of construction	Open walkway with secure construction fencing a minimum of six feet (6') in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility.

Table 3 – TYPE OF EXCAVATION AND DISTANCE FROM PEDESTRIAN WALKWAY

<u>TYPE OF EXCAVATION</u>	<u>DISTANCE OF EXCAVATION FROM PEDESTRIAN WALKWAY</u>	<u>MINIMUM PEDESTRIAN PROTECTION REQUIRED</u>
<u>Trenching for utilities</u>	The public must be kept a minimum of two feet (2') from excavation while maintaining 3 feet (3') minimum clear pedestrian walkway for short distances and six feet (6') minimum for extended distances.	Open walkway with secure construction barricade or fencing a minimum of forty-two inches (42") in height. No portion of the barricade or fencing may project into the clear pedestrian walkway or bikeway facility.
<u>Mass excavation for utility structures or buildings</u>	The public must be kept a minimum of four feet (4') from the excavation while maintaining six feet (6') minimum clear pedestrian walkway or bikeway facility	Open walkway with secure construction fencing a minimum of six feet (6') in height. No portion of the fencing may project into the clear pedestrian walkway or bikeway facility



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The application must minimize the inconvenience to the public and assure public safety under the following rubric:

1. Provide the public with safe passage on the existing passageway using the following standards:

- a. WIDTH. The passageway should have a clear and unobstructed width of not less than six feet (6'). When pedestrian volumes are significant, a greater minimum width of unobstructed passage may be required. When pedestrian volumes are low pedestrian volumes, a minimum width of three feet (3') may be authorized for short distances in order to accommodate existing sidewalk width or such obstructions as trees, street furniture, pay stations, parking meters, fire hydrants, bicycle facilities and other permanent structures. ADA warnings for site obstructions, such as detectable kickboards around structures, must be installed. (2010 ADA Standards Section 403.5.1)
- b. HEIGHT. Passageways must have a clear and unobstructed height of not less than eight feet (8'). Objects projecting into the passageway with their leading edges between twenty-seven and eighty inches above the walkway may not protrude more than four inches (4") into the corridor. (2010 ADA Standards Section 307.2)
- c. FLOOR. Generally, the sidewalk or road surface may serve as the floor of the passageway. Structural floors are not required unless needed to cross an opening, mitigate a newly constructed obstruction in the passageway, or to comply with ADA and PROWAG requirements. The sidewalk, road surface, or structural floor must be solid, slip-resistant, and well drained so that the public does not travel through ponded water. If the road surface is uneven, it must be leveled using asphalt patching. The transition between the temporary passageway surface and the sidewalk must be without:
 - i. abrupt grade breaks or changes in elevation exceeding one-quarter inch (1/4");
 - ii. slope greater than 8 percent; and
 - iii. cross-slope no greater than 2 percent (one-quarter inch for every 1 foot).Changes in elevation between one-quarter inch (1/4") and one-half inch (1/2") must be beveled at a 45-degree angle.
- d. FENCES. Construction fences must meet the following minimum requirements:
 - i. FENCES ON CONSTRUCTION FACING SIDE. When required, fences must be continuous along the full length of the construction site where it abuts a County right-of-way. Fences must be properly anchored chain-link fencing (ground mounted preferred) or concrete or water-filled barriers with chain-link fencing. The fence must be at least six feet in height, unless otherwise specified in Tables 2 and 3.

If construction or demolition activity may create flying debris or otherwise affect the public, then chain-link fencing is not permitted. The fencing must be solid and tight.



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Protective screening is required at all points of entry and exit and at all view holes. If the fencing is within thirty feet (30') of a street intersection or corner, any portion of the fence over three feet (3') in height must be made of a material that protects against flying debris and other construction work zone dangers and allow for traffic visibility.

- ii. OPEN WALKWAY WORKSITE FENCING. Where the existing passageway abutting the worksite is a pedestrian walkway or bikeway facility, properly anchored chain link fencing (ground mounted preferred), concrete or water-filled barriers with chain-link fencing, or alternative as approved by MCDPS must be placed along the entire length of the walkway side abutting the worksite. See Table 2 and Table 3. If the requirements of these Tables cannot be met, a safe alternate route or detour may be authorized.
- iii. FENCE FOOTINGS. It is the preferred method that fencing posts be ground mounted. Where fence footings are present, they must be oriented and demarcated so as not to create a tripping hazard or impede public passage. Footings must not protrude into the minimum free and clear passageway width as provided in this regulation.
- iv. GATE. Any gate in the fence must swing away from the passageway and towards the construction work zone. Sliding gates may also be used. Gates must be securely fastened in a closed position when not in use.

2. If safe passage on the existing passageway is not practical, a safe alternative path on the same side of the street must be provided within the public right-of-way. This may require the closure of a curb lane or parking lane. The safe alternative path must replicate to the maximum extent possible the characteristics of the existing passageway as noted in subpart 1 and adhere to the following additional standards:

- a. ELECTRICAL LIGHTING. The public access area must be continuously well-lit between sunset and sunrise, and other times as necessary to illuminate the area. Additional lighting may be required at ADA transition points and crosswalks. An Electrical Permit may be required.
- b. SIGNAGE. Advanced signage alerting the public of the available safe alternative pathway is required. The safe alternative path must be clearly marked, including advanced warning at crosswalks before the safe alternative path. If the safe alternative path or detour is less than eight feet (8') in width, signage must be placed at all ingress and egress transition tapers and contain appropriate directional arrows. The signage must also direct bicyclists to dismount from their bicycles. Signs must not be placed in a manner that obstructs public access. If sign stands are used for a period longer than 48 hours, they are to be cane-detectable and properly ballasted.
- c. SAFETY BARRIERS. A passageway that abuts a vehicular travel lane must be protected by either water-filled or concrete barriers. Water-filled barriers may be used along roads with posted speeds of 25 MPH or less. Water filled barriers must be filled to manufacturer specifications. Concrete barriers must be used along roads with posted speeds above 25 MPH. Concrete barriers must have proper attenuation to protect blunt ends from vehicular traffic. All



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barriers must have delineation reflectors installed in accordance with MCDOT traffic control standards. (MCDOT Work Zone Temporary Traffic Control Standards, July 2014; Standards TCP-109.01 and TCP-109.02)

- d. ADA COMPLIANCE. All passageways constructed under this section must comply with the Americans with Disabilities Act (2010 ADA Standards for Accessible Design). This includes but is not limited to the following:
- i. DETECTABLE SURFACES. A continuous cane detectable surface or kickboard system must be provided on both sides of pedestrian walkway ingress and egress and for the length of the pedestrian access. Detectable guards must also be provided to warn of potential hazards and restricted access.
 - ii. MAINTAINING REACH. Access to pedestrian crossing signal buttons must be maintained with an unobstructed high forward reach of forty-eight inches (48") maximum, and a low forward reach of fifteen inches (15") minimum above the ground. (ADA 2010 Chapter 3, section 308)
 - iii. ADA RAMPS. Ramps must meet the most current ADA requirements, including the addition of detectable warning surfaces at the top and bottom of the ramp and installation of companion ramps where necessary. Requirements include but are not limited to constructing ramps that are stable, slip resistant and are compliant in slope and counter slope. All ramps with a rise of greater than six inches must be constructed with handrails on both sides of the ramp. (2010 ADA Chapter 4, section 405.8). Prefabricated curb ramps are the preferred standard. On-site designed curb ramps using wood or hot mix asphalt at ingress and egress locations may be approved by MCDPS as an alternative. Both prefabricated and on-site designed ramps must include the following:
 1. Flush transition at the top and bottom of the ramp;
 2. Detectable base boards and/or warning surfaces at the top and bottom of the ramp;
 3. Uniform and slip resistant surface;
 4. Handrail or board edge installed on inside edge, where the transition height exceeds six inches;
 5. Slopes and landing to meet ADA requirements to the maximum extent feasible;
 6. Ramp edges highlighted with reflectorized material. (2010 ADA Chapter 4, section 4.2.5); and
 7. Nighttime visibility of the ramp with proper lighting must be maintained throughout the ramp's use.
- e. TRANSIT ACCESS. Passageways must be designed to maintain ADA-compliant access to any operating bus stop or bus shelter. (2010 ADA Chapter 8, section 810.2.3)



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If the safe alternative path abuts the construction work zone but is not on the existing passageway, the access must meet the minimum requirements of this regulation. Where a general-purpose parking lane exists in the right-of-way and abuts the worksite, the parking lane shall be the preferred safe alternative path unless another passageway is permitted by this regulation.

3. Where safe passage is not possible on the existing passageway or on a safe alternative path under subparts 1 and 2, MCDPS may authorize the temporary closure of the existing passageway with a detour across the street from the construction work zone. To direct the public to the detour, proper advance signage must be provided in good condition, and must not intrude into or obstruct the usable width of the passageway. Access to the detour should be from the nearest existing crosswalk. However, MCDPS may authorize mid-block crossings in certain circumstances. Special requests to temporarily close an existing passageway, and requests for mid-block crossings, will be determined on a case-by-case basis. Such requests must contain detailed, documented justification and will only be granted as a last resort.
 - a. Notice of Temporary Closure. If the temporary closure is required outside of the construction work hours as stated in the Maintenance of Traffic ROW Permit for a time period greater than fifteen (15) days, a legible and weather-resistant sign must be clearly posted at the closure indicating the Maintenance of Traffic ROW Permit number, the date the passageway is to be reopened, and to contact the MCDPS Work Zone Field Supervisor and the Construction Project Manager for the site for further information.
 - b. Mid-block Crosswalks. Directing the public to use the nearest crosswalk is recommended. If the distance to the nearest crosswalk is greater than 200 feet or land uses in the area make rerouting the public to the nearest crosswalk infeasible, a mid-block crossing may be considered. Where a mid-block crossing is permitted, the crossing must incorporate, at a minimum, all traffic control devices including signs, pedestrian markings, beacons or traffic signals recommended by MCDOT.
4. It is the intent of this regulation that all existing passageways remain open and meet PROWAG requirements. When determining whether it is practical to require either the protection of the existing passageway or to permit a safe alternative path or detour, the Director of MCDPS may evaluate the following factors, among others:
 - a. The purpose of the proposed use;
 - b. Pedestrian, bicycle, and vehicular traffic patterns;
 - c. The need to use the existing or abutting right-of-way;
 - d. The impact on public safety, health and welfare, or the provision of public services of using a protected existing passageway versus a safe alternative path versus a detour;
 - e. The impact on adjoining businesses, bus stop(s), or public transit route(s);



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- f. Active existing or proposed construction activity with pedestrian, bicyclist and transit user mobility impacts within a reasonable distance of the affected sidewalk or bike lanes/cycle tracks, as determined by the reviewer;
 - g. The nature and duration of the construction activity; and
 - h. The terrain and other site conditions.
5. The Director may require the applicant to revise plans to confine the proposed use of the passageway to an area the Director finds to be consistent with public safety and use of the street for travel and transportation.
 6. In cases where a proposed use of the right-of-way conflicts with another permitted activity in the right-of-way, the Director will require the various permittees to coordinate their use of the right-of-way in order to minimize the impact on public use and maximize safety. For example, the Director may delay the start date of a permit to lessen potential conflicts among various construction activities.

49.11.01.06 Pedestrian Detour Standards and Signage

Where a sidewalk is temporarily closed and the public is redirected to a pedestrian walkway that does not abut the construction work zone, the detour must meet the general requirements of this regulation. The following conditions also apply:

1. DETOUR CHANNELIZATION AND BARRICADES. Channelization and barricades must not impede sight distance at corners or block access to any pedestrian button, signal, or ADA infrastructure.
2. DETOURS WITH CROSSWALK CLOSURES. Where crosswalks are closed, water-filled barriers that extend the full width of the crosswalk with "CROSSWALK CLOSED" (24" x 12") signage attached is the preferred standard. Where space limitations or other conditions make a water-filled barrier impractical, MCDPS may authorize a properly ballasted cane-detectable Type III barricade that extends the full width of the sidewalk. A "CROSSWALK CLOSED" (24" x 12") sign must be attached to the Type III barricade.
3. INTERSECTION DETOURS. Intersection closures must not impede sight distance at the intersections. A "SIDEWALK CLOSED AHEAD, CROSS HERE" (24" x 18") sign mounted on a properly ballasted cane-detectable Type III barricade must be located in advance of the closure. The Type III barricade must not encroach on the minimum width for pedestrian access. A "SIDEWALK CLOSED" (24" x 12") sign must be attached to water-filled barrier or a properly ballasted cane-detectable Type III barricade at the point of closure.
4. MID-BLOCK CLOSURES. Where a mid-block closure is authorized, a "SIDEWALK CLOSED AHEAD, CROSS HERE" (24" x 18") sign on a properly ballasted cane-detectable Type III barricade must be located at the preceding crosswalk in advance of the mid-block closure. The type III barricade must not encroach on the minimum width for pedestrian access. A "SIDEWALK CLOSED" (24" x 12")



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sign must be attached to water-filled barrier or a properly ballasted cane-detectable Type III barricade at the point of closure. The "SIDEWALK CLOSED" barrier must extend the full width of the sidewalk.

49.11.01.07 Corner Work

Where safety or other conditions require closure of the existing passageway at an intersection, the closure must meet the minimum requirements set forth in this regulation. The following conditions also apply:

1. CORNER WORK INTERSECTION CLOSURES. Where intersections are closed, a safe alternate path must be established in the parking lane if one exists. The public must not be directed onto a closed crosswalk. The barrier must run the length of the safe alternative path. A "SIDEWALK CLOSED" (24" x 12") sign must be placed on a properly ballasted cane-detectable Type III barricade in advance at the preceding side of intersection and at the site.
2. CORNER WORK CROSSWALK CLOSURES. Where crosswalks are closed, except as described, water-filled barriers that extend the full width of the crosswalk must be used. However, where space limitations or other conditions make a water-filled barrier impractical, MCDPS may authorize a properly ballasted cane-detectable Type III barricade that extends the full width of the crosswalk. A "CROSSWALK CLOSED" (24" x 12") sign must be attached to each corner work crosswalk closure barrier.
3. COVERED WALKWAY AT CORNERS. A covered walkway must not impede the sight distance at corners or block access to any pedestrian button, signal, or ADA infrastructure. Additionally, a covered walkway must not impede bus and other heavy-vehicle mirror encroachments or a three-foot (3') door swing radius if adjacent parking is allowed.
4. ADA LANDING ACCOMMODATION. The ADA requires corner landings to be a minimum of five feet (5') in length and five feet (5') in width. The corner landing must remain clear and provide unobstructed access to all pedestrian crossing signals.

49.11.01.08 Covered Walkway Standards

Where safety or other conditions require a covered walkway, the covered walkway must meet the general requirements for walkway width, floor, signage, and ADA accessibility set forth in this regulation. The following minimum conditions also apply:

1. SPECIFICATIONS AND DRAWINGS. The application for a right-of-way permit must be accompanied by copies of specifications and plans drawn to scale, with sufficient clarity and detailed dimensions, to facilitate a structural review of the roofs and supporting structures of the covered walkways, which must not exceed two stories above grade. The covered walkway must be designed for seventy-five pounds per square foot (75 PSF) live load or the load imposed if used for staging, whichever is greater, and be of sufficient width to prevent persons and materials from falling. The specifications and plans must be designed, signed, and sealed by a professional engineer registered in the State of Maryland.



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When the building abutting the covered walkway is more than two stories, a Building Permit is required for the covered walkway. The loading for the covered walkway must be project specific and the specifications and plans must be designed, signed, and sealed by a professional engineer registered in the State of Maryland who is familiar with the abutting project. Covered walkways must be designed to support all imposed loads if used for staging, be of sufficient width to prevent persons and materials from falling, and in no case may the design live load be less than one hundred-fifty pounds per square foot (150 PSF). All imposed loads which are utilized in the design must be clearly stated in the structural documents along with the drawings showing the support system plan, sections, details, and anchorage to the ground (IBC 3306.2 and 3306.7). The structure must be braced sufficiently or anchored to the building so that it will not fall, be blown about, or otherwise collapse. The Maintenance of Traffic Plan must show the covered walkway footprint including the ingress and egress for the walkway.

2. ADA COMPLIANCE. All covered walkways must provide an ADA accessible pedestrian route in accordance with the Americans with Disabilities Act (2010 ADA Standards). This includes but is not limited to: constructing structural floors when required (See "FLOORS" below) that have a surface that is firm, stable, slip-resistant, and that is compliant in slope, counter slope, vertical clearances, turning radii, and surface irregularities; providing compliant ramps connecting the structural floor to an existing ADA accessible route; and implementing sufficient measure to ensure the safety and welfare of the pedestrians traversing the site. All ramps with a rise greater than six inches (6") must be constructed with handrails on both sides of the ramp.
3. RAILING. A continuous handrail must be installed along at least one side of the walkway to aid pedestrians. The handrail must comply with the requirements of ADA. The top of the railing must be between thirty-four inches and thirty-eight inches (34"-38") above the walkway floor and be capable of withstanding a fifty-pound (50 LBS) load per linear foot applied horizontally to the top rail.
4. TRANSIT ACCESS. The covered walkway must be designed to maintain ADA-compliant access from the sidewalk to any operating bus stop or bus shelter. (2010 ADA Section 810.2.3)
5. ELECTRICAL LIGHTING. The interior of the covered walkway area must be continuously well-lit between sunset and sunrise, and at other times as necessary to illuminate the area. Lighting must be one-hundred-watt (100W) bulbs or equivalent, enclosed in vandal-resistant fixtures, and spaced at a maximum of sixteen feet (16') on-center and eight feet (8') minimum above the floor level. If the ingress/egress of the covered walkway is within thirty feet (30') of a crosswalk, then additional lighting may be required to illuminate the crosswalk. An Electrical Permit is required when no lighting source is present.
6. FLOOR. Structural floors are not required unless needed to cross an opening or obstruction in the sidewalk, to comply with requirements of the ADA. Otherwise, the sidewalk or road may serve as the floor of the covered walkway. Any structural floor provided must be firm, treated with a non-slip coating, provide adequate drainage, and must comply with the ADA requirements (See ADA COMPLIANCE above).



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7. **ROOF.** The roof must be designed to carry the loads imposed upon it, provided the minimum live load to be used in design must not be less than seventy-five pounds per square foot (75 PSF) for buildings less than two stories above grade and one hundred-fifty pounds per square foot (150 PSF), uniformly loaded, for buildings of greater height. The roof must be tightly boarded with a covering of roofing paper or other material to prevent water from falling through. If materials are stored or work is done from the roof of the walkway, the roof must have sufficient strength to support the weight to be placed upon it, sufficient width to prevent persons and materials from falling, and the roadway side must have a barrier that extends one foot (1') above the roof or as high as needed to contain the material stored on the roof.
8. **HEIGHT.** Covered walkways must have a clear and unobstructed ceiling height of not less than eight feet (8') vertical above the walkway floor.
9. **WIDTH.** Covered walkways must have a clear unobstructed width of not less than five feet (5'). In urban areas, the minimum width is six feet (6'). The Director may increase the minimum widths depending on the existing pedestrian walkway and volume of users. Width is measured from wall to wall or handrail to handrail. Covered walkways must not allow unprotected passage along the sidewalk on either side of the covered walkway.
10. **ROADWAY-FACING SIDE.** If the walkway abuts upon or within the roadway area, the side of the covered walkway facing the travel lanes of the roadway must have either concrete barriers with proper attenuation or water-filled barriers. The wall of the covered walkway must rest on the roadbed inside of the concrete/water-filled barriers. The walkway must not be constructed within or on any tree box. Within thirty feet (30') of the intersection of two-streets, the sides facing the roadway must be constructed to maintain an unobstructed line of sight for drivers and bicyclists in the roadway and pedestrians using the covered walkway. The intersection of two streets is the point of intersection of the curb lines extended.
11. **CONSTRUCTION-FACING SIDE.** The side of the covered walkway facing the construction area must be completely enclosed with plywood, except the side may have openings, adequately protected by screening, that allow those persons interested to view the construction work site.
12. **STRUCTURAL MEMBERS.** Plans must show that the structural members of the covered walkway are adequately braced and connected to prevent displacement or distortion of the framework.
13. **BUILDING ENTRY.** If the construction work abuts an occupied building while the covered walkway is in place, the covered walkway must be designed to maintain an ADA-accessible entry to and from the building. Coordination with Fire Code Compliance must be done to ensure emergency access is not obstructed. The covered walkway must have signs advising people that businesses and residences can be accessed directly from the covered walkway. Handwritten signs are not allowed.
14. **ADVANCED SIGNAGE.** Advance signs must advise pedestrians and bicyclists that a pedestrian walkway is open ahead. These sign locations must not impede pedestrian, bicyclist or transit user mobility, ADA access, bus stops, or other similar sidewalk-related considerations and signage must be posted at the ingress and egress locations.
15. **POSTINGS, GRAFFITI, and ADVERTISING.** No postings other than signs permitted in accordance with Chapter 59 are allowed. The walls, roof, and floor of the covered walkway must be maintained free



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- of postings, graffiti, or advertising of any type. Any such material must be removed or appropriately covered by the permit holder within 24 hours or the next business day.
16. **SIDEWALK FIXTURES.** The covered walkway must be designed to incorporate any existing sidewalk fixture including fire hydrants, light poles, traffic signal devices, parking meters, trash receptacles, bus stops and bus shelters, and benches. The covered walkway cannot cover or obstruct in any way traffic operation signage and signals, including those related to parking. If an existing sidewalk fixture must be removed to construct the covered walkway, the permittee must provide the following details: what fixtures are to be removed and by whom; where they are to be stored pending the work being completed; and how they will be restored and by whom after the covered walkway is removed. No sidewalk fixture may be removed without prior approval from the MCDPS Director.
 17. **ROADSIDE TREE PROTECTION.** Roadside trees may not be removed, pruned, or disfigured for the construction or razing a covered walkway except under valid right-of-way tree removal permits issued by MCDPS and the Maryland Department of Natural Resources Forest Service. Roadside trees may not be used as an attachment point to support the covered walkway. Damage to any roadside tree caused by the construction or placement of the covered walkway subjects the permit holder to fines. The covered walkway must be constructed to provide adequate tree and critical root zone protection.
 18. **MAINTENANCE.** The covered walkway must be maintained in good and safe condition for the duration of its use by the permittee.
 19. **REMOVAL.** The covered walkway must be removed immediately after the permitted work is completed and the public right-of-way is restored in coordination with the MCDPS Right-of-Way Inspector and when any potential hazard to pedestrians, bicyclists and transit users no longer exists. The covered walkway must be removed without damage to any tree, the tree canopy, or critical root zone. A Temporary Traffic Control Plan for removing the covered walkway must be approved before the covered walkway is removed.
 20. **COVERED WALKWAY VISIBILITY.** Generally, a covered walkway must provide openings above the barrier to the maximum extent practical on the non-construction side.
 21. **ALTERNATE MATERIALS.** Steel or other materials having equivalent strength and suitability may be used in lieu of wood to construct a covered walkway. If alternate materials are selected, then they must satisfy the requirements of ADA and the International Building Code (IBC).
 22. **OTHER COVERED WALKWAY CONDITIONS** – Covered walkway entrances must have detectable warnings; and the walkway must be designed to preclude access to any pedestrian hazard that may exist abutting the walkway. The walkway may be opened on the non-construction side if no hazard exists except for structural support.

Signs identifying "Covered Walkway Ahead" must be placed at the crosswalk immediately before both ends of the covered walkway. If the covered walkway begins at an intersection, a sign must be placed on the opposite side of the intersection to allow the public the opportunity to cross the street using the nearest crosswalk and avoid the covered walkway if desired.

49.11.01.09 Right-of-Way Permit for Temporary Closures



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When a Right-of-Way Permit for Temporary Closure is required, the applicant must submit a permit application to the MCDPS, along with filing fee. A Maintenance of Traffic Plan is required for the following situations:

1. Maintenance of Traffic Plans in Central Business Districts (CBD).
2. Rights-of way 80 feet or greater in width.
3. Work in any other area that is 2 weeks or greater in duration.
4. Any site specific non-standard work zone temporary traffic control plan.
5. A complete closure of a private road of any duration or partial closure of a private road of 15 or more days.

The applicant must also provide a Maintenance of Traffic Plan for review by MCDOT. This plan must show the safe routing of pedestrians, bicyclists, transit users and vehicles in, through and around construction work zones. The plan must identify those areas impacted by the proposed construction and provide for safe alternative paths and detours for passage of pedestrians, bicyclists, transit users and vehicles and must be prepared in accordance with the MCDOT TTC Guidelines and Requirements. The plan must include:

6. The location of any permitted construction work;
7. Vehicle access;
8. All affected parking spaces;
9. Storage and staging areas;
10. Construction access for deliveries;
11. A schedule for construction; and
12. Other types of proposed occupations of the right-of-way

MCDOT will approve a Maintenance of Traffic Plan if:

1. The plan protects the public with safe passage on the existing passageway.
2. If safe passage on the passageway is not practical, the plan protects the public with safe passage on a safe alternative path around the construction work area. This may require the closure of a curb lane or parking lane for this purpose. The safe alternative path must replicate to the maximum extent possible, the characteristics of the existing passageway. Care should be given to areas near schools and senior citizen locations.
3. Where safe passage is not possible on the existing passageway or on a safe alternative path under subparts 1 and 2 of this section, MCDPS may authorize the temporary closure of the existing sidewalk or bikeway facility with a detour across the street from the construction work zone. To direct the public to the detour, proper advance signage must be provided in good condition and must not intrude into or obstruct the usable width of the existing passageway. Access to the detour should be from the nearest existing crosswalk. However, MCDPS may authorize mid-block pedestrian crossings in certain circumstances. Special requests to temporarily close an existing passageway. Requests for mid-block crossings, will be determined on a case-by-case basis. Such requests must contain detailed, documented justification and will only be granted as a last resort. Any justification for a detour must address all



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phases of construction in accordance with Table 1 and detail why a Safe Alternative Path cannot be utilized. When a closure occurs, a Notice of Closure must be posted if the closure is required outside of work hours for a time period greater than fifteen (15) days.

4. It is the intent of this regulation that all existing passageways remain open and meet PROWAG requirements. When determining whether it is practical to require either the protection of the existing path of travel or to permit a safe alternative path or detour, the Director of MCDPS may evaluate the following factors, among others:
 - a. The purpose of the proposed use;
 - b. Potential hazards to the public;
 - c. The user's need for the control of the abutting right-of-way;
 - d. Pedestrian, bicycle, and vehicular traffic patterns;
 - e. The terrain;
 - f. The impact of a safe alternative path or detour on adjoining properties and businesses; and
 - g. The duration of the proposed closure.
5. The Director may require the applicant to revise plans to confine the proposed use of the public right-of-way to an area the Director finds to be consistent with public safety, minimize inconvenience to the public and limit the temporary closure of the right-of-way to the minimum time necessary.
6. The permittee may be required to coordinate construction activities with other permitted users to maximize pedestrian, bicyclist and transit user access. The Director may delay the start of the permit and construction until such time as appropriate with minimal conflicts of existing permitted construction activity.

49.11.01.10 Standard Requirements and Conditions

1. Any Maintenance of Traffic Plan must adhere to this regulation.
2. When any temporary closure of a passageway also requires the occupation of another passageway as a safe alternative path or detour, a temporary closure or Maintenance of Traffic permit is required for the second temporary closure.
3. A plan dimensioned to appropriate scale prepared in accordance with the MCDOT TTC Guidelines and Requirements also showing the following:
 - a. The developer and general contractor name, address, and telephone number. Traffic Control Manager contact name and number of the responsible party. Contact name and number of property owner.
 - b. Streets shown and labeled in front of and/or abutting the property.
 - c. All existing sidewalk and proposed safe alternative path dimensions from building face to face of curb.
 - d. The proposed handicapped accessible facilities and accessible travel route to these facilities from the sidewalk and any safe alternative path.



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4. Show all existing obstructions with dimensions including but not limited to traffic/Pedestrian Signals and Associated Equipment Street Lights, Utility Poles, Fire Hydrants, Parking Meters, sign posts, tree pits/Planters, Building entrances/Door Swing, Emergency exits, Roadway curb and Gutter, Storm Drain Facilities, Stormwater Management Facilities, Bus Stops, Taxi Stands, Crosswalks, Pedestrian Curb Ramps, Loading Zones, Shared Use Facilities, Bikeshare Stations, Bicycle Parking Facilities, Steps and/or Retaining Walls, Streetscape, Benches, Artwork or Similar Features
5. The proposed location of barriers, size and location of opening for ingress/egress, and a detail of the barrier design.
6. A copy of the Certified Site Plan (if applicable) approved by M-NCPPC.
7. The permittee and the permittee's agents, employees, and subcontractors must comply with all approved plans, written requirements, and permit conditions that the Director specifies, either before or during the construction that the Director finds necessary to protect public safety or avoid unnecessary inconvenience to the public during construction.
8. A permittee must notify MCDPS 48 hours before beginning construction for any work associated with this permit for a preconstruction meeting.
9. If the Director finds that a person has violated the conditions of the permit, the Director may order the permittee to stop construction and abate the violation. Each day the permittee fails to stop construction and abate the violation is a separate violation.

49.11.01.11 Permit Expiration and Renewal

A temporary closure to reconstruct or repair a passageway may not exceed 6 months without a safe alternative path. All other temporary closures may not exceed 15 days without the provision of a safe alternative path. Temporary closures may be extended under the following circumstances:

1. Extensions Generally:

The Director may extend the time period for the temporary closure for an additional time period designated by the Director if the Director finds that:

A. Based on certification submitted by a professional engineer, construction of the safe alternative path is not possible, or the street is closed; and

B. The permittee provides full justification or hardships as to the need for permit extension, and the Director finds that the temporary closure is:

i. Limited to the minimum time necessary;

ii. The permit is subject to regular review (at least once every 6 months) by MCDPS to determine whether the temporary closure without a safe alternative path remains necessary; and

iii. If the Director determines that the temporary closure without a safe alternative path is no longer necessary, the Director requires the permittee to immediately:

a. Provide a safe alternative path; or



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b. Terminates the temporary closure.

2. The Director may grant a short permit extension of no more than 15 days if the Director finds that extreme hardship exists. Examples of extreme hardship situations include:

- A. Weather related impacts;
- B. Traffic related impacts;
- C. Unusual site conditions;
- D. Unanticipated conditions; and
- E. Emergency situations.

The Director may impose additional standards and/or requirements or require a plan modification as part of any extension.

49.11.01.12 Penalty for Violations

The Director may enforce any Public Right-of-Way Permit and the Maintenance of Traffic Permit by issuing notices of violations and/or civil citations for:

- 1. Violation of the plan or any condition of the permit;
- 2. Violation of this regulation or any other applicable law or regulation relating to the work; or
- 3. Any condition or act creating a nuisance or hazard or endangering human life.

The Director may issue a citation without warning where:

- 1. Work has begun without a Maintenance of Traffic Permit.
- 2. The required temporary traffic control measures have not been placed in accordance with the approved plan or permit.
- 3. Any condition or act creating a nuisance or hazard or endangering human life.

Any violation of a permit issued under Section 49-11 of the Montgomery County Code or this regulation is a Class A violation. Each day that a violation continues is a separate offense and subject to a separate citation.



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49.11.01.13 Severability

The provisions of this regulation are severable. If a court of competent jurisdiction holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

Mark Elrich, County Executive

Date

Approved as to form and legality



Charles L. Frederick

16 November 2020
Date

Resolution No.: _____
Introduced: December 14, 2021
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

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

SUBJECT: Executive Regulation 15-20 – Public Space Usage in Work Zones

Background

1. On November 29, 2021, the County Executive submitted Executive Regulation 15-20, Public Space Usage in Work Zones, to the County Council.
2. The proposed regulation provides standards by which the Department of Permitting Services (DPS) may issue a permit to temporarily close a public sidewalk, walkway, bicycle facility, or road lane related to repair or construction activity.
3. The County Executive published this regulation in the December 2020 issue of the Montgomery County Register Volume 27, Register 12, with a deadline of January 4, 2021, for written comments.
4. The Council must review the regulation under Method (2) of Section 2A-15 of the County Code.
5. Under Method (2), the Council must approve or disapprove the regulation within 60 calendar days after receipt, or it automatically takes effect.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 15-20 – 15-20, Public Space Usage in Work Zones, is approved.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council