



Committee: T&E
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #RightofWayPermit

AGENDA ITEM #9
April 6, 2021
Public Hearing

SUBJECT

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

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

EXPECTED ATTENDEES

Department of Permitting Services
Department of Transportation
Members of the Public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Public Hearing

DESCRIPTION/ISSUE

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

SUMMARY OF KEY DISCUSSION POINTS

- N/A

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MEMORANDUM

April 1, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

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

PURPOSE: Public Hearing – no Council votes required

Expedited Bill 13-21, Streets and Roads – Permit to Obstruct Public Rights-of-Way and Franchising - Amendments, sponsored by Lead Sponsor Council President Hucker at the request of the County Executive, was introduced on March 11, 2021.¹ A Transportation and Environment Committee worksession will be scheduled at a later date.

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

BACKGROUND

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

- (1) expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations;

- (2) require a permittee to execute a certain agreement for private installation of non-commercial structures that are accessory to residential use in the public rights-of-way;
- (3) clarify the exemption of “franchise” requirements;
- (4) generally amend the law regarding permits to obstruct public rights-of-way.

BILL DESCRIPTION

Under Section 49-20 of the County Code, the franchise law specifies an applicant who intends to use or occupy a County’s right-of-way with a permanent obstruction is required to apply for a franchise. The application for a franchise must be posted in the local newspaper for a certain timeframe, receive an assessment to determine whether the value of the franchise is adequate, followed by a public hearing for taxpayers or adjacent property owners to raise objections, and then finally approval by the Council. The most common applicants for a franchise are public utility and telecommunication companies.

Currently, DPS may grant a permit where an obstruction in the public right-of-way is temporary and removable, however, it lacks the appropriate authority to approve permits for property owners who may need to install a permanent private, non-commercial structure that is in the occupation of right-of-way, as an accessory for residential use. Non-commercial structures can include, EV charging device, private storm drain pipes connecting to the public system, roof drains, sump pumps within the public right-of-way, driveway and parking pavement, playgrounds, fences over storm drain easements, monumental mailboxes, non-standard driveway aprons, retaining walls and steps, and other nonstandard items approved by DPS (©5).

Bill 13-21 would codify and expand DPS’s authority to approve permits for non-commercial accessory structures that encroach on the County’s right-of-way and exempt certain infrastructure from the franchise requirement.

Further, DPS lacks sufficient mechanism to enforce private property owners who misuse the County’s right-of-way; however, through the approved permit process for non-commercial structure, under this bill, DPS would have the authority to require property owners to execute a maintenance and liability agreement. The maintenance and liability agreement will strengthen the Department’s ability to conduct its due diligence, ensure the County is held harmless, and effectively regulate a property owner’s adherence or non-compliance to the agreement.

Montgomery County Climate Initiative

In 2017, the Council adopted the Emergency Climate Mobilization Resolution, which called for 80% reduction in Greenhouse Gas (GHG) emissions by 2027, and the elimination of GHG emissions – “Net Zero” – by 2035. The County initiated strategies to determine the most effective ways to reduce GHG and transportation was cited as a main source that constituted 41% of the County’s GHG emissions.² One recommendation to lower emissions was to increase the scale and rate of Electric Vehicle adoption. Over time, DPS has received an increase of private property

² <https://www.montgomerycountymd.gov/green/Resources/Files/climate/ev-group-buy-forum-january-2021.pdf>

owners who request a permit from the Department to install an EV charging device in the public right-of-way, either because the homeowner’s property does not have a garage, driveway, or parking pad to allow for the installation, and the cost to erect such access becomes very astronomical and more of a deterrent. To further support the Montgomery County Climate Initiative strategy and increase County resident’s access to EV charging devices, DPS in coordination with Department of Transportation (DOT), initiated the Residential Electric Charging Station Pilot Program.

Residential Electric Vehicles (EV) Charging Station Guidelines and Pilot Program

DPS and DOT developed the Residential Electric Vehicles Charging Permitting Guidelines and initiated a pilot program to expand the options for home charging stations. The program allows for a resident to either create new space on their property to accommodate EV charging or to install an EV charging station, at their expense, at the curb by their home for use while parked on the street.

The electric vehicle policy within the guidelines ensures the right-of-way will continue to serve the public and remain safe. Property owners will not have exclusive rights, privileges, or priority for parking adjacent to an EV charging station. Further, the option to encroach on the right-of-way will only be considered when there is no opportunity to install a driveway or parking pad on the property. Street parking will remain available to anyone and parking restrictions will still remain in effect.

Bill 13-21 would adopt the Residential Electric Vehicles (EV) Charging Permitting Guidelines. The guidelines provide a succinct process for DPS to streamline and review permit applications to determine whether a resident can obstruct a County right-of-way for the purpose of installing an EV charging device.

The fiscal impact statement concluded that the Bill would have minimal fiscal impact on property values for specific residential properties who permanently installed a new Residential Electric Vehicles (EV) Charging Station (©6). The Office of Legislative Oversight (OLO) concluded the Bill would have minimal impact on racial equity and social justice among County residents (©8).

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Expedited Bill No. 13-21
Concerning: Streets and Roads – Permit
to Obstruct Public Rights-of-Way and
Franchising - Amendments
Revised: 3/11/2021 Draft No. 2
Introduced: March 16, 2021
Expires: September 16, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations;
- (2) require a permittee to execute a certain agreement for private installation of non-commercial structure that are accessory to residential use in the public rights of way
- (3) clarify the exemption of “franchise” requirements;
- (4) generally amend the law regarding permits to obstruct public rights-of-way.

By amending

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

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

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

33 * * *

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

36 * * *

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

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

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

LEGISLATIVE REQUEST REPORT

Expedited Bill 13-21

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

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

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

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

COORDINATION: Department of Transportation and Department of Permitting Services.

FISCAL IMPACT: Office of Management and Budget.

ECONOMIC IMPACT: Department of Finance.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: Inapplicable.

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

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

APPLICATION WITHIN

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

PENALTIES: Inapplicable.




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

February 23, 2021

TO: Tom Hucker, Council President

FROM: Marc Elrich, County Executive 

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

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

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

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

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

1. Legislative Summary

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

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Not applicable

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

Not applicable

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable

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

Not applicable

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

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

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

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

No additional staff required

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

Not applicable

10. A description of any variable that could affect revenue and cost estimates.

Not applicable

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

None

12. Other fiscal impacts or comments.

None

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

Brady Goldsmith, Office of Management of Budget
Maricela Cordova, Department of Transportation
Emil Wolanin, Department of Transportation
Atiq Panjshiri, Department of Permitting Services
Linda Kobylski, Department of Permitting Services



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

1/28/21

Date

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED STREETS AND ROADS-PERMIT TO OBSTRUCT PUBLIC BILL 13-21: RIGHTS-OF-WAY AND FRANCHISING- AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 13-21 to have a minimal impact on racial equity and social justice in the County.

BACKGROUND

The County Council introduced Expedited Bill 13-21 on March 16, 2021. The bill aims to streamline certain permitting services in the County for residential uses. If enacted, the bill would:

- Expand the authority of the Department of Permitting Services to issue permits for right-of-way occupations;
 - Require a permittee to execute a certain agreement for private installation of non-commercial structure that are accessory to residential use in the public rights of way;
 - Clarify the exemption of “franchise” requirements; and
 - Generally amend the law regarding permits to obstruct public right-of-way.¹
-

ANTICIPATED RESJ IMPACTS

Since Expedited Bill 13-21 aims to enhance the current authority of the Department of Permitting Services for residential uses and not alter its overall goals, OLO anticipates that the expedited bill would have a minimal impact on racial equity and social justice in the County. No changes in RESJ for residents in the County are anticipated under Expedited Bill 13-21.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Dr. Theo Holt, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

RESJ Impact Statement

Bill 11-21

¹ Montgomery County Council, Bill 13-21, Streets and Roads-Permit to Obstruct Public Rights-of-Way and Franchising-Amendments, Introduced on March 16, 2021, Montgomery County, Maryland.