

Resolution No.: 17-1023
Introduced: March 18, 2014
Adopted: March 18, 2014

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 25-13, Streets and Roads - Roadside Trees Protection - Right of Way Permits

Background

1. On February 25, 2014, the Council received Executive Regulation 25-13, Streets and Roads - Roadside Trees Protection - Right of Way Permits. The proposed regulation would implement Bill 41-12, Streets and Roads - Roadside Trees - Protection which requires certain applicants to obtain a permit for certain roadside tree activities as part of the existing permit process.
2. The Council reviewed the regulation under Method (2). Under Method (2), if the Council does not approve or disapprove a regulation within 60 days after the Council receives the regulation, it is automatically approved and takes effect the day after the deadline for approval or a later date specified in the regulation.
3. On March 10, the Transportation, Infrastructure, Energy, and Environment Committee reviewed the proposed regulation and recommended approval.

Action

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

Executive Regulation 25-13, Streets and Roads - Roadside Trees Protection - Right of Way Permits is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Streets and Roads – Roadside Trees Protection – Right of Way Permits	Number 25-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

Montgomery County Regulation on
STREETS AND ROADS - ROADSIDE TREES PROTECTION – RIGHT OF WAY PERMITS

DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive
Regulation No. 25-13
COMCOR No. 49.36A.01

Authority: Montgomery County Code (2004) Section 49-36A(h)
Supersedes: Executive Regulation N/A
Council Review: Method 2 under Code Section 2A-15
Register Vol. 30 No. 12

Effective Date: March 1, 2014
Comment Deadline: December 20, 2013
Sunset Date: None

Summary: This executive regulation is to establish procedures for implementing the Streets and Roads – Roadside Trees Protection, Chapter 49 of the Montgomery County Code.

Staff contact: For further information or to obtain a copy of this regulation, contact Rick Brush at 240-777-6343.

Address: Written Comments on these regulations should be sent to:

Department of Permitting Services
255 Rockville Pike, Second Floor
Rockville, Maryland 20850



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COMCOR 49.36A.01 ROADSIDE TREES PROTECTION – RIGHT OF WAY PERMITS

49.36A.01.01 Purpose

This regulation implements the portion of the County's Roadside Trees Protection Law in Sections 49-35, 49-36, and 49-36A of the County Code as adopted by Bill No. 41-12.

49.36A.01.02 Definitions

For the purpose of this regulation the following words and phrases will have a meaning respectively ascribed to them in this regulation unless the context indicates otherwise:

Critical Root Zone: the area beneath a tree represented by a concentric circle centering on the tree trunk with a radius equal in feet to 1.5 times the number of inches of trunk diameter measured four feet six inches above ground level on the uphill side of the tree.

Licensed Tree Expert: a person licensed under Natural Resources Article 5-415 et seq., Annotated Code of Maryland.

Roadside Tree Care Permit: a permit issued by the Maryland Department of Natural Resources in accordance with the laws of the State of Maryland.

49.36A.01.03 General Administration

Except as other 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.

49.36A.01.04 Documents Incorporated by Reference

The following documents are incorporated by reference as if fully set forth. Whenever the provisions of this regulation and those of the following documents are in conflict, the provisions of this regulation will govern and be enforced in the County:

- A. American National Standards for Tree Care Operations, ANSI A300, American Standards Institute, hereinafter referred to as ANSI A300, in effect as of December 1, 2013.



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- B. American Standard for Nursery Stock, ANSI Z60.1, American Nursery & Landscape Association, hereinafter referred to as ANSI Z60.1, in effect as of December 1, 2013.

49.36A.01.05 Right of Way Permit Applications

- A. When a right of way permit is required by the County Code the applicant must provide a plan for review by the Department. The plan must show the critical root zone of all roadside trees within the delineated area of the activity for which the permit is requested. The plan must identify those roadside trees by species and size measured by the diameter of the trunk at an elevation of 4 ½ feet above existing ground.
- B. The application must include locations of utility construction and vehicle access and parking as well as storage and staging areas and all other types of disturbance.
- C. If the critical root zone of any roadside tree is impacted, the Department will determine whether the tree can be saved or removed.
- D. The applicant must apply for a right of way permit or amend an existing application for a right of way permit to include the tree disturbance or removal. The application for a right of way permit must include a tree protection plan including the designation of a licensed tree expert to perform the tree care or removal for the Department's review and approval. The Department will approve all measures necessary to protect roadside trees except when the right of way permit designates removal of those trees.
- E. The Department will approve a tree protection plan if the proposed tree work is necessary to:
1. Protect the health of the tree;
 2. Eliminate or reduce a hazard to property, public safety, or health;
 3. Improve or prevent deteriorated tree conditions;
 4. Improve the overall appearance of the right of way; or,
 5. Carry out a development which has received all other applicable development approvals.
- F. Some activities relating to public utilities are exempt from tree protection requirements pursuant to Section 49-36A(b)(2) of the County Code.



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- G. The applicant must also apply for a Roadside Tree Care Permit from the Maryland Department of Natural Resources.
- H. The right of way permit will not be issued until the Roadside Tree Care Permit is issued if one is required by the Maryland Department of Natural Resources.
- I. All requirements of the Roadside Tree Care Permit become conditions of the Right of Way Permit.
- J. A licensed tree expert must oversee the conditions of the permit relating to tree protection, maintenance, or removal using ANSI Standard A300.
- K. During construction there must be no additional land disturbance outside of the area designated by the permit without the approval of the Department. This includes the location of storage and staging areas as well as access drives for vehicles and temporary parking.

49.36A.01.06 Tree Protection Plan

- A. The applicant must submit a site specific tree protection plan except when the area of construction is included in a forest conservation plan approved by the Maryland National Capital Park and Planning Commission. The plan must designate a licensed tree expert who will be responsible for tree protection during construction and must incorporate all necessary measures to protect or minimize damage to any affected roadside tree. It must include the limits of disturbance, critical root zone of any roadside tree, access and storage areas.
- B. The tree protection plan must also include specific details and standards that will or may be used for this permitted activity to protect identified roadside trees. This includes a construction sequence and designation of responsible party. The standards must be compliance with ANSI A300 and ANSI Z60.1.
- C. The Department may develop generic plans that may be used as a substitute for site specific tree protection plans. The use of generic plans will be limited by standards developed by the Department. Generic plans do not need to be prepared by a licensed tree expert.

49.36A.01.07 Tree Removal and Replacement

- A. When a permittee removes a roadside tree, it must be replaced unless the requirement is waived by the Department and the Maryland Department of Natural Resources.
- B. The location and species of the replacement trees must be approved by the Department in accordance with the Roadside Tree Care Permit and in coordination with the Department of



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Transportation. The location of the replacement trees must be in the right of way adjacent to the subject lot.

- C. The location of replanting may be in a right of way abutting a lot near the subject lot if approved in writing by the Department of Natural Resources and the owner of that lot.
- D. The replacement trees must meet all requirements in ANSI Z60.1.
- E. Planting must be in accordance with ANSI A300 standards.
- F. For any roadside tree that is removed, the stump must be removed to a depth of six inches below existing ground or the street level elevation, whichever is greater. The chips and woody debris from the stump must be removed. All excavated areas must be filled with topsoil such that the grade is restored. All bare soil must be stabilized with permanent grass seed or other vegetation consistent with the surrounding ground cover.
- G. The Director may determine that the planting of a replacement tree is not feasible. If this determination is made, a fee of \$250 is required for the removal of any tree that is designated on a Department of Transportation Street Tree Inventory or is equal to or greater than 6 inches in diameter as measured 4 ½ feet above the elevation of the ground. This fee will be deposited in the Street Tree Planting Fund and will be used by the Department of Transportation to plant a tree at a suitable location in the public right of way.
- H. An additional \$500 fee is required when any roadside tree is removed that is either designated on a Department of Transportation Street Tree inventory or is equal to or greater than 6 inches in diameter as measured 4 ½ feet above the elevation of the ground. The collected fee will be deposited in the Street Tree Planting Fund for the Department of Transportation to plant 2 additional trees.
- I. The Director may waive the requirement for planting or for the payment of fees in this section if a licensed tree expert finds that the tree to be removed is already dead or poses a danger to persons or property.
- J. The payment of fees required in this section must be on or before the date of permit issuance but no later than 30 days after notification that the fee is due.

49.36A.01.08 Tree Planting When a Tree is not Removed

- A. The approval of the Department is required prior to planting any tree within the right of way. A Right of Way permit is required.

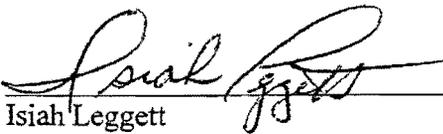


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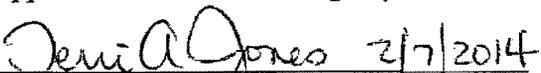
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- B. The location and species of newly planted street trees must be approved by the Department in accordance with the Roadside Tree Care Permit and the recommended County tree list; and, it must conform to the standards in ANSI Z60.1.
- C. The method of planting must be specified and must conform to ANSI A300 standards.


Isiah Leggett
County Executive

Approved as to form and legality:


Office of the County Attorney/Date