

M E M O R A N D U M

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Mike Faden, Senior Legislative Attorney.
Amanda Mihill, Legislative Attorney *mihill*

SUBJECT: **Worksession:** Executive Regulation 23-13, Streets and Roads - Roadside Trees Protection – Building Permits
Executive Regulation 24-13, Roadside Trees Protection – Sediment Control Permits
Executive Regulation 25-13, Roadside Trees Protection – Right of Way Permits

Background

Executive Regulations 23-13 through 25-13, was submitted for method 2 Council review on February 25, 2014. See ©1. Executive Regulation 23-13 is one of three regulations promulgated to implement the provisions of Bill 41-12, enacted by the Council on July 23, 2013 for Roadside Tree Protection. Bill 41-12 amended Chapters 8, 19 and 49 of the Montgomery County Code to better protect roadside trees. Executive Regulation 23-13 implements the amendments to Chapter 8, Buildings. Executive Regulation 24-13 implements the amendments to Chapter 19, Erosion, Sediment Control and Stormwater Management. Executive Regulation 25-13 implements the amendments to Chapter 49, Streets and Roads.

Under Method 2, the Council has 60 days to act on the regulation or extend time for Council action. It was advertised in the December 2013 issue of the County Register with a comment deadline of December 30, 2013. The Department received comments from 4 individuals. A summary of those comments, and the Department's response, is attached at ©16-18.

Council staff does not have significant issues to raise regarding the proposed regulations. Section 49-36A of the Code requires the Department to issue regulations that include criteria and procedures needed to administer the Street Tree Planting Fund. Committee members may wish to ask the Department when this portion of the regulation will be forthcoming. If these regulations need to be revised, there are language changes that Council staff would recommend, but substantively, these regulations seems to be consistent with the Roadside Tree law and the intent of the law. Draft resolutions for these regulations begin on ©19.

This packet contains:	<u>Circle #</u>
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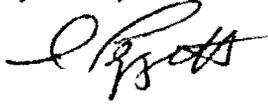
Isiah Leggett
County Executive

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MEMORANDUM

February 25, 2014

Method 2

TO: Craig Rice, President, Montgomery County Council
FROM: Isiah Leggett, County Executive 
SUBJECT: Executive Regulation 23-13 Streets and Roads -- Roadside Trees Protection - Building Permits

Attached for the Council's consideration is Executive Regulation 23-13 which is one of three regulations promulgated to implement the provisions of Bill 41-12 enacted by the County Council on July 23, 2013 for Roadside Tree Protection. Bill 41-12 amended Chapters 8, 19, and 49 of the Montgomery County Code to better protect roadside trees. Executive Regulation 23-13 implements the amendments to Chapter 8, Buildings.

The package of proposed regulations was advertised in the December 2013 issue of the *Montgomery County Register* and the comment period expired December 30, 2013. Comments were received from four individuals. As a result, several revisions were made to the proposed regulations. Copies of the comments and the department's responses to the comments are attached. A copy of the fiscal impact statement will be provided under separate cover.

This proposed regulation is being promulgated under Method 2 of Section 2A-15 of the Montgomery County Code. Please contact Richard Brush, Chief, Division of Land Development, Department of Permitting Services at 240-777-6343 if you have any questions or would like additional information.

Attachments

2014 FEB 25 PM 4:41
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MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Streets and Roads – Roadside Trees Protection – Building Permits	Number 23-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

Montgomery County Regulation on
STREETS AND ROADS - ROADSIDE TREES PROTECTION – BUILDING PERMITS
DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive
Regulation No. 23-13
COMCOR No. 08.26.02

Authority: Montgomery County Code (2004) Section 8-26(o)
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 Streets and Road - Roadside Trees Protection Law, Chapter 8 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Streets and Roads – Roadside Trees Protection – Building Permits	Number 23-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

COMCOR 08.26.02 ROADSIDE TREES PROTECTION – BUILDING PERMITS

08.26.02.01 Purpose

This regulation implements the portion of the County’s Roadside Trees Protection Law in Section 8-26 of the County Code as adopted by Bill No. 41-12.

08.26.02.02 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.

08.26.02.03 General Administration

Except as otherwise 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

08.26.02.04 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.
- B. American Standard for Nursery Stock, ANSI Z60.1, American Nursery & Landscape



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject

Streets and Roads – Roadside Trees Protection – Building Permits

Number

23-13

Originating Department

Department of Permitting Services

Effective Date

March 1, 2014

Association, hereinafter referred to as ANSI Z60.1, in effect as of December 1, 2013.

08.26.02.05 Building Permit and Related Permit Applications

- A. When a building permit is required by the County Code for a development activity 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 proposed development activity. 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. When the critical root zone of a roadside tree is within the delineated area of a development activity, the applicant must apply for a right of way permit or amend an existing application for a right of way permit to include a tree protection plan for the Department’s review and approval. The Department will approve all measures necessary to protect street trees except when the right of way permit designates the removal of those trees.
- C. The applicant must also apply for a Roadside Tree Care Permit from the Maryland Department of Natural Resources.
- D. The building permit will not be issued until the Roadside Tree Care Permit, if one is required by the Maryland Department of Natural Resources, and the Right of Way permit have been issued.
- E. During construction, there must be no additional land disturbance outside of approved limits of disturbance without the approval of the Department. This includes the location of storage and staging areas as well as access drives for vehicles.

Isiah Leggett
County Executive

Approved as to form and legality:

Derick Jones 2/19/2014
Office of the County Attorney/Date

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

February 25, 2014

TO: Craig Rice, President Montgomery County Council
FROM: Isiah Leggett, County Executive *[Signature]* Method 2
SUBJECT: Executive Regulation 24-13 Streets and Roads – Roadside Trees Protection – Sediment Control Permits

Attached for the Council's consideration is Executive Regulation 24-13 which is one of three regulations promulgated to implement the provisions of Bill 41-12 enacted by the County Council on July 23, 2013 for Roadside Tree Protection. Bill 41-12 amended Chapters 8, 19, and 49 of the Montgomery County Code to better protect roadside trees. Executive Regulation 24-13 implements the amendments to Chapter 19, Erosion, Sediment Control and Stormwater Management.

The package of proposed regulations was advertised in the December 2013 issue of the *Montgomery County Register* and the comment period expired December 30, 2013. Comments were received from four individuals. As a result, several revisions were made to the proposed regulations. Copies of the comments and the department's responses to the comments are attached. A copy of the fiscal impact statement will be provided under separate cover.

This proposed regulation is being promulgated under Method 2 of Section 2A-15 of the Montgomery County Code. Please contact Richard Brush, Chief, Division of Land Development, Department of Permitting Services at 240-777-6343 if you have any questions or would like additional information.

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Subject Streets and Roads – Roadside Trees Protection – Sediment Control Permits	Number 24-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

Montgomery County Regulation on
STREETS AND ROADS - ROADSIDE TREES PROTECTION – SEDIMENT CONTROL PERMITS
DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive
Regulation No. 24-13
COMCOR No. 19.71.01

Authority: Montgomery County Code (2004) Section 19-71(c)
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 19 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Streets and Roads – Roadside Trees Protection – Sediment Control Permits	Number 24-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

COMCOR 19.71.01 Roadside Trees Protection – Sediment Control Permits

19.71.01.01 Purpose

This regulation implements the portion of the County's Roadside Trees Protection Law in Section 19-71 of the County Code as adopted by Bill No. 41-12.

19.71.01.02 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.

19.71.01.03 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 Code.

19.71.01.04 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.
- 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.



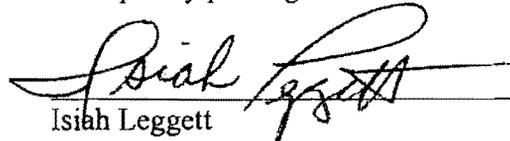
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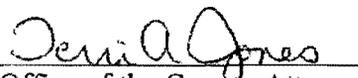
Subject Streets and Roads – Roadside Trees Protection – Sediment Control Permits	Number 24-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

19.71.01.05 Sediment Control Permit Applications

- A. If a sediment control permit is required by the County Code a natural resources inventory is required. In addition to any other requirements, the natural resources inventory must show the location, species, and size of all roadside trees along the frontage of the property subject to the sediment control permit application and fifty feet on either side of the property. The diameter of each tree shall be measured at a height of 4 ½ feet above the existing ground elevation.
- B. The natural resources inventory must also show the proposed limits of disturbance including that which is required for the installation of utilities, construction storage and staging areas, installation of sediment controls, as well as areas where vehicles will drive or park.
- C. If the area under the critical root zone of any roadside tree is impacted, the applicant must apply for a right of way permit or amend an existing application for a right of way permit to include the disturbance or removal. The right of way permit application must include a tree protection plan. The Department will approve all measures necessary to protect roadside trees unless the right of way permit designates the removal of those trees.
- D. The applicant must also apply for a Roadside Tree Care Permit from the Maryland Department of Natural Resources.
- E. The sediment control permit will not be issued until the Roadside Tree Care Permit, if one is required by the Maryland Department of Natural Resources, is issued.
- F. 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 as well as temporary parking areas.


 Isiah Leggett
 County Executive

Approved as to form and legality:

 2/19/2014
 Office of the County Attorney/Date

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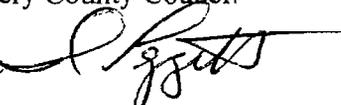
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Isiah Leggett
County Executive

MEMORANDUM

February 25, 2014

Method 2

TO: Craig Rice, President Montgomery County Council
FROM: Isiah Leggett, County Executive 
SUBJECT: Executive Regulation 25-13 Streets and Roads – Roadside Trees
Protection – Right of Way Permits

Attached for the Council's consideration is Executive Regulation 25-13 which is one of three regulations promulgated to implement the provisions of Bill 41-12 enacted by the County Council on July 23, 2013 for Roadside Tree Protection. Bill 41-12 amended Chapters 8, 19, and 49 of the Montgomery County Code to better protect roadside trees. Executive Regulation 25-13 implements the amendments to Chapter 49, Streets and Roads.

The package of proposed regulations was advertised in the December 2013 issue of the *Montgomery County Register* and the comment period expired December 30, 2013. Comments were received from four individuals. As a result, several revisions were made to the proposed regulations. Copies of the comments and the department's responses to the comments are attached. A copy of the fiscal impact statement will be provided under separate cover.

This proposed regulation is being promulgated under Method 2 of Section 2A-15 of the Montgomery County Code. Please contact Richard Brush, Chief, Division of Land Development, Department of Permitting Services at 240-777-6343 if you have any questions or would like additional information.

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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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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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

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.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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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

- 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.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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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

- 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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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

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.

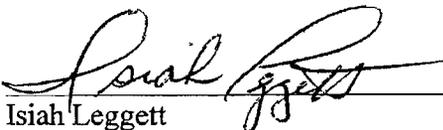


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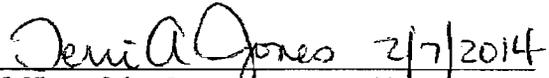
Subject Streets and Roads – Roadside Trees Protection – Right of Way Permits	Number 25-13
Originating Department Department of Permitting Services	Effective Date March 1, 2014

- 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

Executive Regulations 23-13, 24-13 and 25-13

Comments Received

Mark Buscaino, Casey Trees

1. All 3 regulations - Strongly recommended using Critical Root Zone for the measurement of the regulated tree area instead of using Dripline. Response - The Department agreed and added the definition of Critical Root Zone to the regulations. The definition of dripline was removed. All references to dripline in the regulations were replaced by the term "critical root zone"
2. Regulation 25-13 – Section 49.36A.01.07 Paragraphs G and H – made some suggestions for the payment of fees in lieu of planting trees. Response - The regulation, as drafted, correctly states what was approved in the bill.
3. Regulation 25-13 Section 49.36A.01.07 Paragraph G – same section. Recommended changing the payment of a fee in lieu for trees that are not listed on a DOT inventory for all trees that are 4 inches in diameter or greater instead of 6 inches in diameter or greater. Response - Since these are trees that are not yet inventoried by DOT the change was not made.

Arlene Bruhn

1. All 3 regulations - Recommended a slight change in definition for "Dripline". Response - This change was no longer needed since the term "dripline" has been replaced by "critical root zone"
2. All 3 regulations - Wants the existing guideline for tree protection barriers to be included in the regulations. Response - The regulations include nationally accepted standards for tree care. No other specific standard is shown in the regulations. The Department is beginning to prepare a more detailed technical manual with the assistance of the Departments of Transportation and Environmental Protection. This technical manual as required by Section 55-9 of the County Code (as adopted in Bill No. 35-12) will give more specific guidance in relation to both the Canopy Bill and the Roadside Tree Bill. The referenced guidance document should be considered for that manual.
3. All 3 regulations - Believes the regulations should contain direct and specific language to prohibit storage of materials and parking on tree roots. Response – The law doesn't prohibit storage or parking over tree roots. However, the law requires the issuance of a right of way permit; and, the right of way permit now requires tree protection measures. Therefore, the regulations were not changed.
4. Regulation 24-13 - Please clarify the term frontage to include all adjoining rights of way including side streets for corner lots. Response – The regulation, as written, is understood to cover all rights of way. Therefore, no changes were made.
5. Regulations 24-13 and 25-13 - Wants specific language added to the sediment control and right of way regulations to include "drainage and outflow conduits". Response – the language in the regulation already covers these types of land disturbance. Therefore, the regulations were not changed.

6. Regulation 25-13 - Commented on Section 49.36A.01.05.E by saying the regardless of who approves a development or rebuild the right of way trees should be protected and replanted appropriately. Response – The language comes directly from the bill, as adopted.
7. Regulation 25-13 - Commented on Section 49.36.A.01.06.A by saying that “any plans approved by Park and Planning reflect the intent of regulatory restrictions of disruption of the right of way and should conform to the new regulations. There is no sound ecological reason why a large development should not be subject to the same regulations that apply to smaller parcels. In fact, because the impact of large developments is considerable, these construction activities should be subject to more stringent environmental guidelines”. Response – The Department agrees that large development activities should meet the requirements of the law. What the Department is trying to prevent is a conflict between forest conservation plans approved by MNCPPC and tree protection plans approved by the Department. In the development process MNCPPC often approves forest conservation plans before preliminary plans are approved and record plats are recorded that establish new rights of way. Those forest conservation plans establish onsite and mitigation requirements for the entire site, including any disturbance in existing rights of way and those yet to be recorded. Those plans also establish where trees can be removed and which are to remain. Since those decisions have already been made there is no need to have a separate plan. DPS will enforce the protection of future roadside trees where those trees have been identified in the forest conservation plan for protection.

As a side note, DPS notes that DNR considers forest conservation plans to take priority over roadside tree requirements and does not require roadside tree care permits when the area is covered by an approved forest conservation plan. This is not addressed in the County’s Roadside Tree Bill. DPS will issue permits and provide enforcement. However, this will most likely be done without an accompanying DNR permit.

8. Regulation 25-13 Comment on Section 49.36A.01.07 which says “I see no need to cede authority to the State” when the replacement of a roadside tree is waived. Response – Some of this authority already rests with the State since a DNR issued Roadside Tree Care Permit is required prior to the DPS issuance of a right of way permit. However, the regulation does not say the State has complete authority. Both DPS and DNR must agree to the waiver which must be in accordance with the Code.
9. Regulation 25-13 Comment on Section 49.36A.01.08 which wants the section reworded to include the requirement for a “State Roadside Permit” when trees are planted in the right of way. Response – This is already required in the right of way permit requirements in Section 49.36A.01.05. However, for clarity we included the requested language.

Larry Cafritz – Laurence Cafritz Builders

1. All 3 regulations - The regulations say that the Tree Protection Plan must be prepared by a licensed tree expert. However, DNR only requires that a licensed

tree expert be designated in plans submitted to them. Response – The Department agrees. The regulations were changed to state the designation of a licensed tree expert in plans submitted to the Department.

Robert Spalding – Miller and Smith

1. All 3 regulations - The majority of the comments concerned what to require for roadside tree protection or removal when a project has a forest conservation plan approved by the MNCPPC. Response - During the deliberation of the bill there was little or no discussion concerning how to coordinate requirements for roadside trees that are included within forest conservation plans or are used to determine forest conservation plan mitigation requirements. The Department of Natural Resources, either by policy or by interpretation of state law, considers approved forest conservation plans as taking precedence and, therefore, does not require Roadside Tree Care permits in such situations. However, the requirements in the County Code do not specifically exempt such projects. Therefore, unless the Code is revised, applicants for permits must also meet current roadside tree requirements, whether DNR issues Roadside Tree Care permits or not.

The Department agrees that inventories and protection plans contained within approved forest conservation plans can be used as substitutes for specific tree protection measures that would normally be called for in a tree protection plan. However, the regulations cannot exempt projects from roadside tree requirements when the Code does not exempt these projects.

2. Regulation 25-13 - Section 49.36A.01.07.C . The comment concerns the approval of adjoining landowners when a replacement tree is proposed be planted in the right of way in front of their lot. Response – Since those landowners will be required to maintain the vegetation in those rights of way it is proper that they also approve that the replacement tree be planted in that location. Please note that this requirement does not apply to the replacement of trees in front of the lot where the tree is removed.
3. Regulation 25-13 - Section 49.36A.01.08. The comment concerned when fees should be paid. Response – the requirement comes directly from the language in the County Code.
4. Mr. Spalding made the same comment that Larry Cafritz did concerning the requirement in the regulations that tree protection plans be prepared by a licensed tree expert. Response – The regulation has been revised to reflect existing requirements.

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 23-13, Streets and Roads – Roadside Trees Protection – Building Permits

Background

1. On February 25, 2014, the Council received Executive Regulation 23-13, Streets and Roads – Roadside Trees Protection – Building 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 recommendation and recommended _____.

Action

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

Executive Regulation 23-13, Streets and Roads – Roadside Trees Protection – Building Permits is _____.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 24-13, Streets and Roads – Roadside Trees Protection – Sediment Control Permits

Background

1. On February 25, 2014, the Council received Executive Regulation 24-13, Streets and Roads – Roadside Trees Protection – Sediment Control 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 recommendation and recommended _____.

Action

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

Executive Regulation 24-13, Streets and Roads – Roadside Trees Protection – Sediment Control Permits is _____.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Resolution No. _____
Introduced: _____
Adopted: _____

**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 recommendation and recommended _____.

Action

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

Executive Regulation 24-13, Streets and Roads – Roadside Trees Protection – Right of Way Permits is _____.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council