

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 30-14, Streets and Roads – Right-of-Way Permit – Fee - Exemption

Bill 30-14, Streets and Roads – Right-of-way Permit – Fee - Exemption, sponsored by Councilmembers Berliner, Riemer, Elrich, Leventhal, Floreen, Andrews, and Navarro, was introduced on May 6, 2014. A public hearing was held on June 10, at which the only speaker was Reginald Jetter of the Department of Permitting Services (see testimony, ©10).

Bill 30-14 would require DPS to waive the filing fee for *right-of-way permits* to install geographic area signs by civic and homeowners' organizations. It is similar to a provision in the current County sign law, §59-F-9.1, (converted to §7.4.3.B.2 in the new zoning code; see ©4-5), which exempts these organizations from *sign permit* fees. In all cases the sign must be smaller than a maximum size set by regulation. The fiscal impact of waiving this fee would be negligible (see fiscal impact statement on ©7-9).

Issues

In its testimony (see ©10), the County Department of Permitting Services supported this Bill but raised several questions:

1) Who is eligible for a fee waiver or reduction? DPS compared this Bill, which requires DPS to totally waive the right-of-way permit fee for an eligible organization, with the current zoning code provision (see ©4-5) which requires DPS to waive the sign permit fee for organizations on the Planning Board's civic and homeowners' association list but only allows a discretionary full or partial waiver for other non-profit tax-exempt organizations with limited revenues.

Council staff drafted this Bill to require a complete non-discretionary fee waiver for each eligible organization because we think the current zoning provision lacks enforceable standards for DPS to decide which organization would qualify, among those eligible, for an optional waiver or fee reduction. In our view, the law fails to channel DPS' discretion or inform DPS who among those eligible deserves a waiver, which raises First Amendment issues because signage is a form of speech. (The fact that the Planning Board apparently does not have clear-cut standards for which "civic and homeowners' associations" are placed on its list does not resolve, and actually may

exacerbate, the problem.) DPS' implementing regulations (see regulation, ©12-16, and particularly ©15) go part way toward limiting their discretion by relying on a sliding income scale to calculate fee reductions.

Council staff recommendation: the Bill should be redrafted on ©2, lines 9-17 to clarify its applicability and avoid further legal issues as follows:

- (3) install a sign identifying a geographic area in the right-of-way if:
 - (A) the primary applicant is an unincorporated or non-profit civic or homeowners' organization that is either:
 - (i) listed on the Planning Board's most recent list of civic and homeowners associations; or
 - (ii) [[a non-profit organization that by law is]] exempt from federal income taxes and shows that its annual revenue during its most recent fiscal year did not exceed an amount set by a regulation; and

This amendment would retain the Bill's requirement that any fee be fully waived, rather than reduced at DPS's discretion for some qualified organizations.

2) How define "geographic area"? Unlike the current zoning code provisions, this Bill restricts the signs that qualify for a fee waiver to those that are located in the right-of-way and identify a "geographic area". The impetus for this Bill came from an application by a civic association in the Rollingwood section of Chevy Chase to place neighborhood identification signs on roads entering their community. DPS questioned whether the term "geographic area" needs to be further defined, noting that it should not apply to a single building or group of buildings on a single lot. Council staff agrees with DPS but believes that, if any clarification is needed, the implementing regulation would be the better place to do that.

3) Transfer from developer DPS observed that "it may be helpful to clarify that the fee waiver applies after transfer of maintenance of the community from the developer to the established homeowner's association." In a follow-up email, DPS staff suggested that the Bill specify that a development under construction with less than 70% occupancy should not be treated as a homeowners' association; apparently 70% occupancy is the point when a homeowners' association is established. Council staff agrees that this distinction should be made clear, but believes that DPS' regulation can further define "homeowners' association" for this purpose, rather than placing this level of detail in this Bill.

This packet contains:	Circle #
Bill 30-14	1
Legislative Request Report	3
Sign permit provisions	4
Fiscal and Economic Impact statement	6
DPS testimony and followup email	10
DPS regulation	12

Bill No. 30-14
Concerning: -Streets and Roads - Right-
of-way Permit – Fee - Exemption
Revised: 4/29/14 Draft No. 1
Introduced: May 6, 2014
Expires: November 6, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner, Riemer, Elrich, Leventhal, Floreen, Andrews, and Navarro

AN ACT to:

- (1) waive the filing fee for certain right-of-way permits to install certain geographic area signs by certain organizations; and
- (2) generally amend the law governing right-of-way permits.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Section 49-35, Right-of-way permit

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:

LEGISLATIVE REQUEST REPORT

Bill 30-13

Streets and Roads – Right-of-way Permit – Fee - Exemption

DESCRIPTION:	Would waive the filing fee for right-of-way permits to install geographic area signs by civic and homeowners' organizations. It is similar to a provision in the current County sign law, §59-F-9.1, (converted to Chapter 59 §7.4.3.B.2 in the new zoning code), which exempts these organizations from sign permit fees.
PROBLEM:	Inconsistency in current law for different fees charged to civic and homeowners' associations for similar signs.
GOALS AND OBJECTIVES:	To remove one obstacle to civic and homeowners' associations installing neighborhood identification signs.
COORDINATION:	Department of Permitting Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only to County right-of-way permits.
PENALTIES:	Not applicable.

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Sec. 59-F-9.1. Permit.

(a) When Required.

(1) Except as otherwise provided in divisions 59-F-8 and 59-F-6, a permit must be obtained under this Article when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered.

(2) Routine maintenance does not require a permit. Routine maintenance includes painting, cleaning, changing copy where permitted, or changing copy in compliance with a sign concept plan.

(b) Application. The property owner and the sign installer must file a joint application for the sign permit on forms provided by the Director. If the property owner has an agent or lessee, the agent and the lessee must also sign each permit form. The application must be accompanied by all required documents and fees. The Director must waive all required fees for any organization that satisfies subsection (1)(A) and may waive or reduce all required fees for any organization that satisfies subsection (1)(B) if:

(1) the primary applicant is a non-profit organization that:

(A) is on the Planning Board's list of civic and homeowners associations; or

(B) by law is exempt from federal income taxes and demonstrates that its annual revenue during its most recent fiscal year was less than an amount set by a regulation adopted by the Director under method (2); and

(2) the size of the proposed sign is smaller than a maximum size set by a regulation adopted by the Director under method (2).

* * *

Section 7.4.3. Sign Permit

A. Applicability

1. A sign permit is required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy that satisfies a sign concept plan, does not require a permit.
2. Signs listed in Section 6.7.3 and Section 6.7.12 are exempt from the sign permit requirement.

B. Application Requirements

1. The property owner and the sign installer must file a joint application for the sign permit on forms provided by DPS. If the property owner has an agent or lessee, the agent and the lessee must also sign each permit form. The application must be accompanied by all required fees and the following:
 - a. a scale drawing of the sign showing all dimensions and visual characteristics, including structural and architectural supports;
 - b. a scale drawing of the site showing:
 - i. the proposed location of the sign, including setbacks;
 - ii. the location and size of all other signs on the property;
 - iii. the location, dimensions, and distance from property lines of all buildings on the site;
 - iv. the location and name of all streets that abut the property;
 - v. the frontage dimensions of the site along each street that abuts the property;
 - vi. the existing elevation and grade of the site and the proposed contour lines;
 - c. a valid electrical permit or a completed application for an electrical permit under Chapter 17, if the application is for an illuminated sign;
 - d. a completed building permit application under Chapter 8 for a sign requiring structural support;
 - e. payment of the sign permit fee as adopted by District Council Resolution;
 - f. other information that may be required by DPS to insure compliance with Division 6.7 or other sections of the Chapter; and
 - g. a sign concept plan if:
 - i. the lot or parcel is in a Commercial/Residential, Employment, or Industrial zone and is requesting more than 800 square feet of total sign area;
 - ii. the development consists of more than one lot or parcel in a Commercial/Residential, Employment, or Industrial zone developed under a management control plan where one or more individual lots or parcels is requesting more than 800 square feet of total sign area, even if such development includes one or more individual sites or parcels whose total sign area does not exceed 800 square feet; or
 - iii. the development uses optional method within an urban renewal area.
2. DPS must waive all required fees if:
 - a. the primary applicant is a non-profit organization that is on the Planning Board's list of civic and homeowners associations; and
 - b. the size of the proposed sign is smaller than the maximum size under Division 6.7.
3. DPS may waive or reduce all required fees if:
 - a. the primary applicant is a non-profit organization that by law is exempt from federal income taxes and demonstrates that its annual revenue during its most recent fiscal year was less than an amount set by DPS under Method (2); and
 - b. the size of the proposed sign is smaller than the maximum size under Division 6.7.



ROCKVILLE, MARYLAND

MEMORANDUM

May 27, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 30-14, Streets and Roads-Right-of-Way Permit -Fee Exemption

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
David Platt, Department of Finance
Robert Hagedoorn, Department of Finance
Diane Jones, Director, Department of Permitting Services
Dennis Hetman, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 30-14 Streets & Roads – Right of Way Permits – Fee Exemption

1. Legislative Summary.

This bill would waive the permitting fee for right-of-way permits to install geographic area signs by civic and homeowners' organizations. It is similar to a provision in the current County sign law, 59-F-9.1, (converted to 7.4.3.B.2 in the new zoning code; see 4-5) which exempts these organizations from sign permit fees.

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.

Based on an analysis for the last four (4) years, the exemption would result in a negative change of revenue of less than \$500 per year.

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

The County would continue to collect less than \$500 in lost revenue each year for the next 6 years for an estimated total of \$3,000.

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

Not applicable.

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

The legislation does not authorize future spending.

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

No additional staff time is required to implement the bill.

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

The addition of new staff responsibilities would not affect other duties.

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

No additional appropriation will be needed.

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

The loss of revenue would vary slightly from year to year with a negligible impact of marginal amounts.

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

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

The Bill will have minor fiscal impacts due to the low demand for this type of sign in the County Right of Way.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis: (Enter name and department).

Linda Kobylski, DPS

Rick Brush, DPS

Atiq Panshiri, DPS

Dennis Hetman, OMB


Jennifer A. Hughes, Director
Office of Management and Budget

5/22/14
Date

Economic Impact Statement
Bill 30-14, Streets and Roads – Right-of-Way Permit – Fee - Exemption

Background:

This legislation would waive the filing fee for right-of-way permits to install certain geographic area signs. Bill 30-14 exempts an applicant that is listed on the Planning Board's recent list of civic and homeowners' associations or a non-profit organization that is exempt from federal income taxes and its annual revenue during the most fiscal year does not exceed an amount set by regulation.

1. The sources of information, assumptions, and methodologies used.

The Department of Permitting Services (DPS) provided information for the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are the number of permits and the amount of the fee that is waived. According to information provided by DPS, the number of permits issued to civic and homeowners' associations and eligible non-profit organization as defined in amended Section 49-35 of the County Code is very small. The amount of fee that is waived is well below \$500 per permit.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Based on the information provided in paragraph #2, there would be no measurable economic impact on employment, spending, saving, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraphs #2 and #3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Richard Brush, Department of Permitting Services.

For

Joseph E. Beach, Director
Department of Finance

Date

5/22/14

4

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE
ISIAH LEGGETT
IN SUPPORT OF BILL 30-14 STREETS AND ROADS –
RIGHT-OF-WAY PERMIT FEE EXEMPTION**

Good afternoon. My name is Reginald Jetter and I am the Division Chief of Customer Service in the Department of Permitting Services. I am pleased to provide testimony on behalf of County Executive Isiah Leggett in support of Bill 30-14. This bill proposes a fee waiver for homeowners associations and civic groups wishing to place entry signs in the public right of way. County Executive Leggett is very supportive of efforts to remove barriers to communities that install signage to help identify neighborhoods. The intent of Bill 30-14 is to minimize fiscal impacts on recognized civic and homeowners' associations and is modeled on the waiver that is provided in the Zoning Ordinance for sign permits. Accordingly, for clarity, Bill 30-14 should be amended to conform to the Zoning Ordinance waiver reflected in section 7.4.3.B.2 and 3 of the Zoning Rewrite. Importantly, the fee waiver for signs applies only to signs that are smaller than the maximum size allowed in the applicable zone. Additionally, in the case of homeowners' associations, it may be helpful to clarify that the fee waiver applies after transfer of maintenance of the community from the developer to the established homeowner's association. Executive staff is available to assist the Council as this proposed bill proceeds in order to make conforming amendments. Thank you for the opportunity to testify.

Faden, Michael

From: Brush, Rick
Sent: Wednesday, July 16, 2014 10:18 AM
To: Faden, Michael
Cc: Jetter, Reginald; Kobylski, Linda; Motazed, Ehsan
Subject: FW: Bill 30-14

Mike -- I believe you and Reggie have already exchanged emails on this proposed bill. As you know, for convenience he testified on the bill since he was providing testimony on another bill at the same Council session. However, he was not directly involved in the analysis of the bill. Therefore, Linda Kobylski and I will take the lead for the Department and plan on being at the T&E discussion on Monday.

I believe Reggie has already sent you a copy of Exec. Reg. 13-08 which establishes procedures for waiving or reducing sign permit fees. If the language in 49-35 (b) (3) (A) (i.i.) remains as is, then DPS will need to prepare a somewhat similar regulation for establish which of the other non-profits (other than those shown on the Planning Board list) would qualify for the exemption. The difference of course is that there would be no graduation of fee reductions.

That executive regulation would also need to define or clarify the meaning of "geographic area" since the bill only proposes to waive fees for signs that identify a geographic area. Clearly, a subdivision could be defined as a geographic area. However, I don't believe it is the intent of the bill for a single building or a group of buildings on a single lot to be defined as a geographic area. I tried to find an existing definition in the Code but didn't find one. Geographic area is used to define other terms like special protection areas. However, I didn't see a definition just for "geographic area". Possibly that needs to be defined in the bill but will leave that up to you.

DPS identified another concern in the testimony that Reggie provided. As you know, the developers of subdivisions typically provide entrance signs into the neighborhoods they are constructing. This is just a normal part of their development process. DPS did not think the intent of the bill was to waive the fees those developers normally pay for what is routinely included in their construction permits. The intent was to waive fees for those associations that are already completely functioning as intended. I've asked Ehsan Motazed for his opinion on how this should be worded in the bill since he is much more familiar with the establishment of HOA's than I am. However, as I understand, the developer must establish an HOA no later than when 70% of the construction is complete. At that time the transfer of maintenance of HOA property (including signs) from the developer to the community occurs. The applicability of this fee exemption should follow that same pattern.

Let me know if you have questions or comments.

Rick

From: Jetter, Reginald
Sent: Tuesday, July 15, 2014 3:45 PM
To: Brush, Rick
Subject: FW: Bill 30-14

Rick
Lets discuss tomorrow.
Reggie

Reginald T. Jetter
Division Chief Customer Service
Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850
Phone (240) 777-6275
Fax (240) 777-6262

7/17/2014

11

Resolution No.: 16-603
Introduced: June 17, 2008
Adopted: June 17, 2008

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Executive Regulation 13-08, Non-Profit Organization Sign Permit and Sign Variance Fees

Background

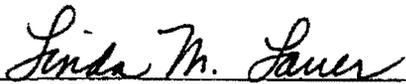
1. On May 20, 2008, the County Executive transmitted Executive Regulation 13-08, Non-Profit Organization Sign Permit and Sign Variance Fees.
2. Executive Regulation 13-08 implements changes approved by the County Council as part of Zoning Text Amendment 07-15 which requires the Director of the Department of Permitting Services to waive sign permit fees for a non-profit organization that is on the Planning Board's list of civic and homeowners associations and deletes the requirement for non-profit organizations to use the sign only for its own activities.

Action

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

Executive Regulation 13-08, Non-Profit Organization Sign Permit and Sign Variance Fees 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: Non-Profit Organization Sign Permit and Sign Variance Fees	Number 13-08
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date: June 17, 2008

Montgomery County Regulation on:

NON-PROFIT ORGANIZATION SIGN PERMIT AND SIGN VARIANCE FEES

DEPARTMENT OF PERMITTING SERVICES

Issued by: County Executive
Regulation No.

AUTHORITY: Code Sections 59-F-9.1(b)(2)
 Supersedes: 19-06AM
 Council Review: Method 2 under Code Section 2A-15
 Register Issue
 Comment Deadline: April 30, 2008
 Effective date: June 17, 2008
 Sunset date: None

SUMMARY: The revisions to this regulation are a result of Zoning Text Amendment 07-15 Signs – Permits Fees effective 3/3/08 which requires the Director of the Department of Permitting Services to waive sign permit fees for a non-profit organization that is on the Planning Board’s list of civic and homeowners associations and deletes the requirement for nonprofit organizations to use the sign only for its own activities.

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

STAFF CONTACT: Susan Scala-Demby, Manager
Division of Casework Management
240-777-6255

Reginald Jetter, Chief
Division of Casework Management
240-777-6275



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject: Non-Profit Organization Sign Permit and Sign Variance Fees	Number 13-08
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

BACKGROUND INFORMATION: The Department of Permitting Services enforces Chapter 59 of the Montgomery County Code. This regulation establishes the licensing requirements and operational requirements for waiving or reducing all required fees for sign permits and sign variances.

Sec. 1 PURPOSE

This regulation establishes a process for waiving or reducing sign permit and sign variance fees for non-profit organizations.

Sec. 2 APPLICABILITY

This regulation applies to any non-profit organization that seeks to obtain a sign permit or sign variance for a sign in Montgomery County.

Sec. 3 DEFINITIONS

For the purposes of this regulation, the following words and phrases have the meaning indicated. Word and phrases defined and used in Chapters 59 of the Montgomery County Code have the meaning indicated in those Chapters.

Sec. 4 POLICY

Applicants on the Planning Board's list of civic and homeowners associations must only submit proof of their non-profit status. All other applicants must provide 501(C)(3) certificate and proof of annual income for the tax year immediately preceding the date of application.

Sec. 5 PROCEDURES

A non-profit organization applying for a sign permit or sign variance must follow all the permitting requirements found in Chapter 59-F of the Montgomery County Code. In addition, non-profit organizations will be required to provide the following with the application:



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject: Non-Profit Organization Sign Permit and Sign Variance Fees	Number 13-08
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

1. proof of non-profit status, and
2. proof of annual revenue (not required for non-profit organizations on the Planning Board's list of civic and homeowners associations), and
3. line drawing showing that the size of the proposed sign is smaller than the maximum size permitted in the zone in which the sign will be located.

Fees will be waived for non-profit organizations on the Planning Board's list of civic and homeowners associations. All other fees will be assessed in accordance with the fee scale noted below after all of the items above are submitted.

Sec. 6 FEES

Fees will be on a sliding scale based upon the annual revenue of the applicant. The fee scale is as follows:

ANNUAL REVENUE	FEE
\$0.00 - \$50,000.00	\$0.00
\$50,000.01 - \$100,000.00	33% of Current Fees
\$100,000.01 - \$200,000.00	66% of Current Fees
\$200,000.01 and above	100% of current Fees



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject: Non-Profit Organization Sign Permit and Sign Variance Fees	Number 13-08
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date:

Sec. 7 SEVERABILITY

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

EFFECTIVE DATE: This regulation becomes effective _____.



 Isiah Leggett, County Executive

15 MAY 08

 Date

Approved as to form and legality
 Montgomery County, Md. County Attorney's Office

