

Bill No. 41-12
Concerning: Streets and Roads –
Roadside Trees - Protection
Revised: 7-23-13 Draft No. 20
Introduced: December 11, 2012
Enacted: July 23, 2013
Executive: July 31, 2013
Effective: March 1, 2014
Sunset Date: None
Ch. 22, Laws of Mont. Co. 2013

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Berliner and Elrich

AN ACT to:

- (1) require certain persons to file, and the Department of Permitting Services to approve, a tree protection plan, and to obtain a right-of-way permit, for certain activities affecting roadside trees;
- (2) require certain persons to plant certain trees and to pay into a roadside tree replacement fund under certain circumstances;
- (3) require the County Executive to adopt regulations specifying certain roadside tree protection, conservation, and replacement standards; and
- (4) generally amend the law regarding streets and roads.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-112
Chapter 8, Buildings
Section 8-26
Chapter 49, Streets and Roads
Sections 49-35 and 49-36

By adding

Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-71
Chapter 49, Streets and Roads
Section 49-36A

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

1 **Sec. 1. Sections 2-112, 8-26, 49-35 and 49-36 are amended and Sections**
2 **19-71 and 49-36A are added as follows:**

3 **2-112. Jurisdiction.**

4 * * *

5 (c) The Board has the following appellate jurisdiction.

The Board must hear and decide each appeal taken under:	Those appeals involve:
* * *	
Section 49-35	Right-of-way permits

6 * * *

7 **8-26. Conditions of permit.**

8 * * *

9 (n) *Tree protection.* If any clearing, construction, or development allowed
10 by any permit issued under this Chapter would result in the trimming,
11 cutting, removal, or injury of any roadside tree (as defined in Section
12 49-35) or any tree located in a State right-of-way in the County, the
13 Director must not issue that permit until:

- 14 (1) the applicant obtains a roadside tree care permit as necessary
15 from the State Department of Natural Resources; and
- 16 (2) the applicant has submitted, in connection with the permit applied
17 for under this Chapter, and the Director has approved, a site-
18 specific tree protection plan that meets the requirements of
19 Section 49-36A(d).

20 The Department must approve or reject each proposed plan within 30
21 days after receiving it. If the Department does not act on a proposed

22 plan within 30 days, the plan is approved by default. The Department
 23 may require further information after a proposed plan is submitted, and
 24 may extend this deadline once for an additional 15 days to receive any
 25 needed information. The Department also may extend this deadline at
 26 the request of the applicant.

- 27 (o) *Regulations.* The Director may recommend, and the Executive may
 28 adopt, regulations under Method (2) to specify standards and practices
 29 needed to protect and maintain roadside trees, including construction
 30 practices needed to prevent or minimize damage to roadside trees, under
 31 subsection (n) These regulations must be at least as stringent as
 32 applicable state roadside tree care standards and requirements.

33 **19-71. Tree Protection.**

- 34 (a) If any clearing, construction, or development allowed by any permit
 35 issued by the Department of Permitting Services under this Chapter
 36 would result in the trimming, cutting, removal, or injury of any roadside
 37 tree (as defined in Section 49-35) or any tree located in a State right-of-
 38 way in the County, the Director must not issue that permit until:
 - 39 (1) the applicant obtains a roadside tree care permit as necessary
 40 from the State Department of Natural Resources; and
 - 41 (2) the applicant has submitted, in connection with the permit applied
 42 for under this Chapter, and the Director has approved, a site-
 43 specific tree protection plan that meets the requirements of
 44 Section 49-36A(d), unless the applicant is engaged in an activity
 45 described in Section 49-36A(b)(2).
- 46 (b) The Department must approve or reject each proposed tree protection
 47 plan within 30 days after receiving it. If the Department does not act on
 48 a proposed plan within 30 days, the plan is approved by default. The

49 Department may require further information after a proposed plan is
50 submitted, and may extend this deadline once for an additional 15 days
51 to receive any needed information. The Department also may extend
52 this deadline at the request of the applicant.

53 (c) The County Executive may adopt regulations under Method (2) to
54 specify standards and practices needed to protect and maintain roadside
55 trees, including construction practices needed to prevent or minimize
56 damage to roadside trees, under this Section. These regulations must be
57 at least as stringent as applicable state roadside tree care standards and
58 requirements.

59 **49-35. Right-of-way permit.**

60 (a) (1) A person must not construct any road, sidewalk, shared use path,
61 curb and gutter, driveway, or drainage structure; begin any such
62 construction (including clearing, grading, and tree cutting); or
63 perform any tree work on any roadside tree (including removing
64 a stump in a County right-of-way), without a permit from the
65 Director of Permitting Services. Any permit issued for roadside
66 tree work must comply with Section 49-36A. In this Article,
67 “roadside tree” means any plant that has a woody stem or trunk
68 which grows all, or in part, in the right-of-way of any County
69 public road.

70 (2) In this Section and Sections 49-36, 49-36A, and 49-37, unless
71 otherwise specified, Director refers to the Director of Permitting
72 Services and Department refers to the Department of Permitting
73 Services.

74 * * *

75 (b) The Director must collect a fee, set by Method 3 regulation, for each
76 right-of-way permit application. However, the Director must not collect
77 a fee for any permit to remove:

78 (1) a tree that endangers a person or property; or

79 (2) a stump in the right-of-way.

80 (c) * * *

81 (d) * * *

82 (e) Any violation of this Section is a Class A violation.

83 (f) The Director must refund half the fees required by this Section to the
84 applicant if a permit is rejected or withdrawn before construction
85 begins. If an applicant proposes to undertake a project using materials,
86 standards, or specifications superior to those required under this Article,
87 the fees charged must be computed on the estimated cost of the project
88 as if it met those requirements.

89 (g) * * *

90 (h) * * *

91 **49-36A. Roadside tree work.**

92 (a) *Right-of-way permit required.* The Department must not issue a
93 building or related permit to an applicant for any demolition, clearing,
94 pre-construction activity, construction, or development that is likely to
95 result in the trimming, pruning, root-pruning, cutting, or removal of, or
96 injury to, a roadside tree unless the applicant obtains a right-of-way
97 permit from the Department under Section 49-35.

98 (b) *Applicability; exceptions.*

99 (1) A person (including a government agency) may receive a right-
100 of-way permit to perform tree work on a roadside tree if the
101 person:

- 102 (A) holds title to the land where the roadside tree is located;
- 103 (B) owns property abutting the right-of-way at the point where
- 104 the tree is located;
- 105 (C) is a government agency that has an easement for the public
- 106 right-of-way where the tree is located;
- 107 (D) is responsible for providing tree care to the tree;
- 108 (E) is a public utility; or
- 109 (F) is an authorized agent of any of these.
- 110 (2) The following activities are not subject to this Section (except
- 111 subsection (f)) and do not require a right-of-way permit:
- 112 (A) cutting or clearing a public utility right-of-way or land for
- 113 an electric generating station licensed under Sections 7-
- 114 204, 7-205, 7-207, or 7-208 of the Public Utilities Article
- 115 of the Maryland Code, or any successor provision, if:
- 116 (i) any required certificate of public convenience and
- 117 necessity has been issued under Section 5-1603(f) of
- 118 the Natural Resources Article of the Maryland Code
- 119 or any successor provision; and
- 120 (ii) the cutting or clearing is conducted in a way that
- 121 minimizes the loss of forest;
- 122 (B) routine maintenance of a public utility right-of-way, and
- 123 cutting or clearing any tree by a public utility as necessary
- 124 to comply with applicable vegetation management
- 125 requirements or to maintain, repair, replace, or upgrade
- 126 any public utility transmission or distribution line; or
- 127 (C) cutting or clearing a public utility right-of-way or land for
- 128 a new transmission or distribution line.

- 129 (3) (A) A licensed tree expert need not obtain a right-of-way
 130 permit for tree work performed on:
 131 (i) a tree that is uprooted or severely damaged because
 132 of a storm or vehicular collision;
 133 (ii) a tree branch that is broken and contacts a
 134 telephone, cable television, electric power, or other
 135 wire carrying electric current; or
 136 (iii) a tree or tree branch that a licensed tree expert finds
 137 immediately endangers a person or property.
- 138 (B) A licensed tree expert who provides tree work under
 139 subparagraph (A) must, within one week after an action is
 140 taken, give the Department:
 141 (i) notice of the property address, if available, and
 142 general area where the action was taken; and
 143 (ii) a proposed plan to upgrade the work, if necessary, to
 144 the tree work standards in this Section and
 145 applicable regulations.
- 146 The Department must approve, modify, or reject the
 147 proposed plan, after reviewing the actions taken, within 14
 148 days after receiving the information. If the Department
 149 does not act on the proposed plan within 14 days, the plan
 150 is approved by default. The Department may require
 151 further information, and may extend this deadline once for
 152 an additional 15 days in extenuating circumstances. The
 153 Director also may extend this deadline at the request of the
 154 applicant.
- 155 (c) *Basis of permit.* The Department may issue a right-of-way permit if the

- 156 applicant shows that the proposed tree work is necessary to:
- 157 (1) protect the health of the tree;
- 158 (2) eliminate or reduce a hazard to property, public safety, or health;
- 159 (3) improve or prevent a deteriorated tree condition;
- 160 (4) improve the overall appearance of the right-of-way; or
- 161 (5) carry out a development which has received all other applicable
- 162 development approvals.
- 163 (d) *Tree protection plan.*
- 164 (1) The Department must not issue a right-of-way permit for tree
- 165 work under Section 49-35 until the applicant has submitted, and
- 166 the Department has approved, a site-specific tree protection plan
- 167 that requires the applicant to take all necessary measures to
- 168 protect, and minimize damage during development to, any
- 169 affected roadside tree.
- 170 (2) If the advice or consent of any County department, in its role as
- 171 owner of or otherwise responsible for the care of any tree in a
- 172 County right-of-way, is needed or requested before the state
- 173 Department of Natural Resources may act on a permit allowing
- 174 tree work on a tree in a County right-of-way, that County
- 175 department must not give its advice or consent until the
- 176 Department of Permitting Services has approved a tree protection
- 177 plan under this subsection, Section 8-26, or Section 19-71.
- 178 (3) The Department must approve or reject each proposed tree
- 179 protection plan within 30 days after receiving it. If the
- 180 Department does not act on a proposed plan within 30 days, the
- 181 plan is approved by default. The Department may require further
- 182 information after a proposed plan is submitted, and may extend

183 this deadline once for an additional 15 days to receive any needed
 184 information. The Department also may extend this deadline at
 185 the request of the applicant.

186 (e) *Tree replacement.*

187 (1) Each permittee who removes a roadside tree in a County right-of-
 188 way must:

189 (A) plant a tree from the recommended County tree list in a
 190 County right-of-way, at or near the location of the original
 191 tree, which is suitable to that location, unless the Director
 192 waives this requirement because:

193 (i) compliance at the particular site would not be
 194 feasible; or

195 (ii) the removed tree was already dead or posed a
 196 danger to persons or property; and

197 (B) pay an amount into a Street Tree Planting Fund maintained
 198 by the Department of Transportation, unless the Director
 199 waives this requirement because the removed tree was
 200 already dead or posed a danger to persons or property, at a
 201 rate set by regulation that will allow the Department of
 202 Transportation to plant 2 more suitable replacement trees,
 203 or 3 more replacement trees if the Director has waived the
 204 on-site planting requirement because compliance at the
 205 particular site would not be feasible, at suitable locations in
 206 the right-of-way of a public road in the County.

207 (2) The permittee must pay the required amount within 30 days after
 208 the Director notifies the permittee that the payment is required.

209 (3) The Department of Transportation must use funds in the Street

210 Tree Planting Fund only to plant trees in the right-of-way of a
 211 public road in the County, and must not use funds received under
 212 this subsection to hire additional County staff or to supplant funds
 213 otherwise appropriated for that purpose.

214 (4) In locating, selecting, and planting trees under this subsection, the
 215 Department must:

216 (A) give highest priority to those areas of the County, such as
 217 central business districts and other urban and suburban
 218 areas, that have relatively low tree canopy coverage; and

219 (B) take every reasonable measure to avoid interference with
 220 utility transmission and distribution lines.

221 (f) *Roadside tree planting.*

222 (1) In this Section, *recommended County tree list* means a list of
 223 trees approved by the Director after consulting the Department of
 224 Transportation. The list must only include trees that are also on
 225 the State recommended tree list and must include each tree that
 226 the Director identifies as suitable for planting on specific sites
 227 and conditions in the right-of-way of a public road in the County.

228 (2) Any tree that any person plants on a public right-of-way must be
 229 a species and variety listed on the recommended County tree list
 230 and must conform to the American Standard for Nursery Stock.

231 (g) *Enforcement.* In addition to any other procedure or remedy allowed by
 232 law, the Director may issue a stop work order to prevent or correct any
 233 violation of this Section or any permit issued or plan approved under
 234 this Section. Sections 8-20 and 8-22 apply to any stop work order
 235 issued under this Section.

236 (h) *Regulations.* The County Executive must adopt regulations under
237 Method (2) to administer this Section that are at least as stringent as
238 applicable state roadside tree care standards and requirements. These
239 regulations may include:

- 240 (1) criteria and procedures to issue, deny, modify, suspend, or revoke
241 permits for work on roadside trees;
- 242 (2) tree work standards and practices needed to protect and maintain
243 roadside trees, including construction practices needed to prevent
244 or minimize damage to roadside trees; and
- 245 (3) supplementary roadside tree planting requirements and
246 specifications, and criteria and procedures needed to administer
247 the Street Tree Planting Fund.

248 **Sec. 2. Effective Date.** This Act takes effect on March 1, 2014, and applies to
249 any permit applied for under Chapter 8, Chapter 19, or Section 49-35 on or after that
250 date.

251 *Approved:*

252

253 /s/ July 26, 2013

Nancy Navarro, President, County Council Date

254 *Approved:*

255

256 /s/ July 31, 2013

Isiah Leggett, County Executive Date

257 *This is a correct copy of Council action.*

258

259 /s/ July 31, 2013

Linda M. Lauer, Clerk of the Council Date