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

2-112. Jurisdiction.

* * *

(c) The Board has the following appellate jurisdiction.

<table>
<thead>
<tr>
<th>The Board must hear and decide each appeal taken under:</th>
<th>Those appeals involve:</th>
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<tbody>
<tr>
<td>* * *</td>
<td>Right-of-way permits</td>
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<td>Section 49-35</td>
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* * *

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

(1) the applicant obtains a roadside tree care permit as necessary from the State Department of Natural Resources; and

(2) the applicant has submitted, in connection with the permit applied for under this Chapter, and the Director has approved, a site-specific tree protection plan that meets the requirements of Section 49-36A(d).

The Department must approve or reject each proposed plan within 30 days after receiving it. If the Department does not act on a proposed
plan within 30 days, the plan is approved by default. The Department may require further information after a proposed plan is submitted, and may extend this deadline once for an additional 15 days to receive any needed information. The Department also may extend this deadline at the request of the applicant.

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

19-71. Tree Protection.

(a) If any clearing, construction, or development allowed by any permit issued by the Department of Permitting Services under this Chapter would result in the trimming, cutting, removal, or injury of any roadside tree (as defined in Section 49-35) or any tree located in a State right-of-way in the County, the Director must not issue that permit until:

(1) the applicant obtains a roadside tree care permit as necessary from the State Department of Natural Resources; and

(2) the applicant has submitted, in connection with the permit applied for under this Chapter, and the Director has approved, a site-specific tree protection plan that meets the requirements of Section 49-36A(d), unless the applicant is engaged in an activity described in Section 49-36A(b)(2).

(b) The Department must approve or reject each proposed tree protection plan within 30 days after receiving it. If the Department does not act on a proposed plan within 30 days, the plan is approved by default. The
Department may require further information after a proposed plan is submitted, and may extend this deadline once for an additional 15 days to receive any needed information. The Department also may extend this deadline at the request of the applicant.

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

49-35. Right-of-way permit.

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

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

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

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

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

(c) * * *

(d) * * *

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

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

(g) * * *

(h) * * *

49-36A. Roadside tree work.

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

(b) Applicability; exceptions.

(1) A person (including a government agency) may receive a right-of-way permit to perform tree work on a roadside tree if the person:
(A) holds title to the land where the roadside tree is located;
(B) owns property abutting the right-of-way at the point where the tree is located;
(C) is a government agency that has an easement for the public right-of-way where the tree is located;
(D) is responsible for providing tree care to the tree;
(E) is a public utility; or
(F) is an authorized agent of any of these.

(2) The following activities are not subject to this Section (except subsection (f)) and do not require a right-of-way permit:

(A) cutting or clearing a public utility right-of-way or land for an electric generating station licensed under Sections 7-204, 7-205, 7-207, or 7-208 of the Public Utilities Article of the Maryland Code, or any successor provision, if:
   (i) any required certificate of public convenience and necessity has been issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code or any successor provision; and
   (ii) the cutting or clearing is conducted in a way that minimizes the loss of forest;

(B) routine maintenance of a public utility right-of-way, and cutting or clearing any tree by a public utility as necessary to comply with applicable vegetation management requirements or to maintain, repair, replace, or upgrade any public utility transmission or distribution line; or

(C) cutting or clearing a public utility right-of-way or land for a new transmission or distribution line.
(3) (A) A licensed tree expert need not obtain a right-of-way permit for tree work performed on:

(i) a tree that is uprooted or severely damaged because of a storm or vehicular collision;

(ii) a tree branch that is broken and contacts a telephone, cable television, electric power, or other wire carrying electric current; or

(iii) a tree or tree branch that a licensed tree expert finds immediately endangers a person or property.

(B) A licensed tree expert who provides tree work under subparagraph (A) must, within one week after an action is taken, give the Department:

(i) notice of the property address, if available, and general area where the action was taken; and

(ii) a proposed plan to upgrade the work, if necessary, to the tree work standards in this Section and applicable regulations.

The Department must approve, modify, or reject the proposed plan, after reviewing the actions taken, within 14 days after receiving the information. If the Department does not act on the proposed plan within 14 days, the plan is approved by default. The Department may require further information, and may extend this deadline once for an additional 15 days in extenuating circumstances. The Director also may extend this deadline at the request of the applicant.

(c) Basis of permit. The Department may issue a right-of-way permit if the
applicant shows that 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 a deteriorated tree condition;
4. improve the overall appearance of the right-of-way; or
5. carry out a development which has received all other applicable development approvals.

(d) **Tree protection plan.**

1. The Department must not issue a right-of-way permit for tree work under Section 49-35 until the applicant has submitted, and the Department has approved, a site-specific tree protection plan that requires the applicant to take all necessary measures to protect, and minimize damage during development to, any affected roadside tree.

2. If the advice or consent of any County department, in its role as owner of or otherwise responsible for the care of any tree in a County right-of-way, is needed or requested before the state Department of Natural Resources may act on a permit allowing tree work on a tree in a County right-of-way, that County department must not give its advice or consent until the Department of Permitting Services has approved a tree protection plan under this subsection, Section 8-26, or Section 19-71.

3. The Department must approve or reject each proposed tree protection plan within 30 days after receiving it. If the Department does not act on a proposed plan within 30 days, the plan is approved by default. The Department may require further information after a proposed plan is submitted, and may extend
this deadline once for an additional 15 days to receive any needed information. The Department also may extend this deadline at the request of the applicant.

(e) **Tree replacement.**

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

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

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

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

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

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

(3) The Department of Transportation must use funds in the Street
Tree Planting Fund only to plant trees in the right-of-way of a public road in the County, and must not use funds received under this subsection to hire additional County staff or to supplant funds otherwise appropriated for that purpose.

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

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

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

(f) Roadside tree planting.

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

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

(g) Enforcement. In addition to any other procedure or remedy allowed by law, the Director may issue a stop work order to prevent or correct any violation of this Section or any permit issued or plan approved under this Section. Sections 8-20 and 8-22 apply to any stop work order issued under this Section.
(h) *Regulations.* The County Executive must adopt regulations under Method (2) to administer this Section that are at least as stringent as applicable state roadside tree care standards and requirements. These regulations may include:

1. criteria and procedures to issue, deny, modify, suspend, or revoke permits for work on roadside trees;
2. tree work standards and practices needed to protect and maintain roadside trees, including construction practices needed to prevent or minimize damage to roadside trees; and
3. supplementary roadside tree planting requirements and specifications, and criteria and procedures needed to administer the Street Tree Planting Fund.

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

/s/ Nancy Navarro, President, County Council
July 26, 2013

Approved:

/s/ Isiah Leggett, County Executive
July 31, 2013

This is a correct copy of Council action.

/s/ Linda M. Lauer, Clerk of the Council
July 31, 2013