

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2018 Legislative Session

Bill No. CB-17-2018

Chapter No. 65

Proposed and Presented by Council Member Lehman

Introduced by Council Members Lehman, Toles, Glaros,
Turner, Taveras and Franklin

Date of Introduction September 25, 2018

BILL

1 AN ACT concerning

2 Utilities - Construction within the Roadway

3 For the purpose of defining certain terms; requiring valid road construction permits; providing
4 requirements for road construction permits; regarding the submittal and approval of plans;
5 providing the regulation of utility permits; providing for inspection and notice; providing for
6 general construction requirements for roads; and generally relating to highway and street
7 construction.

8 BY adding:

9 SUBTITLE 23. ROADS AND SIDEWALKS.
10 Sections 23-102(b)(15.1) and 23-102(b)(18.1)
11 The Prince George's County Code
12 (2015 Edition, 2017 Supplement).

13 BY repealing and reenacting without amendments:

14 SUBTITLE 23. ROADS AND SIDEWALKS.
15 Sections 23-107 and 23-108
16 The Prince George's County Code
17 (2015 Edition, 2017 Supplement).

18 BY repealing and reenacting with amendments:

19 SUBTITLE 23. ROADS AND SIDEWALKS.
20 Sections 23-112, 23-120, 23-123, and 23-129
21 The Prince George's County Code

(2015 Edition, 2017 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Section 23-102(b)(15.1) and Section 23-102(b)(18.1), of the Prince George's County Code be and the same are hereby added:

Sec. 23-102. - Definitions.

(a) Except as herein provided, the definitions of words and phrases used in this Subtitle shall be the same as stated in Subtitles 1, 4, 24, 26, and 27 of this Code. If not defined in the said Subtitles or herein, the words or phrases shall have the meanings generally recognized under Maryland law.

(b) The following words and phrases are hereby defined with respect to their use in this Subtitle:

* * * * *

(15.1) Utility Designated Inspectors mean utility staff inspectors or third-party inspectors of the utility's choosing. Utility staff eligible for training must be currently working in the inspection field as engineering technicians, or the appropriate equivalent, with construction inspection work experience.

* * * * *

(18.1) Road Restoration means the temporary or permanent act of road restoration following road construction.

* * * * *

SECTION [1] 2. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 23-107 and 23-108, of the Prince George's County Code be and the same are hereby repealed and reenacted without amendments:

Sec. 23-107. - Penalty.

(a) Any person who does any road construction in a public right-of-way without a valid permit, or performs work in conflict with the detailed plans submitted and approved for work to be performed under permit, or creates a situation within the right-of-way which requires corrective action shall immediately take those actions necessary to reinstate a pre-existing permit where the permit has expired or been suspended, or obtain a permit where none existed, and then correct or remove said work or correct said situation to bring it into conformance with established requirements or standards within the time specified in a written Notice of Violation

1 from the Department. Noncompliance on the part of the responsible person shall be a violation of
2 this Subtitle.

3 (b) Any person required by this Subtitle to have a permit who performs work which is in
4 violation of the provisions of this Subtitle, approved permit plans, or a lawful order issued
5 thereunder, or creates a situation in the right-of-way which constitutes a hazard to public safety,
6 shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars
7 (\$1,000.00), by imprisonment for not more than ninety (90) days, or by both such fine and
8 imprisonment for each offense. Each day that a violation continues shall be deemed a separate
9 offense.

10 (c) The application of such penalty shall not preclude the enforced removal, abatement, or
11 correction of the conditions, which were found to be in noncompliance, through appropriate
12 proceedings in a court of competent jurisdiction. In addition, the County may take those actions
13 necessary to correct the situation, and all costs therefor shall be billed to the responsible person
14 in accordance with the provisions of Section 23-109, or be recovered through legal recourse.

15 **Sec. 23-108. - Appeals; right of appeal.**

16 (a) Prior to the commencement of any appeal, any person aggrieved, with the exception of
17 a person aggrieved under Section 23-117(a), shall, within fifteen (15) days of a decision, action,
18 or nonaction by an authorized representative of the Department, make known in writing the basis
19 of his complaint to the individual responsible for the decision, action, or nonaction, together with
20 a request for review. If a satisfactory resolution cannot be reached within fifteen (15) days of the
21 receipt of the written complaint, the person aggrieved may request a review of the decision by
22 the next higher level of authority (as established by the Director).

23 (b) Any person may file an appeal to the Board of Administrative Appeals within thirty
24 (30) days (except for a Notice of Violation which shall require the appeal to be filed within
25 fifteen (15) days) after the resolution period provided for in Subsection (a), above, or within
26 thirty (30) days after the expiration of a thirty (30) day period allowed for such resolution. No
27 appeal (with the exception of a Notice of Violation) shall be considered by the Board of
28 Administrative Appeals until the person aggrieved has obtained a decision by the Director, or the
29 thirty (30) day period for resolution has passed without such decision.

30 SECTION [2] 3. BE IT ENACTED by the County Council of Prince George's County,
31 Maryland, that Sections 23-112, 23-120, 23-123, and 23-129, of the Prince George's County

1 Code be and the same are hereby repealed and reenacted with the following amendments:

2 **Sec. 23-112. - Application for permit.**

3 (a) Application for a road construction permit shall be made on forms provided by the
4 Director, and shall, when required by the Director, be accompanied by:

5 (1) The specifications applicable to the scope of work covered by the permit;

6 (A) For utility permits for non-emergency work, the plan for meeting the public
7 notification requirements, including how the public will be notified, which neighborhoods will
8 be impacted, and whether any change of traffic patterns will be part of the notification, as
9 approved by the Department;

10 (B) The plan for meeting the milling, overlay, and greenspace restoration
11 requirements, per the approved utility policy;

12 (2) The maintenance of traffic plan;

13 (3) The proposed inspection plan;

14 [(2)] (4) Suitable prints of detailed plans of the work;

15 [(3)] (5) A filing fee in accordance with Section 23-115 for each application;

16 [(4)] (6) Estimated cost of the work; and

17 [(5)] (7) The signature of the owner or authorized agent.

18 (b) The Director may refuse to accept an application for a road construction permit from
19 any applicant, as principal, who is or was in default on a previously issued permit, or who is
20 the permittee listed on an expired permit which is not currently in the process of being
21 extended by County administrative action.

22 (c) Before the Department may issue a road construction permit, or concur in the
23 issuance of a building permit, all bonds required shall be approved by the Director and the
24 County Attorney.

25 **Sec. 23-120. - Other types of permits.**

26 (a) Utility Permit. Utilities shall be required to apply for and obtain a permit from the
27 Department for all work performed within the public right-of-way related to the repair or
28 modification of their systems. A separate permit may be required for each new installation,
29 major repair, or modification to the system located within the paved portion of the right-of-
30 way. The Director may issue to a utility, at his discretion, a [blanket] maintenance permit or
31 permits for the performance of work within the right-of-way, and establish the conditions for

1 operation under the permit(s) so issued. Utility construction specifications and a quality control
2 plan for road resurfacing shall be reviewed annually by the Department and submitted with the
3 maintenance permit application.

4 (1) [Blanket] Maintenance permits may be issued for a period of up to one year.
5 [Bonding and permit fees for utility permits shall be in accordance with this Subtitle.]

6 (2) If a contractor has performed work for a utility in the County without a utility
7 permit three or more times within one year, the contractor after written notification of each
8 instance of noncompliance shall be prohibited from performing work in the right-of-way for
9 that utility for a period of up to 12 months. Pursuant to the provisions of Section 23-108 of this
10 Code, there is a right of appeal to the Director of the Department of Permitting, Inspections,
11 and Enforcement. Decisions of the Director of the Department of Permitting, Inspections, and
12 Enforcement may be appealed to the Board of Administrative Appeals. Bonding and permit
13 fees for utility permits shall be in accordance with this Subtitle. Utilities performing work
14 without a utility permit may be fined One Thousand Dollars (\$1,000.00) per day in accordance
15 with Subtitle 23.

16 * * * * *

17 **Sec. 23-123. - Inspection and notice.**

18 (a) Notice. For utility permits, [T]the permittee shall post notice in the following
19 situations:

20 (1) [A notice provided by the Department shall be posted in a conspicuous place
21 on each project site near an existing road] For non-emergency work, the permittee shall
22 notify the Department and the public in impacted neighborhoods of the time of
23 commencement of road construction, if the duration of work is expected to be more than five
24 (5) working days, or if there will be a change in traffic patterns, at least ten (10) working
25 days before commencement of any construction under said permit;

26 (2) [The permittee shall notify the Department of the time of commencement of
27 work at least two (2), and not more than five (5), working days before commencement of
28 any construction under the said permit] For non-emergency work, a project information sign
29 provided by the permittee and approved by the Department shall be posted in a conspicuous
30 place on each project site near or within an existing road five (5) working days in advance of
31 the start of construction unless waived by the Department;

1 (3) Where work is interrupted for a period of five (5) working days or more, the
2 permittee shall, at the end of each interruption, notify the Department of his intent to
3 actively resume work under the permit;

4 (4) Where the permittee has completed work on the subgrade and concrete forms,
5 he shall give notice to the Department that the work is ready for inspection and approval.

6 (5) After written notification of noncompliance, the permittee may be fined Five
7 Hundred Dollars (\$500.00) per day of noncompliance with the public notification plan.

8 (b) Inspection; penalty for noninspection.

9 (1) [The Department shall provide inspection services to assure compliance with
10 this Subtitle.] Upon request from a utility, the Department shall provide training and approval
11 to utility designated inspectors and third-party inspectors to inspect permitted work to verify
12 that the compaction and roadway restoration and repaving work has been performed in
13 compliance with the Prince George’s County Code and Specifications. For non-emergency
14 work, all utilities, or their contractors doing compaction, right-of-way and roadway restoration
15 and repaving work under a utility permit or a maintenance permit are required to provide for a
16 utility designated staff inspector or an independent third-party inspector both of whom must
17 be approved by the County to perform an inspection to ensure that the permitted compaction,
18 right of way and roadway restoration and repaving work is in compliance with the Prince
19 George’s County Code and Specifications. The permittee shall, during the hours of work, make
20 available to the inspector and to other employees of the Department the construction work,
21 materials, plans, and specifications.

22 * * * * *

23 (d) Compliance; penalties.

24 (1) The permittee, including [public] utilities, agents, contractors, and
25 subcontractors shall comply with all requirements of the permit, including sediment and
26 erosion control, either before or during the course of construction.

27 (2) Where the permittee fails to comply with the requirements cited in the Notice of
28 Violation, said noncompliance may result in the following:

29 (A) Issuance of a stop work order. A stop work order may be issued for work
30 that commences without a permit. A stop work order shall be issued by the Director and
31 constitute a suspension of the applicable permit, and shall prohibit the violator from doing any

1 further work under the permit except such work as shall bring any previous work into
2 compliance. When the permittee corrects the work to the satisfaction of the Department in
3 accordance with the applicable requirements, the Director shall rescind the stop work order in
4 writing at which time the permittee may resume further work under the permit; or

5 (B) The County may complete the required work and charge the permittee on a
6 cost basis, including the costs of administration and overhead.

7 (3) Any governmental agency not required to obtain a permit from the Department
8 or post a bond shall be subject to the provisions of Subsections (d)(1) and (d)(2), above. In
9 addition, nonpayment by any governmental agency of any outstanding balance due to the
10 County within the time allotted shall subject said governmental agency to liability in the
11 amount of nonpayment, except where state or federal law provides to the contrary.

12 * * * * *

13 **DIVISION 3. DESIGN AND CONSTRUCTION STANDARDS**
14 **AND REQUIREMENTS.**

15 **Sec. 23-129. - General construction requirements for existing or proposed County roads.**

16 * * * * *

17 (j) Utility cuts.

18 (1) No person, including any [public or private] utility, shall cut any road for the
19 purpose of installing, connecting, repairing, or otherwise modifying underground gas,
20 electric power, water, sewer, storm water, telephone or cable lines, or other utility without
21 first obtaining a permit from the Director. Any person, including [public] utilities with a
22 valid [public] utility permit, shall be required to provide the Department with forty-eight
23 (48) hours' notice prior to cutting the pavement. Said notice shall include the location, type,
24 timing, and extent of the cut.

25 (2) Except in an emergency, no utility or person shall be allowed to cut into any
26 road pavement for a period of three (3) years from the date of acceptance of the road
27 construction in the case of new road construction, or completion of pavement resurfacing in
28 the case of maintenance or improvement to an existing road. The placement of all new
29 utilities shall be accomplished, to the maximum practicable extent as determined by the
30 Director, by tunneling, jacking, boring, or other means which will avoid disturbing the

1 pavement. This subparagraph shall not be effective until two (2) years after a utility location
2 protocol is approved as part of the Design and Construction Standards.

3 (3) Any [public] utility which cuts, and then subsequently repairs a pavement
4 with either a temporary or permanent patch, shall mark the patch or adjacent pavement
5 surface to identify the utility responsible for the pavement cut. Temporary patches may be
6 designated using paint or other approved markers. Permanent pavement patches shall be
7 designated using an approved marker manufactured and installed in accordance with the
8 Design and Construction Standards. After written notification of noncompliance, utilities not
9 in compliance with this standard may be fined Five Hundred Dollars (\$500.00) per violation
10 of Subsection 23-129(j)(3) of this Code.

11 (4) The permittee or its contractor shall have in his or her possession on site, and
12 make available to an inspector, on request, a copy of the subject permit and detailed plans
13 showing the location of all existing utilities within the area of the cut.

14 * * * * *

15 (9) Restoration and Repairs.

16 (A) Where a pavement cut has been made, the permittee shall be responsible
17 for the following in accordance with the Design and Construction Standards:

- 18 (i) Restore road base and surface to comply with County standards and
19 specifications;
- 20 (ii) Repair pavement failure;
- 21 (iii) Repair settlements; and
- 22 (iv) Construct permanent patches in the cut area.

23 (B) The permittee shall also be responsible for all future repairs to the cut
24 area which are the result of consolidation, subsidence, or inadequate compaction of the
25 subgrade, or any other type of failure of the patch.

26 (C) It shall be the sole responsibility of the permittee to protect property
27 adjacent to, and within the area of, the cut, including sidewalks, driveways, shrubbery, trees,
28 buildings, lawns, or other objects during construction and maintenance. In the event that a
29 [public] utility(ies) cuts the pavement in so many places or in such a way that the road
30 surface or subgrade deteriorates over time resulting in numerous pavement failures or a poor

riding surface such that the road must be resurfaced or reconstructed as a direct result of the utility cuts and pavement repairs, the Director may instruct the utility company(ies) to resurface or reconstruct the roadway as the Director may determine. Failure to repair the roadway in a timely fashion shall result in the suspension of any existing permits.

(D) For any pavement cut, the following pavement rehabilitation considerations apply as determined by the Director or his designee:

(i) When the pavement cut is within a roadway intersection (i.e. up to the outside fillet points that define the roadway intersection), the mill and overlay requirements, as a minimum, apply to the full surface area of said intersection; and

(ii) When the pavement cut is within a cul-de-sac bulb, (i.e. up to the outside fillet points where the cul-de-sac bulb meets the regular section roadway), the mill and overlay requirements, as a minimum, apply to the full surface area of said cul-de-sac bulb.

* * * * *

SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect on July 1, 2019.

Adopted this 23rd day of October , 2018.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Dannielle M. Glaros
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:

- Underscoring indicates language added to existing law.
- [Brackets] indicate language deleted from existing law.
- Asterisks *** indicate intervening existing Code provisions that remain unchanged.