



Gregory J. Swain, County Attorney

MEMORANDUM

To: Members, Anne Arundel County Council

From: Lori L. Blair Klasmeier, Deputy County Attorney /s/

Via: Gregory J. Swain, County Attorney /s/

Date: January 6, 2020

Subject: Bill No. 2-20 – Public Works – Rights-of-way – Abandonment of Facilities

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 2-20, which addresses infrastructure in County roads and rights-of-way.

Purpose. The purpose of Bill No. 2-20 is to address the failure of owners to relocate or remove obstructions and abandoned infrastructure in County roads and rights-of-way.

Background. As underground utilities are becoming increasingly prevalent in County rights-of-way, it is becoming increasingly critical that the respective utility entities manage and administer the physical state of their assets and honor the County’s laws and regulations under which they are permitted. The County has experienced a growing incidence of uncharted and charted infrastructure during construction for road-widening, intersection improvements, and water/sewer work. Once encountered, it is difficult to identify the owner of the uncharted infrastructure and then agreeing on relocation design, construction, and terms and conditions for the work, including costs. While charted infrastructure is known, it is often not located where anticipated, introducing unanticipated needs for relocation to remedy conflicts with proposed County work. This leads to extended construction delays, increased costs to the County, and disruption to the surrounding properties and travelling public. The extreme cases get unduly extended due to unresponsiveness of the owners of the infrastructure. Other issues arise from the delay by owners of recently buried infrastructure to update their “as-built” records to ensure that MISS UTILITY has current information, without which the County cannot proceed with markings and subsequent construction.

Mis-marks and inadequate quality assurance by the owners of infrastructure leads to unnecessary delays and disruption. Specifically, the County encounters inadequate depth of cover and relocation issues related to ADA curb ramp upgrades and curb, gutter, and sidewalk reconstruction because infrastructure (usually communications) is buried at an inadequate depth within the County right-of-way (“ROW”) . Sometimes these facilities are so shallow that they preclude the installation of ADA compliant curb ramps or residential driveway aprons within the ROW unless relocated. Shallow facilities within the ROW lead to an increased likelihood for damage resulting in service outages to utility customers, repair fees/bills to County contractors, delays in the completion of work, extended impacts on existing pedestrian facilities vital to communities (such as school walking routes), and increases to the cost incurred by the County to contract this type of work.

The County has had several road projects, including those on Pasadena Road, Cape St. Claire Road, Sunrise Beach Road, Chesapeake Center Drive, and Forest Drive, that have suffered inexcusable delays and disruption due to buried infrastructure issues and conflicts with or lack of responsiveness from the infrastructure owners.

The County has recently assumed design, construction, and funding obligations for improvement to certain State-owned roads, but the State has been unwilling to delegate its prior rights to the County relating to existing private infrastructure in the State rights-of-way. This has required the County to incur significant costs to relocate the infrastructure that could have been avoided if the project were completed by the State. In that instance, the State could have asserted its prior rights, and the infrastructure owners would have had to relocate at their expense.

Summary. In **Section 1** of the Bill, the definition of “obstruction” in § **13-1-105(a)** is modified to remove the word “private” when referring to facilities so that there is no question that “obstruction” includes public utilities.

Subsection 13-1-105(b) already includes a duty to remove or relocate obstructions in County roads, easements, and rights-of-way, but the Bill adds a requirement that the owner act within 45 days of a notice from the County.

Subsection 13-1-105(c) allows the County to remove or relocate an obstruction in County roads, easements, and rights-of-way if the owner fails to do so and allows for suspension of any active permits or issuance of any permit until the obstruction is removed. The Bill states that this removal and relocation may be done if the owner does not remove or relocate the obstruction within the 45 day period in § 13-1-105(b) and allows the County to deduct the cost of the work performed from any security held by the County.

The Bill adds § **13-1-105(d)**, which relates to abandonment of above-ground or underground infrastructure in County roads, easements, and rights-of-way. Facilities are considered abandoned if they are not used for one year or more and they must be removed immediately by the owner. If the owner does not remove a facility as required, the County may, after 60 days’ notice to the owner, may remove the facility and charge the owner for the cost of performing the work.

Underground facilities may be abandoned in place if a record of location of the facility is proved to the Department of Public Works upon abandonment. However, if the abandoned facility prevents or makes an improvement to the County right-of-way impracticable, the owner shall remove the abandoned facility within 30 days of a request by the County.

The Bill also adds § **13-1-105(e)**, which makes a violation of this Section a Class B Civil Offense.

Subsection 13-3-502 relating to right-of-way permits is modified to provide that a permit may be suspended or revoked and issuance of pending and future permit may be suspended if obstructions in, on, over, under, or through County roads, easements, or rights-of-way are not removed or relocated as required by the Department of Public Works or if fees or costs are due and owing to the County.

Section 2 provides that the Bill will become effective 45 days from the date that it becomes law.

Please let me know if there are any questions.

Cc: Stuart Pittman, County Executive
Jennifer Purcell, Chief of Staff
Benjamin J. Birge, Chief Administrative Officer
Peter Baron, Legislative Liaison
Sherri Dickerson, Personnel Officer
Jim Beauchamp, Budget Officer