

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 6-10, Noise Control – Arts and Entertainment Activities

Bill 6-10, Noise Control – Arts and Entertainment Activities, sponsored by Councilmember Elrich and Council President Floreen, was introduced on March 2, 2010. A public hearing was held on March 23 (see testimony, ©9-12).

Summary Bill 6-10 would set different noise level standards for certain seasonal arts and entertainment activities. It would also exempt noise levels created by those seasonal arts and entertainment activities, up to a higher maximum level, from being treated as a noise disturbance. In addition, a potential homebuyer would be notified about certain seasonal arts and entertainment activities near those areas.

This Bill would allow a performing arts facility (such as, but not limited to, Strathmore Hall) which conducts at least 5 outdoor arts and entertainment activities (such as concerts or films) each year to, at its option, annually file a noise mitigation plan with the Department of Environmental Protection (DEP). DEP would review but would not approve the plan. Having filed the plan, the facility would then be subject to a higher maximum noise level from 11 a.m. to 11 p.m. during April through October – 75 dBA versus the normal 65 (daytime) or 55 (nighttime) levels that apply to residential areas. If an arts facility conducts fewer than 5 outdoor events, under the current law (see County Code §31B-11(a)) it could apply for an event-by-event waiver, which is good for up to 30 days, and would not have to file a noise mitigation plan.

Issues

1) Should this kind of blanket waiver of the applicable noise limits be allowed?

The management of Strathmore Hall Foundation (see testimony, ©9-10) in particular is concerned that occupants of the new housing development (Symphony Park) being built nearby would file a noise complaint during any outdoor performance event (concert or film) which exceeds the applicable relatively low 55 dBA nighttime noise limits. In their view, the ability to

apply for an event or 30-day waiver, which the current law allows, is not sufficient because they need to schedule outdoor events and sign performers well in advance. They also argue that the upper noise limit in this Bill, 75 dBA, is not excessive and would not offend nearby residents.

While the County's noise control enforcement agency, the Department of Environmental Protection (DEP) has received few complaints about concerts or other seasonal outdoor entertainment activities, that doesn't necessarily mean that the public does not object to them. For another view, see the letter from a County resident on ©15 regarding Silver Spring outdoor concerts.

The County Noise Control Advisory Board (see memo, ©13-14) does not support this Bill and instead proposed that Strathmore Hall Foundation use the long-term (up to 3 years) noise waiver process allowed under the current law (see County Code §31B-11(b)). This process includes public notice and a hearing.

2) If any waiver is allowed, should DEP be required to approve a noise mitigation plan?

As introduced, Bill 6-10 only requires the applicant to submit a noise mitigation plan, which DEP would review but not approve or reject. The 3-year waiver process which the Noise Control Advisory Board prefers does not expressly require the applicant to submit a noise mitigation plan, although DEP could require one as a condition of approving the waiver.

3) What if any disclosure should surrounding residents receive?

Bill 6-10 requires the seller of any residential property within 300 yards of a covered performing arts facility¹ to notify any buyer that seasonal arts and entertainment activities at the facility would be subject to special noise limits (see ©4-5, lines 77-98). At the hearing the Greater Capital Area Association of Realtors (GCAAR) objected to this added disclosure requirement, partly because it would add to many other required notices recently inserted in County law (see GCAAR testimony, ©11-12).

This kind of pre-sale notice has another flaw: it's not clear when it would be triggered because a performing arts facility could begin an outdoor concert program at any time, and home sellers would not necessarily know when the facility has applies for the special noise standards under this Bill.

As an alternative form of notice among others, GCAAR suggested directing the performing arts facility to notify surrounding homeowners. However, this would not reach prospective homebuyers before they buy in that area. GCAAR also suggested that new homebuyers in the Strathmore Hall area be given a notice tailored to that facility, or some

¹A "performing arts facility is defined in Bill 6-10 (see ©2, lines 25-27) in a way that limits it to a venue that primarily presents live theatrical, music, or dance performances, such as Strathmore, Black Rock, or Round House Theater, and in staff's view would not cover a temporary performance area such as the site of downtown concerts in Silver Spring, Bethesda, or Rockville. Those areas would be subject to the otherwise applicable noise limits and could apply for waivers under the current law.

disclosure be required to be included in homeowners' association and condominium documents for developments near a performing arts facility.

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Bill No. 6-10
Concerning: Noise Control – Arts and Entertainment Activities
Revised: 2-25-10 Draft No. 1
Introduced: March 2, 2010
Expires: September 2, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Elrich and Council President Floreen

AN ACT to:

- (1) set different noise level standards for certain arts and entertainment activities;
- (2) exempt certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance;
- (3) require certain notices to be given to certain potential homebuyers near certain arts and entertainment activities; and
- (4) generally amend the County noise control law.

By amending

Montgomery County Code
Chapter 31B, Noise Control
Sections 31B-2 and 31B-5

By adding

Chapter 31B, Noise Control
Section 31B-6A
Chapter 40, Real Property
Section 40-12D

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:

1 **Sec. 1. Sections 31B-2 and 31B-5 are amended, and Section 31B-6A is**
2 **added, as follows:**

3 **31B-2. Definitions.**

4 In this Chapter, the following words and phrases have the following
5 meanings:

6 **Arts and entertainment activity** means a performance of artistic or creative
7 **work, such as a play, film, music, or dance.**

8 [(a)] * * *

9 [(b)] * * *

10 [(c)] * * *

11 [(d)] * * *

12 [(e)] * * *

13 [(f)] * * *

14 [(g)] * * *

15 [(i)] * * *

16 [(j)] * * *

17 [(k)] * * *

18 [(l)] * * *

19 [(m)] * * *

20 **Noise mitigation plan** means a document that identifies noise mitigation
21 **equipment, materials, and methods which are sufficient to comply with applicable**
22 **standards for an outdoor arts and entertainment activity.**

23 [(n)] * * *

24 [(o)] * * *

25 **Performing arts facility** means a building, outdoor seasonal, temporary, or
26 **permanent stage, or other clearly defined area or space, which is located at a venue**
27 **that primarily presents live theatrical, musical, or dance performances.**

55 (b) If the owner or manager of a **performing arts facility** submits a
 56 completed **noise-mitigation plan** to the Department and conducts at
 57 least 5 outdoor **arts and entertainment activities** each year in
 58 accordance with that **plan**, each outdoor **arts and entertainment**
 59 **activity** held at the **facility** must not exceed the following noise decibel
 60 limits:

61 (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75
 62 dBa, as measured on the receiving property; and

63 (2) at all other times, the maximum allowable noise level set in
 64 Section 31B-5.

65 (c) A person must not cause or permit noise levels from an outdoor **arts**
 66 **and entertainment activity** which is subject to this Section to exceed
 67 the standards in subsection (b).

68 (d) Any outdoor **arts and entertainment activity** subject to this Section
 69 which meets the standards in subsection (b) must not be cited as causing
 70 a noise disturbance.

71 (e) For a **performing arts facility** to remain in compliance with this
 72 Section, its owner or manager must update its **noise mitigation plan** as
 73 necessary to reflect significant changes in programming and noise
 74 control technology, and must file an updated **plan** with the Department
 75 not later than March 15 each year.

76 **Sec. 2. Section 40-12D is added as follows:**

77 **40-12D. Disclosure of noise from certain arts and entertainment activities.**

78 (a) If any residential real property is located within 300 yards of a
 79 **performing arts facility** where 5 or more outdoor **arts and**
 80 **entertainment activities** which are subject to special noise level
 81 standards under Section 31B-6A have been conducted during the

82 previous 12 months or are scheduled to be conducted in the next 12
83 months, any seller of that property must disclose to each prospective
84 buyer, before the buyer signs a contract to buy the property, that certain
85 seasonal outdoor **arts and entertainment activities** conducted at that
86 facility are subject to special noise level standards which may exceed
87 otherwise applicable noise limits.

88 (b) A prospective buyer must indicate, by signing an addendum to the
89 contract or a separate section of the contract printed in boldface type in
90 a clearly demarcated box, that:

91 (1) the seller has provided the information required by subsection (a);
92 and

93 (2) the buyer understands that:

94 (A) nearby property may be a source of periodic noise from
95 seasonal outdoor **arts and entertainment activities**; and

96 (B) the buyer may obtain more information about noise limits
97 on these activities from the County Department of
98 Environmental Protection.

99 *Approved:*

100

Nancy Floreen, President, County Council Date

101 *Approved:*

102

Isiah Leggett, County Executive Date

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

104

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 6-10

Noise Control – Arts and Entertainment Activities

DESCRIPTION:	Sets higher noise level standards during specific hours and seasons for certain arts and entertainment activities. Exempts certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance. Requires potential homebuyers near covered outdoor performance areas to be notified about potential noise from arts and entertainment activities at those areas.
PROBLEM:	Certain outdoor performing arts activities with substantial community support may violate current evening noise standards.
GOALS AND OBJECTIVES:	To allow reasonable, enforceable standards to apply to seasonal outdoor performances, and to notify potential neighbors that outdoor performances with different noise standards may be held nearby.
COORDINATION:	Department of Environmental Protection
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:	To be researched.
PENALTIES:	Class A



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 17, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 6-10, Noise Control – Arts and Entertainment Activities

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This bill will establish a “seasonal noise level standard” that exceeds otherwise applicable noise standards for qualifying outdoor arts and entertainment activities that consist of more than five performances at a performing arts facility. To qualify for the seasonal noise level standard, the owner of the facility must file a noise mitigation plan, prepared by an acoustical engineer or consultant, with the Department of Environmental Protection. The plan must specify, among other things, the types of noise mitigation measures that the facility will employ and the impact of the proposed arts and entertainment activity and of the noise mitigation measures on the performers, the audience, and nearby properties. The Department of Environmental Protection must make the plan available to the public and send a copy to the Noise Control Advisory Board.

In addition, potential buyers of residential real property located within 300 yards of a performing arts facility subject to the seasonal noise level standard must be notified by the seller that there may be periodic noise from nearby seasonal outdoor arts and entertainment activities that may exceed otherwise applicable noise limits.

FISCAL AND ECONOMIC SUMMARY

This legislation does not appear to have a fiscal impact on the County, although the exact scope of the facilities affected is still to be determined. The noise mitigation plan submitted by the owner of a performing arts facility will not require processing or approval by the Department of Environmental Protection, except for making it available to the public and to the Noise Advisory Board. However, it is uncertain at this time whether the legislation will affect County-sponsored seasonal outdoor activities, either by restricting them or by requiring the County to pay for the preparation and implementation of a noise mitigation plan.

Office of the Director

Nancy Floreen, President, County Council
March 17, 2010
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The Department of Finance has determined that this bill will not have an overall economic impact. However, it is unclear what effect, if any, the notification requirements contained in the proposed bill may have on sellers of property in the vicinity of performing arts facilities, or on the real estate industry.

The following contributed to and concurred with this analysis: Stan Edwards, Department of Environmental Protection; Mike Coveyou, Department of Finance; and John Greiner, Office of Management and Budget.

JFB:jg

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Bob Hoyt, Director, Department of Environmental Protection
Stan Edwards, Department of Environmental Protection
Mike Coveyou, Department of Finance
John Greiner, Office of Management and Budget
John Cuff, Office of Management and Budget

Remarks from Eliot Pfanstiehl, President & CEO
Strathmore Hall Foundation, Inc.
March 23, 2010

Re: Bill No. 6-10
Noise Control – Arts and Entertainment Activities

Good Evening: Council President Floreen and Members of the County Council:

My name is Eliot Pfanstiehl, President and CEO of Strathmore Hall Foundation. Strathmore is a performing arts center that offers both indoor and outdoor concerts and performances, art exhibitions, film and other outdoor festivals, and various educational services for the benefit of the public. Strathmore is one of the performing arts centers that will benefit from the proposed Noise Ordinance amendments.

For the past 24 years, Strathmore has presented hundreds of concerts, art exhibitions, community festivals, and outdoor movies while welcoming thousands of artists and several million citizens to the 11 acres campus. Strathmore has become synonymous for the cultural quality of life for the residents of Montgomery County, in part due to the free outdoor events offered every year on the lawn and in the Gudelsky Gazebo.

During the last 3 years, Strathmore has been working with two developers on the American Speech-Language-Hearing Association (ASHA) property developing "Symphony Park", a 112-unit condominium project, which borders the Strathmore campus to the north. With the proposed change in the use of the site from office to residential use, and coupled with the close proximity of the proposed residences to the Strathmore campus, this could compromise the continuance of all outdoor activities at Strathmore, unless certain changes are made to the County's current noise regulations.

During the summer of 2007, the County Department of Environmental Protection monitored sound levels from our outdoor concerts and the NIH Film Festival. Virtually all the events violated the County's nighttime residential noise standard of 55 dBA maximum at the nearest proposed property line.

We believe this proposed amendment is important for addressing inherent conflicts between the new neighbors at Symphony Park, the current Noise Ordinance and the cultural events desired by County residents, and note that such an amendment would further ensure future compliance of Strathmore's outdoor events with the Noise Ordinance.

(over)

Remarks from Eliot Pfanstiehl, President & CEO
Strathmore Hall Foundation, Inc.
March 23, 2010

Re: Bill No. 6-10
Noise Control – Arts and Entertainment Activities

pg 2.

The Board of Directors of the Strathmore Hall Foundation, Inc. represents the larger community and is guided by its primary objective to protect the substantial public investment in the Strathmore facilities. With the capital investment of \$48 million each by both Montgomery County and the State of Maryland to build the Music Center, we were concerned about maintaining our mission in the face of this new development.

In addition to the public funds expended, Strathmore generated private contributions and earned income over the years that now exceed \$50 million dollars. Protecting this public and private investment is our moral and fiduciary responsibility.

We maintain that the County Council should amend the current Noise Ordinance to create an exception for the outdoor activities for the cultural arts centers of Montgomery County. Unless the Noise Ordinance is amended, it will only be a matter of time before the most accessible programs will be curtailed by citizen appeals to the ordinance.

We want to thank you for allowing us to testify this evening and I would be happy to answer any questions you may have.



Bill 6-10
#1

**TESTIMONY OF THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®
BEFORE THE MONTGOMERY COUNTY COUNCIL REGARDING
“BILL 6-10, NOISE CONTROL – ARTS AND ENTERTAINMENT ACTIVITIES”**

March 23, 2010

Council President Floreen and members of the council, my name is Shelly Murray and I am the 2010 President for the Greater Capital Area Association of REALTORS® (“GCAAR”) – the voice of Montgomery County and the District of Columbia’s nearly 9,300 REALTORS®, property managers, title attorneys and other real estate professionals. On behalf of GCAAR, I would like to make some comments regarding Bill 6-10.

REALTORS® Supportive of Disclosure

As many of you on the Council know, GCAAR has worked very closely with you in the past on similar issues related to disclosures in the real estate contract. For example, the Historic Preservation, Special Protection Area, agricultural, and most recently development districts and estimated tax disclosures. GCAAR fully understands the intent of this new legislation and that it is important so that homeowners and future homeowners are fully aware of any arts and entertainment activities going on within a certain distance from their homes. Therefore, GCAAR would like to work closely with the Council to find the most sufficient and adequate way for residents to understand the arts and entertainment activities in the county.

Prior to this hearing, GCAAR met with lead sponsor Councilmember Elrich to discuss many of our concerns that we have with yet another disclosure to the real estate contract. While GCAAR is generally supportive of disclosure because it helps a buyer make a more informed decision about a particular piece of residential property, we have many concerns with the recent increase of government regulations on the real estate transaction, the mandates of disclosures and the extra paperwork that they add to the real estate contract. As I’m sure many of you are aware, over the years the real estate contract has gone from only a few pages to a very lengthy, thick and overly cumbersome document. GCAAR has been working very hard over the years to find ways to simplify and streamline the contract. And every new real property disclosure potentially adds another page to the contract. And since this particular issue only affects a small part of the county residents, we are concerned that the disclosure language is broader than necessary right now.

A Better Way for Notification

GCAAR very clearly understands that there is a need to notify buyers of certain state and county laws. We had a very good discussion with Councilmember Elrich on how to modify and amend



the legislation to see if there is a way to remove the element of the real estate transaction and maybe look at some type of public notice requirement. We have several suggested changes that might accomplish the same goal without putting the burden on a seller to disclose an item that is probably more feasibly accomplished through a public notice requirement.

Here are some of our suggested changes:

- Offer an amendment to change Section 40-12D to change the language so that it is NOT a disclosure that a seller has to provide the buyer with;
- Change the disclosure to be a “Notice Requirement” on the performing arts facility where 5 or more outdoor arts and entertainment activities are held. They must notify all homeowners within 300 yards that this facility is subject to special noise levels standards:
 - a. The notice must include information on the county’s noise ordinance, noise levels permitted to this facility, the activities conducted by the facility, homeowners’ rights, etc.
 - b. This notice should satisfy any legal issues as long as the notice is provided and it also should be distributed in a certain timeframe should the facility choose to change their activities
 - c. We would suggest the notice also be provided every 6 months or at least on an annual basis;
- HOA/Condo docs – another way and an additional way would be to look into having this notice included in the HOA/condo documents so that buyers will be made aware that they are purchasing within 300 yards of a performing arts facility
- Master plan – look to see what is listed on the master plan and if there is anyway a buyer could see this on a master plan
- Property tax records – the property tax records provide a lot of detailed information about a home. Is there a way to include this information in an address search of a home?
- Strathmore Hall specific – All potential buyers must be given a notification that Strathmore Hall is within 300 yards of where the homes are being built. The notification would provide further information on the county’s noise ordinance.

GCAAR looks forward to continuing to work on this issue to find a proper solution so that all homeowners and future homeowners are properly notified about arts and entertainment activities near their homes. Thank you for your consideration of GCAAR’s perspective on this issue.

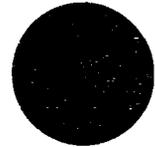


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NOISE CONTROL ADVISORY BOARD

MEMORANDUM

July 6, 2010



2010 JUL -7 AM 8:29
RECEIVED
MONTGOMERY COUNTY

TO: Nancy Floreen
President, Montgomery County Council

FROM: John Fuchs
Chair, Noise Control Advisory Board

SUBJECT: Bill 6-10, Noise Control, Arts and Entertainment Activities

The Montgomery County Noise Control Advisory Board (NCAB) has reviewed proposed Bill 6-10, Noise Control, Arts and Entertainment Activities, sponsored by Councilmember Elrich and Council President Floreen. Bill 6-10 would establish different maximum noise levels for certain arts and entertainment activities and, in some cases, would exempt the noise from these activities from being treated as a noise disturbance. We were fortunate to have Mr. Dale Tibbitts, from Councilmember Marc Elrich's staff, attend our June 14, 2010 meeting along with representatives from several of the County's Regional Services Centers.

The NCAB is mandated by law to advise the County Executive, County Council, and the Director of the Department of Environmental Protection on noise control issues. Pursuant to this mandate, at its last meeting the Board and its guests discussed several concerns regarding Bill 6-10 and provides the following comments:

- The definition of a "performing arts facility" is vague and could easily be misused.
- As written, noise mitigation plans do not need to be approved, just submitted, and there is no recourse if an entity does not follow the noise mitigation plan. There may be consequences associated with a County approval that would limit the County's enforcement powers.
- There is no oversight or enforcement. The County may have resource limitations in these areas.
- The burden of proof for a disturbance is on the affected property owner.
- Noise mitigation plans are not required to be posted for public viewing, unlike a permit. There was discussion about the mechanism for disclosing the special noise considerations during real estate transactions of affected properties.
- It is unclear whether there is an appeal process or what an appeal would involve.
- The term "exempted residential" requires further definition or clarification as it applies to this topic.

Nancy Floreen
July 6, 2010
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Following the informative discussions during our June 14th meeting, the NCAB recommends that the County use the provision for a three-year noise waiver that is currently allowed under Chapter 31B of the Montgomery County Code to address the underlying issues that introduction of Bill 6-10 is expected to resolve. It is possible that slight modifications to the current code may be required, but the legislative activity involved would be less than the introduction of a new law.

Mr. Tibbitts also stated that the NCAB Chair is welcome to attend the upcoming work session on this proposed legislation. I am happy to accept the invitation and will attend the working session on July 15th to discuss our comments before the County moves forward with Bill 6-10. Thank you for your attention to this matter.

cc: County Executive Isiah Leggett

6-30-10

LETTERS TO THE EDITOR

Turn down the volume in urban centers

I am writing to express my continued frustration with the volume of the concerts in downtown Silver Spring. They drown out every attempt at conversation for 100 yards.

When concerts are in force, it is impossible to eat outside at the restaurants — the wait staff cannot hear our orders and I cannot hear them. Managers have told me they are not allowed to complain about the volume. Even inside, the sound drowns out ambiance and any music inside.

I can't have friends call to ask where to meet me, because it is impossible to hear them over

the phone. Even walking down the street toward the AFI theater, it is not possible to just have a conversation until we get around the corner.

This Saturday there was a chess tournament (with players) struggling to concentrate over the ear splitting, static-filled sound.

As a professional who follows health issues as part of my job, I recognize this as clearly loud enough to permanently damage hearing. I can't imagine that it is within allowable decibel limits. If it wasn't our own government sanctioning it, there would be tickets and arrests. Parents should not be forced to decide between the fountain and

their children's safety. Employees should not have to choose their jobs or their hearing.

I like the music most of the time. However, I'm not going to permanently ruin my hearing for it.

My calls have been met with empty promises to lower the dangerous volume. What organization is accountable to the employees, diners, and families in downtown Silver Spring for the dangerously high decibels of the noise here? When will the decibel levels be enforced? Who will take responsibility and supervise this activity?

Andrea Chamblee, Silver Spring