

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals

Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals, sponsored by the Council President at the request of the County Executive, was introduced on May 5, 2009. A Planning, Housing and Economic Development Committee worksession on this Bill and related code enforcement proposals is tentatively scheduled for July 13 at 2 p.m.

Bill 22-09, which was part of the Executive’s code enforcement package, would make a number of mainly technical changes in the process to enforce County laws. Specifically, it would:

- authorize a code enforcement agency to issue a notice of violation (NOV) – in effect, a warning notice – which cannot be appealed to the Board of Appeals (see ©3-4, lines 4-30). The next step after an NOV is issued normally would be a civil or (less likely) criminal citation, enforceable in the District Court;
- repeal the right to appeal certain administrative actions, other than the issuance or denial of a license or permit, to the Board of Appeals, and clarify that certain other appeals can be taken (see ©4, lines 31-33 and following table; ©7-8, lines 111-119; ©8-9, lines 134-156; ©15-17, lines 174-234; ©17-19);
- confirm that decisions of the Circuit Court in cases appealed from the Board of Appeals can be appealed to the Court of Special Appeals (see ©5-6, lines 35-78); and
- repeal obsolete fire safety code regulatory references (see ©9-15, lines 157-173 and included table).

Veteran land use lawyer (and former County Hearing Examiner) Stan Abrams criticized certain provisions of Bill 22-09 that would reduce the jurisdiction of the Board of Appeals (see letter, ©24-25).

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Bill No. 22-09
Concerning: Enforcement of County
Laws - Notice of Violation - Appeals
Revised: 4-28-09 Draft No. 4
Introduced: May 5, 2009
Expires: November 5, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) authorize an enforcement agency to issue a notice of violation to enforce certain County laws;
- (2) limit the jurisdiction of the Board of Appeals regarding certain enforcement actions taken by certain enforcement agencies;
- (3) clarify when certain appeals may be taken and remove the right to appeal certain orders and decisions;
- (4) make technical corrections and repeal obsolete provisions of law; and
- (5) generally amend County law regarding enforcement.

By amending

Montgomery County Code
Chapter 1. General Provisions
Section 1-18
Chapter 2. Administration
Sections 2-112 and 2-114
Chapter 2A, Administrative Procedures Act
Section 2A-11
Chapter 8. Buildings
Sections 8-22 and 8-23
Chapter 19. Erosion, Sediment Control and Storm Water Management
Sections 19-9 and 19-12
Chapter 22. Fire Safety Code
Sections 22-3, 22-14, 22-18, and 22-27
Chapter 48. Solid Waste
Sections 48-26, 48-27, and 48-28
Chapter 49. Streets and Roads
Section 49-9

By repealing

Montgomery County Code
Chapter 22. Fire Safety Code
Section 22-21
Chapter 58. Weeds
Section 58-6

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:

28 (5) This subsection does not apply if another County law expressly
 29 allows an enforcement officer to issue a notice of violation or
 30 warning before a citation is issued.

31 **2-112. Jurisdiction.**

32 * * *

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

The [board] Board must hear and decide each appeal taken under:	Those appeals involve:
* * *	
[Section 22-21	Fire safety orders]
	* * *
[Chapter 27A	Individual water supply and sewage disposal systems]
* * *	
Section 48-28	[Removal of solid waste and weeds] <u>Permits and licensing</u>
[Section 49-16	Removal of obstructions to vision along highways]
<u>Section 49-35</u>	<u>Permits for grading and construction</u>
<u>Section 49-36</u>	<u>Permit conditions and procedures</u>
[Section 49-39A	Grading and construction of roads, sidewalks, and curbs]
	* * *
[Section 58-6	Weed removal]
Chapter 59	Special exceptions decided by Hearing Examiner

* * *

34

35 **2-114. Appeals from decisions.**

36 [Any decision by the county board of appeals may, within thirty (30) days
 37 after the decision is rendered, be appealed by any person aggrieved by the decision of
 38 the board and a party to the proceeding before it, to the circuit court for the county
 39 which shall have power to affirm the decision of the board, or if such decision is not
 40 in accordance with law, to modify or reverse such decision, with or without
 41 remanding the case for rehearing as justice may require. Whenever any such appeal
 42 is taken a copy thereof shall be served on the board by the clerk of the court and the
 43 board shall promptly give notice of the appeal to all parties to the proceeding before
 44 it and shall, within the time limit prescribed by the Maryland Rules of Procedure, file
 45 with the court the originals or certified copies of all papers and evidence presented to
 46 the board in the proceeding before it, together with a copy of its opinion which shall
 47 include a statement of the facts found and the grounds for its decision. Any party to
 48 the proceeding in the circuit court aggrieved by the decision of the court may appeal
 49 from such decision to the court of appeals within thirty (30) days from the date
 50 thereof. The review proceedings provided by this section shall be exclusive.]

51 (a) If a party in a matter adjudicated by the Board of Appeals is aggrieved
 52 by a final decision of the Board in the matter, the party may seek
 53 judicial review of the decision in the Circuit Court under the applicable
 54 Maryland Rules of Procedure governing judicial review of
 55 administrative agency decisions. A party aggrieved by the decision of
 56 the Circuit Court may appeal that decision to the Court of Special
 57 Appeals.

58 (b) Unless the court reviewing the Board's decision orders a stay, the
 59 decision remains in effect pending a final decision of the court.

60 **2A-11. Judicial review.**

61 [Any party aggrieved by a final decision in a case governed by this article,
 62 whether such decision is affirmative or negative in form, may appeal said decision
 63 to the circuit court for Montgomery County, Maryland, in accord with the
 64 provisions of the Maryland Rules of Procedure governing administrative appeals.
 65 Said court shall have the power to affirm, reverse or modify the decision or remand
 66 the case for further proceedings as justice may require. The filing of such appeal
 67 shall not stay the order of the hearing authority. Any party to the proceeding in the
 68 circuit court may appeal from such decision to the appellate courts of Maryland
 69 pursuant to applicable provisions of the Maryland Rules of Procedure.]

70 (a) A party aggrieved by a final decision in a case governed by this
 71 Article may seek judicial review of the decision in the Circuit Court
 72 under the applicable Maryland Rules of Procedure governing judicial
 73 review of administrative agency decisions. A party aggrieved by the
 74 decision of the Circuit Court may appeal that decision to the Court of
 75 Special Appeals.

76 (b) Unless the court reviewing the decision of the hearing authority orders
 77 a stay, the hearing authority's decision remains in effect pending a
 78 final decision of the court.

79 **8-22. Violations.**

80 [(a) *Notice of violation.* The director shall serve a notice or order on the
 81 person responsible for the erection, construction, alteration, extension,
 82 repair, use or occupancy of a building or structure in violation of the
 83 provisions of this chapter or any other applicable federal, state or local
 84 law or regulation or in violation of a detail statement or a plan
 85 approved thereunder or in violation of a permit or certificate issued
 86 under the provisions of this chapter; and such order shall direct the

87 discontinuance of the illegal action or condition and the abatement of
88 the violation.]

89 [(b) *Prosecution of violation.* If the violation cited in the notice or order is
90 not abated within the period set forth in said notice or order, the
91 director may institute the appropriate proceeding at law or in equity to
92 restrain, correct or abate such violation or to require the removal or
93 termination of the unlawful use of the building or structure in
94 violation of the provisions of this chapter or of the order or direction
95 made pursuant thereto.]

96 [(c) *Violation penalties.* Any person who violates a provision of this
97 chapter or fails to comply with any of the requirements thereof or who
98 erects, constructs, alters or repairs a building or structure in violation
99 of an approved plan or who refuses, ignores or violates an order of the
100 director or a condition of permit or certificate issued under the
101 provisions of this chapter shall be subject to punishment for a class A
102 violation as set forth in section 1-19 of chapter 1 of the County Code.
103 Each day a violation continues to exist shall constitute a separate
104 offense.]

105 A person has committed a class A violation if the person violates any
106 provision of this Chapter, including:

107 (a) building, altering, or repairing a building or structure in violation of an
108 approved plan; or

109 (b) violating an order of the Director or any condition of an approved plan,
110 permit, or certificate issued under this Chapter.

111 **8-23 [Board of appeals] Appeals.**

112 (a) Any person aggrieved by the issuance, denial, renewal, or revocation of
113 a permit [or any other decision or order of the Department] under this

114 Chapter may appeal to the County Board of Appeals within 30 days
115 after the permit is issued, denied, renewed, or revoked[, or the order or
116 decision is issued]. A person may not appeal any other order of the
117 Department, including a decision to issue or rescind a stop work order.

118 (b) After notice and hearing, the Board may affirm, remand, modify, or
119 reverse the [order or decision] action of the Department.

120 (c) Any party may appeal a decision of the Board to the Circuit Court under
121 Section 2-114.

122 **19-9. Permit revocation or suspension; stop work order.**

123 * * *

124 (f) This Section [must not be interpreted as restricting] does not restrict the
125 Department from proceeding directly with any available alternative
126 enforcement procedures under [section 19-19 of this chapter] Section
127 19-69.

128 * * *

129 **19-12. Inspections.**

130 * * *

131 (h) This Section does not restrict the Department from proceeding directly
132 with any available alternative enforcement procedure under Section 19-
133 69.

134 **22-3. Construction and scope of Chapter.**

135 * * *

136 (e) [Nothing in this chapter shall be construed as rendering] This Chapter
137 does not render any other applicable [laws] law or regulation invalid.
138 [In any situation where] If a conflict [exists] arises between [a
139 provision of] this [chapter] Chapter and another [code] law or
140 regulation, the fire marshal and [appropriate] the head of the agency

141 responsible for enforcing the conflicting [code shall determine in
 142 concert] law or regulation must agree which [provisions shall apply]
 143 applies. [Conflicts which are unreconcilable shall] If they cannot agree,
 144 any remaining conflict must be referred to the [director of the
 145 department of fire and rescue services] Fire Chief. The decision of the
 146 [director of fire and rescue services] Fire Chief in any matter relating to
 147 fire safety [shall be] is final], except that any person aggrieved by such
 148 decision shall have the right to appeal to the county board of appeals in
 149 accordance with chapter 2 of the County Code]. Within [thirty (30)] 30
 150 days [following the discovery of] after any [serious] remaining conflict
 151 has been resolved, the [director] Fire Chief and the head of the agency
 152 responsible for enforcing the conflicting [code shall] law or regulation
 153 must forward to the [county executive] County Executive a joint
 154 [recommendations for the removal of] proposal to amend a law or
 155 regulation to eliminate the conflict [from the County Code or the
 156 regulations adopted pursuant thereto].

157 **22-14. [Standards adopted] National standards.**

158 [The following codes, standards and model laws, published by the National
 159 Fire Protection Association, International, 470 Atlantic Avenue, Boston,
 160 Massachusetts 02210, in Volumes 1-10 and Volume 16 of the sixteen-volume set
 161 of National Fire Codes, are adopted in their entirety in these regulations except as
 162 herein set forth. The text of these adopted codes, standards and model laws shall
 163 be fully enforceable as other regulations adopted under the provisions of this
 164 chapter as if the same were incorporated and set forth at length therein. The dates
 165 or additions of the individual codes and standards shall be as listed in the National
 166 Fire Codes of the National Fire Protection Association, more specifically, the 1978
 167 edition thereof. The codes, standards and model laws adopted pursuant to these

168 regulations shall not waive any provision of this chapter nor be less restrictive than
 169 its provisions.

<u>NFPA No.</u>	<u>Code Standards</u>
32	Standard for Drycleaning Plants
88A	Standard for Parking Structures
88B	Standard for Repair Garages
101	Code for Life Safety from Fire in Building and Structures
102	Standard for Tents, Grandstands and Air-Supported Structures Used for Places of Assembly
501A	Standards for Installation of Mobile Homes
1122L	Code for Unmanned Rockets
<u>NFPA No.</u>	<u>Engineering Practice Standards Flammable and Combustible Liquids</u>
30	Flammable and Combustible Liquids Code
321	Standard on Basic Classification of Flammable and Combustible Liquids
327	Standard Procedures for Cleaning and Safeguarding Small Tanks and Containers
385	Recommended Regulatory Standards for Tank Vehicles for Flammable and Combustible Liquids
386	Standard for Portable Shipping Tanks
<u>NFPA No.</u>	<u>Flammable Gasses</u>
50	Standard for Bulk Oxygen Systems at Consumer Sites
50A	Standard for Gaseous Hydrogen Systems at Consumer Sites
50B	Standard for Liquefied Hydrogen Systems at Consumer Sites

56A	Standard for the Use of Inhalation Anesthetics (Flammable and Nonflammable)
56B	Standard for Inhalation Therapy
56D	Standard for Hyperbaric Facilities
56E	Standard for Hypobaric Facilities
56F	Standard for Nonflammable Medical Gas Systems
58	Standard for Storage and Handling of Liquefied Petroleum Gases
59	Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants
59A	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)
<u>NFPA No.</u>	<u>Hazardous Materials and Processes</u>
33	Standard for Spray Finishing Using Flammable and Combustible Materials
34	Standard for Dip Tanks Containing Flammable or Combustible Liquids
35	Standard for the Manufacture of Organic Coatings
<u>NFPA No.</u>	<u>Hazardous Materials and Processes</u>
40	Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film
40E	Code for the Storage of Pyroxylin Plastic
43A	Code for the Storage of Liquid and Solid Oxidizing Materials
43C	Code for the Storage of Gaseous Oxidizing Materials
43D	Code for the Storage of Pesticides in Portable Containers
51	Standard for the Installation and Operation of Oxygen Fuel Gas Systems for Welding and Cutting
51B	Standard for Fire Prevention in Use of Cutting and Welding Processes

56C	Safety Standard for Hospital Laboratories
57	Standard for Fumigation
490	Code for the Storage of Ammonium Nitrate
495	Code for the Manufacturing, Transportation, Storage and Use of Explosive Materials
654	Standard for the Prevention of Dust Explosions in the Plastics Industry
<u>NFPA No.</u>	<u>Transportation</u>
407	Standard for Aircraft Fuel Servicing
505	Standard for Type Designations, Areas of Use, Maintenance and Operation of Powered Industrial Trucks
<u>NFPA No.</u>	<u>Fire Extinguishing Systems</u>
11	Standard for Foam Extinguishing Systems
11A	Standard for High Expansion Foam Systems (Expansion Ratios from 100:1 to 1000:1)
11B	Standard on Synthetic Foam and Combined Agent Systems
12	Standard on Carbon Dioxide Extinguishing Systems
12A	Standard on Halogenated Fire Extinguishing Agent Systems – Halon 1301
<u>NFPA No.</u>	<u>Fire Extinguishing Systems</u>
12B	Standard on Halogenated Fire Extinguishing Agent Systems – Halon 1211
13	Standard for the Installation of Sprinkler Systems
14	Standard for the Installation of Standpipes and Hose Systems
15	Standard for Water Spray Fixed Systems for Fire Protection

16	Standard for the Installation of Foam-Water Sprinkler Systems and Foam-Water Spray Systems
17	Standard for Dry Chemical Extinguishing Systems
20	Standard for Installation of Centrifugal Fire Pumps
24	Standard for Outside Protection
75	Standard for the Protection of Electronic Commuter/Data Processing Equipment
<u>NFPA No.</u>	<u>Portable Fire Extinguishers</u>
10	Standard for the Installation of Portable Fire Extinguishers
<u>NFPA No.</u>	<u>Fire Warning Systems</u>
71	Standard for the Installation, Maintenance and Use of Central Station Protective Signaling Systems for Guard, Fire Alarm and Supervisory Service
72A	Standard on Installation, Maintenance and Use of Local Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72B	Standard for the Installation, Maintenance and Use of Auxiliary Protective Signaling Systems for Fire Alarm Service
72C	Standard for the Installation, Maintenance and Use of Remote Station Protective Signaling Systems
<u>NFPA No.</u>	<u>Fire Warning Systems</u>
72D	Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72E	Standard for Automatic Fire Detectors
74	Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment

<u>NFPA No.</u>	<u>Storage</u>
81	Standard for Fur Storage, Fumigation and Cleaning
231	Standard for Indoor General Storage
231B	Standard for Storage of Cellular Rubber and Plastic Materials
231C	Standard for Rack Storage of Materials
232	Standard for the Protection of Records
<u>NFPA No.</u>	<u>Building Construction and Facilities</u>
31	Standard for Oil Burning Equipment
37	Standard for Stationary Combustion Engines and Gas Turbines
54	National Fuel Gas Code
80	Standard for Fire Doors and Windows
82	Standard for Rubbish Handling and Incinerators
86A	Standard for Ovens and Furnaces, Design, Location and Equipment
86B	Standard for Industrial Furnaces, Design, Location and Equipment
90A	Standard for the Installation of Air Conditioning and Ventilating Systems
91	Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, Vapor Removal or Conveying
96	Standard for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment
<u>NFPA No.</u>	<u>Building Construction and Facilities</u>
211	Standard for Chimneys, Fireplaces and Vents
241	Standard for Safeguarding Building Construction and Demolition Operations
418	Standard on Roof-Top Heliport Construction Protection]

170 The Fire Chief must recommend that the Executive adopt by regulation under
 171 Section 22-13 those parts of the National Fire Code as published by the National Fire
 172 Protection Association, or a comparable code published by a similar organization,
 173 that the Fire Chief finds will promote the purposes of this Chapter.

174 **22-18. Compliance.**

175 (a) *Generally.* [Any person who shall violate any of the provisions of this
 176 chapter; or shall fail to comply therewith; or shall permit or maintain
 177 such a violation; or shall violate or fail to comply with any order made
 178 thereunder; or shall build in violation of any details, statements,
 179 specifications or plans submitted or approved thereunder; or shall
 180 operate not in accordance with the provisions of any certificate,
 181 permit or approval issued thereunder; or who shall fail to comply with
 182 such an order as affirmed or modified by the board of appeals within
 183 the time fixed therein shall severally for each and every violation and
 184 noncompliance respectively, be guilty of a misdemeanor. The
 185 imposition of a penalty for any violation shall not excuse the violation
 186 nor shall the violation be permitted to continue. Prosecution or lack
 187 thereof of either the owner, occupant, or the person in charge shall not
 188 be deemed to relieve any of the others.] A person has committed a
 189 Class A violation if that person violates, permits a violation of, or
 190 does not comply with:

- 191 (1) this Chapter;
 192 (2) an order issued under this Chapter;
 193 (3) any building specification or plan approved under this Chapter;
 194 or
 195 (4) any certificate, permit, or approval issued under this Chapter.

196 (b) *Orders or notices.* [Any order or notice issued or served as provided
197 in this code shall be complied with by the owner, operator, occupant
198 or other person responsible for the condition or violation to which the
199 order or notice pertains. Every order or notice shall set forth a time
200 limit for compliance dependent upon the hazard and danger created by
201 the violation. In cases of extreme danger to persons or property
202 immediate compliance shall be required. If the building or other
203 premises is owned by one person and occupied by another, under
204 lease or otherwise, and the order or notice requires additions or
205 changes in the building or premises such as would immediately
206 become real estate and be the property of the owner of the building or
207 premises, such order or notice shall be complied with by the owner
208 unless the owner and occupant have otherwise agreed between
209 themselves, in which event the occupant shall comply.]

210 (1) Any order or notice regarding a condition or violation which
211 must be corrected must:

212 (A) set a deadline for compliance that is based on the danger
213 created by the condition or violation;

214 (B) be complied with by the owner and any other person
215 responsible for the condition or violation; and

216 (C) require immediate compliance if the condition or
217 violation presents an extreme danger to any person or
218 property.

219 (2) If the property is occupied by a person other than the owner, the
220 owner is responsible for compliance with the order or notice
221 unless within 5 days after the order or notice is issued:

222 (A) the owner and occupant agree that the occupant will
 223 comply with the order or notice; and

224 (B) the owner and occupant notify the Fire Chief of this
 225 decision.

226 (c) *Unauthorized tag removal.* [It shall be a misdemeanor for any person
 227 or user, firm or agent to continue the use of any device or appliance
 228 which has been tagged under section 22-16(c), unless written
 229 authority to remove such tag is given by the director. Removing or
 230 mutilating the tag shall be deemed a misdemeanor.] A person has
 231 committed a Class A violation if that person:

232 (1) continues using any device or appliance that was tagged under
 233 Section 22-16; or

234 (2) removes the tag without written permission of the Fire Chief.

235 **22-21. [Appeals] Reserved.**

236 (a) *From orders.* Any person aggrieved by an order issued under this
 237 chapter may appeal within the abatement period but not to exceed ten
 238 (10) days from such order to the county board of appeals pursuant to
 239 sections 2-108 to 2-116 of the County Code. Such appeal shall not
 240 stay execution of the order more than ten (10) days, unless the board
 241 of appeals shall grant further stay upon application of the person filing
 242 the appeal. No stay of execution shall be permitted for any order
 243 issued pursuant to this chapter that requires immediate compliance,
 244 unless a court of competent jurisdiction shall order such stay of
 245 execution.

246 (b) *Decisions of department.* Any person aggrieved by the issuance,
 247 denial, renewal or revocation of a permit, license, certificate or any
 248 other decision of the department made hereunder may appeal to the

249 county board of appeals, which after hearing upon notice shall have
 250 authority to affirm, modify or reverse the order or decision made.]

251 **22-27. [Permits and certificates of approval for] Approval of fire detection**
 252 **systems and devices.**

253 * * *

254 [(f) *Appeals.* If a certificate of approval or permit required by this Section
 255 has been denied, the applicant may appeal to the County Board of
 256 Appeals under Section 22-21.]

257 **Chapter 48. SOLID [WASTES] WASTE (TRASH).**

258 **48-26. [Same] Permits and licenses — Fees.**

259 * * *

260 **48-27. [Same] Permits and licenses — Refusal to renew; revocation or**
 261 **suspension.**

262 * * *

263 **48-28. [Appeals from orders and decisions under chapter] Permits and**
 264 **licenses — Appeals.**

265 [The county board of appeals shall have full authority to hear testimony and
 266 decide all appeals taken from decisions or orders of the director under this
 267 chapter.] Any person aggrieved by the issuance, denial, renewal, suspension, or
 268 revocation of a permit or license [or any other decision or order of the director
 269 made] under this Chapter may appeal to the [county board of appeals] County
 270 Board of Appeals within [ten (10)] 10 days [from such order or decision] after the
 271 action is taken. [Upon notice, after hearing, the board shall have authority to] The
 272 Board may affirm, remand, modify, or reverse the [order or decision of the
 273 director] action of the Department. [Such] An appeal [shall] to the Board must not
 274 stay [execution of] the [order] action unless the [board] Board, upon application,
 275 [shall grant] grants a stay of [such order] the action.

276 **49-9. Removal of items that [obstruct the vision of motorists on public**
 277 **highways or] interfere with the use of public rights-of-way.**

278 * * *

279 [(b) *Petition for hearings.* Any person aggrieved by any order issued under
 280 this Section may, within 10 days after receiving the order, petition in
 281 writing for a hearing before the Board of Appeals. Within 30 days
 282 after receiving a petition, the Board must hold a hearing. The Board
 283 may affirm, modify or rescind the order. The County must not
 284 remove any obstruction or enforce any order issued under this Section
 285 until either:

- 286 (1) the Board has affirmed the order; or
- 287 (2) the time to petition for a hearing has expired and no petition
 288 was filed.] Reserved.

289 * * *

290 **58-6. [Appeals] Reserved.**

291 [(a) The County Board of Appeals may hear testimony and decide all
 292 appeals of decisions or orders of the director under this chapter.]

293 [(b) Any person aggrieved by any decision or order of the director under
 294 this chapter may appeal to the County Board of Appeals within 10
 295 days after the order or decision is issued.]

296 [(c) After notice and hearing, the board may affirm, modify, or reverse the
 297 order or decision of the director.]

298 [(d) An appeal does not stay execution of an order unless the board, on
 299 application, grants a stay.]

300 [(e) Any party may appeal a decision of the board to the Circuit Court
 301 under section 2-114.]

302 **Sec. 2. Transition.** This Act does not apply to any appeal to the Board

303 of Appeals that was filed before this Act took effect.

304 **Sec. 3. Regulations.** Regulations 6-06AM and 7-06AM remain in effect,
305 notwithstanding any amendment to the County Code in Section 1 of this Act, except
306 for any provision of the National Fire Code that authorizes or refers to an appeal to
307 the Board of Appeals.

308 *Approved:*

309

310

311 Philip M. Andrews, President, County Council Date

312 *Approved:*

313

314

315 Isiah Leggett, County Executive Date

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

317

318

319 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 22-09

Enforcement of County Laws – Notice of Violation - Appeals

- DESCRIPTION:** This Bill would amend County law to generally provide that an enforcing agency may, but is not required to, issue a notice of violation for a code violation. In addition, the Bill provides that if a certain notice of violation is issued, the notice of violation may not be appealed to the Board of Appeals. The Bill authorizes an enforcing agency to issue a citation at any time, even if a notice of violation has been issued and the time to correct the violation has not elapsed.
- PROBLEM:** Some code revisions require an enforcing agency to issue a notice of violation, giving the violator an opportunity to correct the violation before the enforcing agency may issue a citation. The Code also gives, in many instances, the violator a right to appeal the notice of violation to the Board of Appeals. As a result, significant time may elapse before the enforcing agency is in a position to issue a citation and bring the matter to court where the violator may be compelled to correct the violation. During the elapse of this time, members of the community must continue to endure a violation and the public's confidence in County Government is eroded.
- GOALS AND OBJECTIVES:** To provide enforcing agencies with a means to seek to correct code violations that erode the quality of life in the communities of Montgomery County.
- COORDINATION:** Department of Permitting Services, Department of Environmental Protection, Montgomery County Fire & Rescue Service, Department of Transportation, Office of the County Attorney
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** Subject to the general oversight of the County Executive and the County Council.
- EXPERIENCE ELSEWHERE:** Unknown.
- SOURCE OF INFORMATION:** Tom Street, Assistant Chief Administrative Officer
Marc P. Hansen, Deputy County Attorney
- APPLICATION WITHIN MUNICIPALITIES:** Varies.
- PENALTIES:** None.

BILL



041490

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 2, 2009

MF
CC
SBF
LL
BD
AM
SF
CKS
KL
LAM

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation – Notice of Violation and Jurisdiction of Board of Appeals

I am attaching for the Council's consideration a bill which would authorize, but not require, an enforcing agency to issue a notice of violation for a code violation. The bill also provides that certain notices of violation may not be appealed to the Board of Appeals. I am also attaching a Legislative Request Report for the bill.

This bill is one of four legislative proposals that I am submitting to Council today to implement the recommendations included in the November 2008 final report of the Code Enforcement Work Group. Each of these proposals is intended to address code enforcement problems which erode the quality of life in the County.

Under current law, an enforcing agency is required to issue a notice of violation which gives a violator an opportunity to correct the violation before the enforcing agency may issue a citation. In many instances, current law also allows a violator to appeal a notice of violation to the Board of Appeals. As a result of these current provisions of the County Code, significant time may elapse before an enforcing agency is able to issue a citation and bring a code enforcement matter to court where the violator can be compelled to correct the violation. During that lapse of time, members of the community must continue to endure a violation and the public's confidence in County government is eroded. By reducing the amount of time between issuance of a notice of violation and issuance of a citation, this bill will help restore confidence on the County's code enforcement activities.

Thank you for your prompt consideration of this legislation. I look forward to working with the Council as it considers this proposal.

Attachments (2)

BILL



041544

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

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BD
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AM

MEMORANDUM

April 7, 2009



APR 7 2009
10 30 AM

TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Council Bill – Issuance of Notice of Violation and Jurisdiction of Board of Appeals
- Amendments

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

LEGISLATION SUMMARY

The Bill would amend County law to generally provide that an enforcing agency may, but is not required to; issue a notice of violation for a code violation. In addition, the Bill provides that if a certain notice of violation is issued, the notice of violation may not be appealed to the Board of Appeals. The Bill authorizes an enforcing agency to issue a citation at any time, even if a notice of violation has been issued and the time to correct the violation has not elapsed.

FISCAL SUMMARY

The Office of the County Attorney states that the proposed amendment, as drafted, will shift and reduce the attorney resources presently required to defend the County's actions before the Board of Appeals and that it will expedite the enforcement of county law and streamline the appeal process.

The following departments reported no fiscal impact: Permitting Services, Environmental Protection, Fire and Rescue Service, and Transportation.

The following contributed to and concurred with this analysis: Alicia Thomas, Department of Permitting Services; Marc Hansen, Office of the County Attorney; Gladys Balderrama, Department of Environmental Protection; Dominic Del Pozzo, Fire and Rescue Service; and Bruce Meier, Department of Transportation.

JFB:aw

Office of the Director

ABRAMS & WEST, P.C.

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PRACTICING IN MARYLAND AND
DISTRICT OF COLUMBIA

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May 7, 2009

Hon. Phil Andrews, President
Montgomery County Council
County Council Office Building, 6th Fl.
100 Maryland Avenue
Rockville, MD 20850

**RE: Bill No. 22-09
Enforcement of County Laws**

Dear President Andrews & Members of the County Council:

I write in opposition to certain provisions contained in this Bill which radically alters enforcement procedures relating to the issuance of a Notice of Violation by a county enforcement officer. Currently, an inspector issues a warning notice of violation which may be appealed to the County Board of Appeals. The Bill (§1-18(f)(4) and §8-23(a)) would prohibit any recipient of a notice of violation (NOV) from appealing the NOV to the Board of Appeals (unless such appeal to the Board is expressly granted by another County law) and instead requires the matter to be litigated in District Court. This has certain detrimental impacts upon property owners and other recipients of such notices.

- (1) The Board of Appeals which is a citizens board would not be available to resolve enforcement issues involving citizens. The Board of Appeals has developed a certain expertise in these disputes over the years and operates on a much more informal basis than when matters are litigated in courts. Strict rules of evidence are not applied in Board proceedings whereas they are required in judicial proceedings and attorneys are not therefore necessary at an administrative level.
- (2) If a Notice of Violation and municipal infraction which must be litigated in Court is the only basis to "appeal", the matter must be assigned a court date, responses filed by the alleged violator, the parties and witnesses wait around the courthouse for their case to be called and adjudicated by a judge. Certainly no time is saved over the scheduling of such matters before the Board of

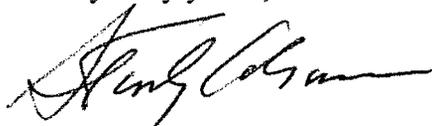
Appeals which specially sets the cases for hearing, hears the evidence and makes a decision. Have any studies been made of the two respective processes to see if indeed any savings in time or costs to resolve enforcement actions are improved by having the District Court hear all of these issues.

- (3) The process proposed becomes punitive instead of remedial. Municipal infractions are enforced by the assessment of fines. In many cases the County Code provisions allow for each day of violation to become a separate violation subject to additional fines. Presently we try to work out a resolution with County inspectors before a municipal infraction is issued but if a NOV is issued under the proposed law, a case is filed by the County in District Court. Remedial action is not always available because courts are reluctant to grant continuances and even then unless the County dismisses the action, the fines may still be assessed.

The effect of this legislation is unclear with respect to Notices of Violation issued by inspectors for alleged violations of special exception conditions for approved special exception cases. Will the Board be permitted to issue "Show Cause Orders" or engage in other proceedings to determine compliance, because those proceedings are traditionally initiated by DPS issuing Notices of Violations to special exception holders? If the intent is not to remove the Board from this function, the legislation needs to be clarified.

This appears to be legislation in search of a problem. The County has successfully operated under the present system for 50 years with a citizen board. There is no reason to change it now.

Very truly yours,



Stanley D. Abrams

SDA:dw

cc: County Council Members
Michael Faden, Esq.
Catherine Titus, Esq.