

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** 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, is scheduled to be introduced on March 2, 2010. A public hearing is tentatively scheduled for March 23 at 7:30 p.m.

Bill 6-10 would set different noise level standards for certain arts and entertainment activities. It would also exempt certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance. In addition, a potential homebuyer would be given a notice about certain 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 file a noise mitigation plan with the Department of Environmental Protection (DEP). DEP would review but would not approve the plan. The facility would then be subject to a higher maximum noise level from 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, it could apply for an event-by-event waiver under the current law and would not have to file a plan.

This packet contains:	<u>Circle #</u>
Bill 6-10	1
Legislative Request Report	6

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.

- 28 [(p)] * * *
- 29 [(q)] * * *
- 30 [(r)] * * *
- 31 [(s)] * * *
- 32 [(t)] * * *

33 **31B-5. Noise level and noise disturbance violations.**

34 (a) Maximum allowable noise levels.

35 (1) Except as otherwise provided in Section 31B-6(a), 31B-6A, and
36 31B-8, a person must not cause or permit noise levels that exceed
37 the following levels:

38 * * *

39 **31B-6A. Seasonal noise level standard for qualifying arts and entertainment**
40 **activities.**

41 (a) If more than 5 performances of an outdoor arts and entertainment
42 activity will be conducted at a performing arts facility, the owner or
43 manager of the facility may file a noise mitigation plan, prepared by
44 an acoustical engineer or consultant, with the Department. The plan
45 must include:

- 46 (1) performance requirements;
- 47 (2) the types of noise mitigation measures that the facility will use;
48 and
- 49 (3) information about the impact of the proposed arts and
50 entertainment activity and the planned noise mitigation
51 measures on the performers, the audience, and the occupants of
52 nearby properties.

53 The Department must make each plan filed with it available to the
54 public and send a copy to the Noise Control Advisory Board.

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