

Expedited Bill No. 6-10
Concerning: Noise Control – Arts and
Entertainment Activities
Revised: 5-18-11 Draft No. 7
Introduced: March 2, 2010
Enacted: May 18, 2011
Executive: May 31, 2011
Effective: May 31, 2011
Sunset Date: None
Ch. 7, Laws of Mont. Co. 2011

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Elrich and Council President Floreen

AN EXPEDITED 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; and
- (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 [[and 31B-6B]]
[[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>
<u>[[Double boldface brackets]]</u>	<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]]**
2 **[[Sections]] Section 31B-6A [[is]] [[and 31B-6B are]] is 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, which is readily accessible to the public,
8 whether or not admission is charged. **Arts and entertainment activity** includes the
9 time necessary to set up and remove any structure or equipment used in the activity.

10 [(a)] * * *

11 [(b)] * * *

12 [(c)] * * *

13 [(d)] * * *

14 [(e)] * * *

15 [(f)] * * *

16 [(g)] * * *

17 [(i)] * * *

18 [(j)] * * *

19 [(k)] * * *

20 [(l)] * * *

21 [(m)] * * *

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

25 [(n)] * * *

26 [(o)] * * *

27 [(p)] * * *

28 [[Permissible Performance Location means a defined area in an urban
29 district which is:

- 30 (1) used for an outdoor arts and entertainment activity; and
- 31 (2) nominated and designated as provided in Section 31B-6B.]]

32 [(q)] * * *

33 [[Performing]] Qualifying performing arts facility means the outdoor area
34 of a building, outdoor seasonal, temporary, or permanent stage, or other clearly
35 defined outdoor area or space, which is [[located at a venue that primarily presents
36 live theatrical, musical, or dance performances]]:

- 37 (1) used for an outdoor arts and entertainment activity; and
- 38 (2) owned or operated by the County; and
- 39 (3) so designated by the County Executive in an Executive Order published
40 in the County Register. The Executive may revoke a designation at any
41 time by publishing an Executive Order revoking the designation in the
42 County Register.

43 [(r)] * * *

44 [(s)] * * *

45 [(t)] * * *

46 **31B-5. Noise level and noise disturbance violations.**

- 47 (a) Maximum allowable noise levels.
- 48 (1) Except as otherwise provided in Section 31B-6(a), 31B-6A,
- 49 [[31B-6B,]] and 31B-8, a person must not cause or permit noise
- 50 levels that exceed the following levels:

51 * * *

52 **31B-6A. Seasonal noise level standard for qualifying outdoor arts and**
53 **entertainment activities.**

54 (a) [[If [[more than 5 performances of]] an outdoor **arts and**
 55 **entertainment activity** will be conducted at a **qualifying performing**
 56 **arts facility**, the [[owner or manager]] operator of the **facility** may file a
 57 **noise mitigation plan**, prepared by an acoustical engineer or consultant,
 58 with the Department. The **plan** must include:

- 59 (1) performance requirements;
 60 (2) the types of noise mitigation measures that the facility will use;
 61 and
 62 (3) information about the impact of the proposed **arts and**
 63 **entertainment activity** and the planned noise mitigation
 64 measures on the performers, the audience, and the occupants of
 65 [[nearby]] properties within 1000 feet of the perimeter of the
 66 **facility**.

67 The Department must make each **plan** filed with it available to the
 68 public and send a copy to the Noise Control Advisory Board.]]

69 [[b) If the [[owner or manager]] operator of a **qualifying performing arts**
 70 **facility** submits a completed **noise-mitigation plan** to the Department
 71 and conducts [[at least 5]] all outdoor **arts and entertainment**
 72 **activities** each year in accordance with that **plan**, each]] Each outdoor
 73 **arts and entertainment activity** held at [[the]] a **qualifying**
 74 **performing arts facility** must not exceed the following noise decibel
 75 limits:

- 76 (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75
 77 dba, as measured on the receiving property; and
 78 (2) at all other times, the maximum allowable noise level set in
 79 Section 31B-5.

80 ~~[(c)]~~ (b) A ~~[[person]]~~ **qualifying performing arts facility** which has ~~[[filed a~~
 81 **noise mitigation plan** and otherwise]] complied with this Section must
 82 not cause or permit noise levels from an outdoor **arts and**
 83 **entertainment activity** ~~[[which is subject to this Section]]~~ to exceed the
 84 standards in subsection ~~[(b)]~~ (a).

85 ~~[(d)]~~ (c) Any outdoor **arts and entertainment activity** ~~[[subject to]]~~
 86 conducted at a **qualifying performing arts facility** which has ~~[[filed a~~
 87 **noise mitigation plan** and otherwise]] complied with this Section
 88 ~~[[which meets the standards in subsection (b)]]~~ must not be cited as
 89 causing a noise disturbance.

90 ~~[(e)]~~ (d) ~~[[For a **qualifying performing arts facility** to remain in compliance~~
 91 with this Section, its ~~[[owner or manager]]~~ operator must update its filed
 92 **noise mitigation plan** as necessary to reflect significant changes in
 93 programming and noise control technology, and must file an updated
 94 **plan** with the Department not later than March 15 each year.] The
 95 Department must annually advise the Executive and Council, and the
 96 operator of each **qualifying performing arts facility**, whether the noise
 97 levels specified in this Section remain appropriate for that **facility** and
 98 the extent of compliance with those levels.

99 **[[31B-6B. Noise review procedure for outdoor arts and entertainment**
 100 **activities in urban districts.]]**

101 ~~[(a)]~~ A defined area located in an urban district may qualify as a **permissible**
 102 **performance location** if the area is:

- 103 (1) nominated for that purpose by the applicable urban district
 104 advisory committee or urban district corporation board of
 105 directors after the committee or board has:

106 (A) given at least 30 days' public notice on the website of the
 107 applicable County regional services center that it is
 108 considering a nomination of a specific area; and

109 (B) reviewed and approved the nomination at a regularly
 110 scheduled monthly meeting; and

111 (2) after it is so nominated, designated by the County Executive as a
 112 permissible performance location in an Executive Order
 113 published in the County Register. The Executive may revoke a
 114 designation at any time by publishing an Executive Order
 115 revoking the designation in the County Register.]]

116 [[(b) If an outdoor arts and entertainment activity will be conducted in an
 117 urban district, the owner or operator of the designated permissible
 118 performance location where the activity will be conducted must first
 119 file a noise information report with the applicable urban district
 120 advisory committee or corporation board of directors. Each noise
 121 information report must:

122 (1) describe each arts and entertainment activity to be conducted
 123 at that location;

124 (2) list each performance date and time;

125 (3) specify who will sponsor each activity;

126 (4) describe the target audience for each performance; and

127 (5) identify the permissible performance location for each
 128 activity.]]

129 [[(c) The urban district committee or board must review each noise
 130 information report at a regularly scheduled monthly meeting and advise
 131 the owner or operator whether each proposed outdoor performance is
 132 consistent with the goals and objectives, vision, and mission strategy of

133 the district. The committee or board must first give at least 30 days'
134 public notice on the website of the applicable County regional services
135 center that it will review a noise information report at a specific
136 meeting. This review may occur in conjunction with the nomination of
137 a **permissible performance location** under subsection (a).]

138 [(d) If the owner or operator of each **permissible performance location**
139 submits a noise information report and receives the advice of the
140 applicable urban district advisory committee or corporation board, each
141 outdoor **arts and entertainment activity** conducted at the **location** as
142 specified in the report must be treated as complying with the noise
143 limits in Section 31B-5 and must not be cited as causing a noise
144 disturbance.]]

145 [(e) To remain in compliance with this Section, the owner or operator of
146 each **permissible performance location** must update its noise
147 information report as necessary to reflect any significant changes in the
148 type of planned **arts and entertainment activities** and any additional
149 **arts and entertainment activity** not previously described in the report.
150 An updated noise information report may be filed at any time, but an
151 updated report must be filed not later than March 15 of each year before
152 any outdoor **arts and entertainment activity** may be conducted at that
153 **permissible performance location** during that year.]]

154 [(f) In its annual report filed under Section 68A-12(d), each urban district
155 must list each **permissible performance location** that the district
156 nominated during that year and each noise information report that it
157 reviewed. The report also must list the types and number of noise
158 complaints about **outdoor arts and entertainment activities** in the
159 district that the district received during that year and discuss the

160 district's response, if any, to those complaints. The district must
 161 forward a copy of each written noise complaint that it receives to the
 162 Department.]]

163 **[[Sec. 2. Section 40-12D is added as follows:]]**

164 **[[40-12D. Disclosure of noise from certain arts and entertainment activities.**

165 (a) If any residential real property is located within 300 yards of a
 166 **performing arts facility** where 5 or more outdoor arts and
 167 **entertainment activities** which are subject to special noise level
 168 standards under Section 31B-6A have been conducted during the
 169 previous 12 months or are scheduled to be conducted in the next 12
 170 months, any seller of that property must disclose to each prospective
 171 buyer, before the buyer signs a contract to buy the property, that certain
 172 seasonal outdoor arts and entertainment activities conducted at that
 173 **facility** are subject to special noise level standards which may exceed
 174 otherwise applicable noise limits.

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

178 (1) the seller has provided the information required by subsection (a);
 179 and

180 (2) the buyer understands that:

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

183 (B) the buyer may obtain more information about noise limits
 184 on these activities from the County Department of
 185 **Environmental Protection.]]**

186 **Sec. 2. Expedited Effective Date.** The Council declares that this Act is
187 necessary for the immediate protection of the public interest. This Act takes effect on
188 the date when it becomes law.

189 *Approved:*

190

191



Valerie Ervin, President, County Council

5/19/2011

Date

192 *Approved:*

193

194



Isiah Leggett, County Executive

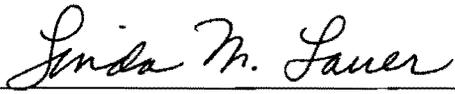
MAY 31, 2011

Date

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

196

197



Linda M. Lauer, Clerk of the Council

June 7, 2011

Date