

MEMORANDUM

TO: County Council

FROM: ~~Michael~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Expedited Bill 16-11, Noise Control – Urban Areas

Expedited Bill 16-11, Noise Control – Urban Areas, sponsored by the Council President at the request of the County Executive, was introduced on May 18, 2011. A Transportation, Infrastructure, Energy, and Environment (T&E) Committee worksession is tentatively scheduled for June 27 at 2 p.m.

Expedited Bill 16-11 is the Executive's revision of part of Bill 6-10 which the Committee deleted from that Bill at its worksession on March 28. The Council enacted Bill 6-10, as amended, on May 18. See the Executive's memo on ©6 and the OMB fiscal impact statement on ©9-10.

Bill 16-11 would allow higher noise level standards for certain outdoor arts and entertainment activities in certain urban noise areas. Essentially, under this Bill outdoor entertainment conducted in an urban district or other designated urban noise area could range up to 75 dBA from 11 a.m. to 11 p.m., at the edge of the urban district or noise area property line, rather than the current standards of 65dBA during the day and 55 dBA at night in residential areas or 67 and 62 dBA in non-residential areas, measured at the nearest property line.

A recent email exchange between an aggrieved Bethesda resident and the Bethesda Urban Partnership management on ©7-8 illustrates, in Council staff's view, the issues that this Bill raises and the potential for urban district management, ungoverned by external controls, to ignore reasonable noise level expectations of neighborhood residents.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 16-11
Concerning: Noise Control – Urban
Areas
Revised: 5-13-11 Draft No. 3
Introduced: May 18, 2011
Expires: November 18, 2012
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 EXPEDITED ACT to:

- (1) set different noise level standards for certain outdoor arts and entertainment activities in certain urban noise areas; and
- (2) generally amend the County noise control law.

By amending

Montgomery County Code
Chapter 31B, Noise Control
Sections 31B-1, 31B-2, and 31B-5

By adding:

Chapter 31B, Noise Control
Section 31B-6B

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:

29 a public space, including a public or private road, that is intended and used for
30 outdoor performance or assembly.

31 * * *

32 Urban noise area means a definable area that is:

- 33 (a) (1) located in an urban district created under Chapter 68A;
- 34 (2) located in and designated by a municipality, or
- 35 (3) if located elsewhere, designated by the County Executive as
36 suitable for outdoor arts and entertainment activities in an
37 Executive Order published in the County Register; and

38 (b) either:

- 39 (1) a space that is accessible to the public and designed and
40 programmed for performances, events, or recreation at which
41 outdoor arts and entertainment activities can be conducted; or
- 42 (2) a publicly owned plaza, right-of-way, or open space that:
 - 43 (A) is adjacent to or confronts property used for commercial
44 or mixed use; and
 - 45 (B) is not adjacent to and does not confront any property that
46 is used for single-family residential use.

47 **31B-5. Noise level and noise disturbance violations.**

48 (a) *Maximum allowable noise levels.*

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

52 * * *

53 **31B-6B. Noise standards for outdoor arts and entertainment activities in**
54 **urban noise areas.**

55 (a) In an urban noise area that is not located in an urban district, the noise
56 level and noise disturbance standards in Section 31B-5 do not apply to
57 any outdoor arts and entertainment activity conducted between 11
58 a.m. and 11 p.m., if the noise level from that activity at any boundary
59 of the property that includes the urban noise area does not exceed 75
60 dBA.

61 (b) In an urban noise area that is located in an urban district, the noise
62 level and noise disturbance standards in Section 31B-5 do not apply to
63 any outdoor arts and entertainment activity conducted between 11
64 a.m. and 11 p.m., if the noise level from that activity at the nearest
65 outer boundary of the urban district does not exceed 75 dBA.

66 (c) The noise level and noise disturbance standards in Section 31B-5
67 apply in each urban noise area at all other times and for all other
68 activities.

69 **Sec. 2. Expedited Effective Date.**

70 The Council declares that this Act is necessary for the immediate protection
71 of the public interest. This Act takes effect on the date when it becomes law.

72 *Approved:*

73

74 _____
Valerie Ervin, President, County Council Date

75 *Approved:*

76

77 _____
Isiah Leggett, County Executive Date

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

79

80 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 16-11
Noise –Urban Areas

- DESCRIPTION:** This bill would establish a new noise standard for outdoor arts and entertainment activities occurring in core urban areas. Such activities occurring in defined *urban noise areas* would not be subject to the existing standards in Section 31B-5 of the County Code subject to certain conditions. This bill is a complement to Bill 6-10, Noise Control – Arts and Entertainment Activities, which addresses these activities at performing arts facilities.
- PROBLEM:** Outdoor arts and entertainment activities provide multiple public benefits including community engagement, cultural arts awareness and enjoyment, crime reduction and increased security while creating spillover economic activity for area businesses and general quality of life enhancement. In mixed use areas, space is planned for programming for these types of activities, yet the existing standards in Section 31B-5 do not accommodate the noise levels generated by many of these activities. This bill focuses on urban areas and arts and entertainment districts, where there is generally a higher level of background noise and a greater tolerance for noise. Creating a unique standard for outdoor arts and entertainment activities reflects the value of the activities to the general community, and serves to protect public health and welfare and to allow the peaceful enjoyment of property while permitting outdoor arts and entertainment activities in certain circumstances.
- GOALS AND OBJECTIVES:** To accommodate outdoor arts and entertainment activities in core urban areas in order to allow these events to reasonably occur while protecting public health and welfare and to allowing for the peaceful enjoyment of property.
- COORDINATION:** Department of Environmental Protection
- FISCAL IMPACT:**
- ECONOMIC IMPACT:**
- EVALUATION:**
- EXPERIENCE ELSEWHERE:**
- SOURCE OF INFORMATION:** Diane Schwartz Jones, Assistant Chief Administrative Officer, 240-777-2561
- APPLICATION WITHIN MUNICIPALITIES:**
- PENALTIES:** Class A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 26, 2011

TO: Valerie Ervin, President
County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Noise Control – Arts and Entertainment Activities in Core Urban Areas

I am submitting the attached bill related to arts and entertainment activities in urban areas for Council introduction. I am also submitting a Legislative Request Report. As outlined in my March 21, 2011 memorandum to Council regarding Bill 6-10, Noise Control – Arts and Entertainment Activities, this proposed bill would complement Bill 6-10, which addresses noise levels for these same types of activities at performing arts facilities. Separating the bills provides an opportunity for public input on the important issue of identifying urban noise areas in which outdoor arts and entertainment activities are intended to occur.

Outdoor arts and entertainment activities in urban areas provide multiple public benefits including community engagement, cultural arts awareness and enjoyment, crime reduction and increased security while creating spillover economic activity for businesses in the vicinity of such activities. The attached legislation reflects the reality that these desirable activities may create noise that exceeds the current restrictive levels in the County's noise ordinance and should be facilitated in spaces designed for these types of activities such as public plazas, rights-of-ways, and public amenity space included in development plans for certain zones. In the County's Urban Districts, where there is a reasonable expectation of higher ambient background noise, and in the County's Arts and Entertainment Districts, which were specifically created to facilitate arts and entertainment activities, the proposed amendment provides for measurement of the noise level at the district boundary. At other urban noise areas that are not in a district, the measurement would continue to be taken at the property boundary.

I believe that this modest approach to facilitating desirable outdoor arts and entertainment activities is reasonable and supports the many benefits that result from these activities. I appreciate your introduction of this bill on my behalf and urge the Council to adopt it as expeditiously as possible.

I look forward to working with the Council as it considers this legislation.

cc: Tim Firestine, Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Diane Jones, Assistant Chief Administrative Officer
Bob Hoyt, Department of Environmental Protection
Stan Edwards, Department of Environmental Protection

Ms. Doll,

Let me take this opportunity to once again apologize for any problems that we may have caused you or any other residents of Triangle Towers. As I mentioned to you when we spoke we will be debriefing this event as we do all events that we manage and produce early this week. I can assure you that we have heard your concerns and we will be taking the necessary steps to make sure that this unfortunate situation will not occur in the future.

Dave Dabney

Executive Director
Bethesda Urban Partnership
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Bethesda, Maryland 20814
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301-215-6660 extension 122
240-876-8492 cell

From: Amy Doll [mailto:doll.amy@gmail.com]

Sent: Sunday, May 15, 2011 06:01 PM

To: Councilmember.Berliner@MontgomeryCountyMD.gov;
County.Council@MontgomeryCountyMD.gov

Cc: Diana Holland; Dave Dabney; Lauren Hamilton

Subject: High-volume noise from BUP arts festival -- formal complaint

Dear Councilmember Berliner:

This weekend, May 14-15, 2011, your District 1 constituents at Triangle Towers Apartments in Bethesda, MD, experienced a serious noise problem from high-volume music in close proximity to our apartments for 8 hours between 10am-6pm on May 14th and 7 hours between 9:45am-nearly 5pm on May 15th because of poor planning by Bethesda Urban Partnership (BUP) for the Bethesda Arts Festival. I live on the Del Ray Avenue side of our 16-floor high-rise building and my apartment home is one of around 100 apartments facing Del Ray Avenue. BUP had closed multiple streets within Bethesda's Woodmont Triangle for this festival, and none of those blocks had apartment homes except for the area where they located their entertainment stage. On Del Ray Avenue, literally right under my apartment windows, BUP's entertainment stage had around a half-dozen commercial size amplifiers that played high-volume music during the lengthy period on Saturday and Sunday noted above.

On Saturday (May 14), after they started testing the sound system and amplifiers around 9:15am, I realized the volume would be unbearable in my apartment right above BUP's entertainment stage. Then I went outside, found and spoke with Ms. Hamilton, BUP's Senior Marketing Manager. She explained that she

made the decision to locate the entertainment stage with full knowledge that would be under many apartment homes at Triangle Towers and also said she had located it on that part of Del Ray Avenue even though she knew it was the only block within the entire festival area that had a residential building. Ms. Hamilton listened to my concerns but said she would locate the entertainment stage under our apartment homes again in future years, unless there was a formal complaint. Please consider this letter my formal complaint to the County Council about BUP locating high-volume entertainment stages right under the windows of a large number of downtown Bethesda's apartment homes.

On Sunday (May 15), as I was leaving home to escape the loud noise I saw Mr. Dabney (who I recognized from photos in BUP literature) and spoke with him about the same concerns. Mr. Dabney said he had been notified that the high-volume music from BUP's entertainment stage on Del Ray Avenue was a big problem for residents in Triangle Towers. Mr. Dabney said he had asked for the volume to be kept down; however, with so many amplifiers in such close proximity to our apartment homes it wasn't helping much that morning. After returning home around 4pm, I found the band playing then had a full drum set and trumpets, electric guitars, and vocals that were at such a high volume I had to insert ear plugs because it was painfully loud inside my apartment. All of my double-pane windows were kept closed all weekend and even with the earplugs it was unbearable late Sunday afternoon so I began writing this letter with my formal complaint.

I understood from Mr. Dabney that BUP will have a debriefing after this festival and that he plans to discuss BUP's location of their high-volume entertainment stage in such close proximity to our apartment homes during their BUP debriefing. Hopefully BUP will make a decision not to locate a high-volume entertainment stage on Del Ray Avenue right under our apartment windows at Triangle Towers in future events.

I will send a copy of this letter by U.S. mail and follow up with a call to your office.

Sincerely,

Amy Doll
4853 Cordell Avenue
Bethesda, MD 20814
doll.amy@gmail.com

cc:

Diana Holland, Property Manager, Triangle Towers
W. David Dabney, Executive Directory, BUP
Lauren Hamilton, Senior Marketing Manager, BUP



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

May 17, 2011

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill XX-11: Noise – Core Urban Area Arts and Entertainment

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

LEGISLATION SUMMARY

This legislation will amend the County's Noise Control Law to set different noise standards for outdoor arts and entertainment activities (including farmers' markets and community festivals) within defined urban noise areas and the County's Urban Districts. Urban noise areas correspond to certain public facility and amenity spaces, as well as other performance or event spaces specifically identified as an urban noise area by a resolution of a municipality.

For urban noise areas within the County's Urban Districts, under this legislation the noise level and noise disturbance standards applicable elsewhere in the County will no longer apply to outdoor arts and entertainment activities conducted between 11 am and 11 pm. However, during that time, the noise level at the Urban District boundary must not exceed 75 dBA. For other designated urban noise areas, the same exception to the noise standards will apply for outdoor arts and entertainment activities conducted between 11 am and 11 pm, but here the noise level must not exceed 75 dBA at the boundary of the urban noise area. At all other times, the maximum allowable noise levels, noise disturbance standards, and required noise measurement techniques will be the same in these areas as for other parts of the County (e.g. noise levels to be measured at the relevant property line).

FISCAL AND ECONOMIC SUMMARY

The fiscal impact of this legislation is not expected to result in additional costs to the County because it is relaxing the current standard under limited circumstances; however, there could be a possible increase in the number of noise complaints that have to be investigated by the Department of Environmental Protection. If that were to occur there would be a limited increase in enforcement costs. Each complaint takes about 4 staff hours to investigate (including the positioning, setup, and operation of noise monitoring equipment), and since most of the complaints triggered by this legislation are likely to occur in connection with evening events, investigation of a complaint will usually entail overtime. The average cost would be \$218 per complaint, including salary, benefits (FICA), and overtime premium for an

Office of the Director

Environmental Health Specialist. However, the potential number of additional noise complaints that would be triggered by the proposed changes to the noise standards cannot be projected at this time and there may actually be no increased complaints as a result of this legislation. While a precise total fiscal impact of this bill cannot be determined at this time the table below provides a few scenarios for potential costs that may result from the subject legislation.

Potential Fiscal Impact								
Council Bill XX-11: Noise - Core Urban Area Arts and Entertainment								
Number of Complaints	Cost per Complaint	FY12	FY13	FY14	FY15	FY16	FY17	Six Year Total
10	218 \$	2,180 \$	2,180 \$	2,180 \$	2,180 \$	2,180 \$	2,180 \$	13,080
20	218 \$	4,360 \$	4,360 \$	4,360 \$	4,360 \$	4,360 \$	4,360 \$	26,160
30	218 \$	6,540 \$	6,540 \$	6,540 \$	6,540 \$	6,540 \$	6,540 \$	39,240

Assumptions:

1. No inflationary increase in personnel costs from FY13-17
2. All inspections are performed on nights and weekends and are performed on overtime

This bill is not expected to have a measurable economic impact on the County. However it is intended to facilitate arts and entertainment programming in urban areas. These types of programs do attract the community and visitors to the urban areas where they will dine and shop which is expected to have an undefined positive economic impact.

The following contributed to and concurred with this analysis: Diane Jones, Offices of the County Executive; Stan Edwards, Department of Environmental Protection; and Mike Coveyou, Department of Finance.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Bob Hoyt, Director, Department of Environmental Protection
- Stan Edwards, Department of Environmental Protection
- Jennifer Barrett, Director, Department of Finance
- Mike Coveyou, Department of Finance
- John Greiner, Office of Management and Budget
- Amy Wilson, Office of Management and Budget
- John Cuff, Office of Management and Budget