


MEMORANDUM

December 7, 2018

TO: County Council

FROM: Jeffry L. Zyontz  Senior Legislative Analyst

SUBJECT: Expedited Bill 38-18, Weapons – Urban Area – Boundary

PURPOSE: Action – Council roll call vote required

Staff Recommendation¹: Approve Bill 38-18 with an amendment to Section 57-3. The amendment would allow Council to consider future changes to the urban area boundary whenever such changes are recommended by the Executive.

Background

Expedited Bill 38-18, Weapons – Urban Area - Boundary, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on November 13, 2018.² A public hearing was held on December 4.

Expedited Bill 38-18 would change the boundaries of the urban area which has remained static for over 20 years. The boundary change would include 9 dwellings and vacant property west of Kruhm Road in the urban area. The discharge of firearms is prohibited with some exceptions, in the urban area.

The Police Department responded to calls for service related to the reporting of shootings in progress or the sound of shots in the area of Kruhm Road, 21 times during calendar year 2018. These calls occurred both during all hours of the day and night. Several neighbors told Police that the shooting took place from 16030 Kruhm Rd. and regularly awakes them from their sleep which is impacting their ability to feel safe.

¹ This Bill, with the consent of the Council President and the Chair of the Public Safety Committee is going to Council without a recommendation by the Public Safety Committee. In the absence of a Committee recommendation, a motion will be required to put the Bill before the Council.

² Key search terms: #GunSafety, urban area, firearm discharge, and weapon discharge.

The Police Department initiated 3 police reports related to safety concerns of neighbors. During those investigations, it was determined that the resident of 16030 Kruhm Rd. resides outside the urban area, possessed several licenses issued by the State of Maryland that allow him, with certain restrictions to shoot firearms on his property. The license holder was not violating any County or State law.

Public Hearing

The Council held a public hearing on December 4. There were 4 speakers.

Assistant Chief Marcus Jones spoke on behalf of County Executive Elrich in favor of Bill 38-18. He stated that the expansion of the urban area would be in the best interest of public safety for the greater Burtonsville community. In the opinion of the Montgomery County Police Department, the approval of Bill 38-18 would provide “greater comfort to the citizens who reside in the area while also [providing] additional safety from weapon fire permitted by law.”

Mr. Aaron Rosenzweig, a resident who fires his weapon in Germantown, testified against the approval of Bill 38-18. He disputed the characterization of the area in Burtonsville as an “urban” area. In his opinion the expansion of the area in which guns may be discharge takes a property interest away from residents. He disputes the presence of a safety or noise issue. To the extent that the problem is a firearm being discharged in the middle of the night, he recommends that the Council consider restricting the permissible hours for that activity. He does not recommend increasing the geography of the urban area.

Steven Shinholser and John Barreto residents of Kruhm Road testified in favor of Bill 38-18. They report that gun fire in the middle of the night disturbed their sleep. At other times they thought their physical safety was threatened.

State Code

Although State law preempts the County from some aspects of firearm control, it does allow the County to regulate the discharge of weapons.

Criminal Law – Title 4 Weapon Crimes –

Section 4-209 - Regulation of weapons and ammunition.

* * *

(d) Discharge of firearms. -

- (1) Except as provided in paragraph (2) of this subsection, [A county...may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section.] in accordance with law, a county, municipal corporation, or special taxing district may regulate the discharge of handguns, rifles, and shotguns.

- (2) A county, municipal corporation, or special taxing district may not prohibit the discharge of firearms at established ranges.

The provision gives the Council broad discretion. It does not limit the area in which firearm discharges may be restricted.

County Code

Chapter 57 includes the County's regulation of weapons. A provision in that Chapter only allows a change to where weapons may be discharged with fewer restrictions (outside of the urban area). The urban area is geographically defined by the boundaries of the area (Section 57-1 Definitions). The urban area is not described in terms of any characteristics that defines "urban".

Chapter 57 allows for changes to the area in which the discharge of firearms is restricted (the "urban area") under the following circumstances:

Section 57-3. Change in urban area boundary.

On February 1 each year, the County Executive, after consulting with the Firearm Safety Committee, must recommend to the County Council any appropriate change in the boundary of the urban area based on new development or reported incidents of weapons discharge near developed areas.

Section 57-4 prohibits the discharge of firearms in the urban area except under certain circumstances:

Section 57-4. Discharge of guns in the urban area.

- (a) Prohibition. Except as provided in subsection (b), a person, other than a peace officer or employee of the Maryland Department of Natural Resources performing official duties, must not discharge a gun within the urban area.
- (b) Exceptions. Except as provided in Sections 57-7 and 57-11, a person may discharge a gun:
 - (1) on any indoor or outdoor target, trap, skeet, or shooting range that the Firearms Safety Committee has inspected and approved in writing;
 - (2) in a private basement or cellar target range;
 - (3) when necessary to protect life or property;
 - (4) to kill a dangerous animal;
 - (5) for discharge of blank cartridges in musical and theatrical performances, parades, or sporting events;
 - (6) for salutes by firing squads at military funerals;
 - (7) if approved by the Chief of Police, under a deer damage control permit issued by the Maryland Department of Natural Resources;
 - (8) for the purpose of deer hunting on private property that is at least 50 acres in size if...

Issues

Would the inclusion of the area abutting Kruhm Road in the urban area be a taking of property rights under the 5th Amendment of the U.S. Constitution?

The Fifth Amendment says the following in part:

No person shall... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Staff could not find case law to support the proposition that the discharge of a firearm was a “property right” protected under the Fifth Amendment. The Supreme Court interpreted the Second Amendment as an individual right to keep and bear firearms in the case of *District of Columbia v. Heller*.³ That landmark case mentioned that laws existed to limit the discharge of firearms in passing without any negative comment.⁴

There is an ancient but still relevant common law doctrine; You may, “use your own property so as not to injure that of your neighbors”. This doctrine has applicability to the discharge of firearms. The discharge of firearms can intrude on the peaceful enjoyment of neighboring property.

Even if there were a Fifth Amendment property interest in discharging a weapon, that interest is not absolute. The County also has authority under its police power to approve laws that provide for the health, safety, and welfare of residents even when it negatively effects property rights.⁵

Should the boundary of the area in which discharging firearms is restricted (the urban area) be increased?

The boundary change proposed by Bill 38-18 is identified on the following maps:

³ 554 U.S. 570, (2008).

⁴ “A broader point about the laws that Justice BREYER cites: All of them punished the discharge (or loading) of guns with a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail), not with significant criminal penalties. They are akin to modern penalties for minor public-safety infractions like speeding or jaywalking. And although such public-safety laws may not contain exceptions for self-defense, it is inconceivable that the threat of a jaywalking ticket would deter someone from disregarding a “Do Not Walk” sign in order to flee an attacker, or that the government would enforce those laws under such circumstances.”

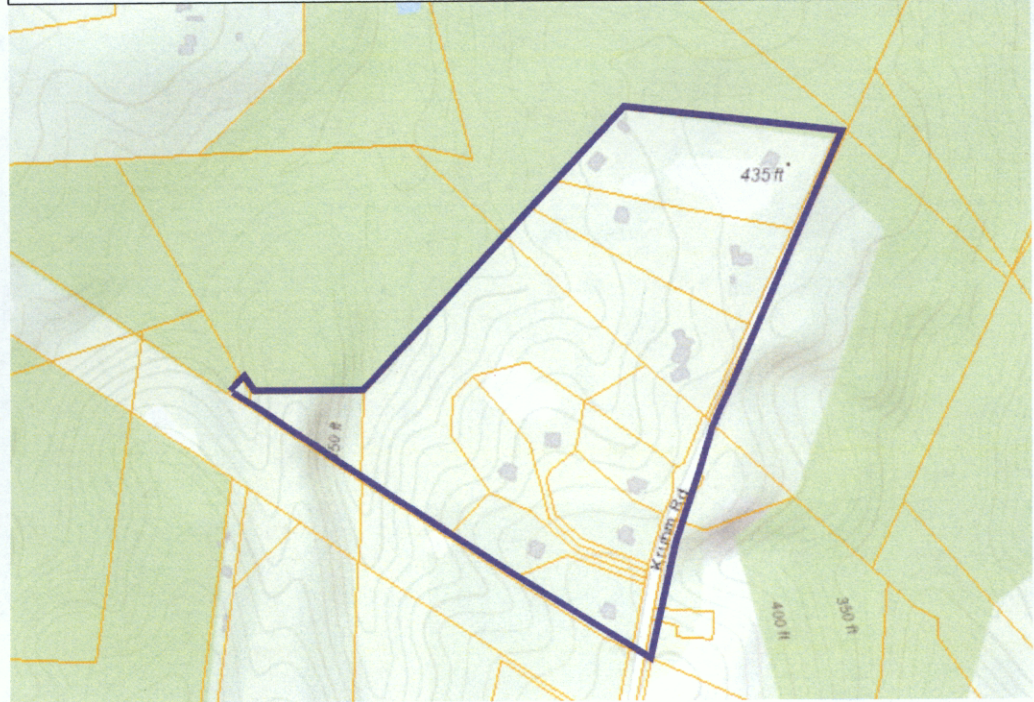
While the right to keep and bear arms is constitutionally protected, states have long restricted how and when people can use firearms. All states, as well as cities and municipal governments, have laws or ordinances which prevent people from firing or discharging a weapon under certain circumstances. These laws, often known as unlawful discharge, negligent discharge, or unlawful use of a weapon, differ widely between states and cities.

⁵ See, *Euclid v. Ambler Realty*, 272 U.S. 365 (1926).

General Location Map of the proposed Urban Area Boundary change



Specific area that would be added to the Urban Area by Bill 38-18



The testimony from the Police Department did not recommend restricting the hours during which weapons could be discharged as suggested in their testimony. **Given the testimony and the positive recommendation of the Police Department, staff recommends amending the Urban Area boundary.** This is not to define the area as “urban”. The designation is only to better

the discharge of firearms. The mapped area is the only place where such a change to the boundary is being recommended.

State law allows the Council to regulate the discharge of handguns, rifles, and shotguns. State law does not require the recommendation of a resident committee (Fire Safety Committee) to make a change.

How should the current requirement of a February 1 recommendation for a boundary change be addressed?

The Executive did not recommend the proposed boundary change on February 1, 2018. The Firearm Safety Committee was not consulted on the boundary change proposed in Bill 38-18. The Executive proposes to overcome Section 57-3 by including the following uncodified provision in Section 3 of the Bill (starting on line 41 in the Bill as introduced):

The Council declares that this legislation will take effect notwithstanding anything in Montgomery County Code Section 57-3

The facts that gave rise to Bill 38-18 may occur again. The Executive's proposed method of allowing the approval of Bill 38-18 would not put anyone on notice that a change to the urban area was possible after February 1. **Staff recommends approving Bill 38-18 with the following amendment to Section 57-3 of the current code:**

On February 1 each year, the County Executive, after consulting with the Firearm Safety Committee, [must] may recommend to the County Council any appropriate change in the boundary of the urban area based on new development or reported incidents of weapons discharged near developed areas. In addition, the County Executive, without consultation, may recommend any amendment to the boundary of the urban area at any other time.

With this change, Section 3 of Bill 38-18 starting on line 41 in the Bill as introduced, would be deleted.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 38-18
Concerning: Weapons – Urban Area -
Boundary
Revised: 12-5-2018 Draft No. 4
Introduced: November 13, 2018
Expires: May 13, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) change the boundaries of the urban area; and
- (2) generally amend the County law on weapons.

By amending

Montgomery County Code
Chapter 57, Weapons
Sections 57-1 and 57-3

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. Section 57-1 is amended as follows:

2 Sec. 57-1. Definitions.

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

5 * * *

6 *Urban area:* That part of the County within the following boundaries:
7 Beginning at a point where the Maryland/District of Columbia boundary line in the
8 County intersects with the Maryland/Virginia boundary line on the southwest side
9 of the Potomac River; running then northwest along the Maryland/Virginia boundary
10 line to the emptying of Watts Branch into the Potomac River; then northwest along
11 the northeast side of the Potomac River to the emptying of Seneca Creek into the
12 Potomac River; then north along Seneca Creek to Route 112 (Seneca Road); then
13 east along Route 112 to Route 28 (Darnestown Road); then northwest along Route
14 28 to Route 118 (Darnestown-Germantown Road); then north along Route 118 to
15 Route 117 (Clopper Road); then northwest along Route 117 to Little Seneca Creek;
16 then northeast along Little Seneca Creek to Black Hill Regional Park; then along the
17 eastern boundary of Black Hill Regional Park to the Park's southernmost intersection
18 with I-270; then northwest along I-270 to Little Seneca Creek; then north along Little
19 Seneca Creek to West Old Baltimore Road; then east along West Old Baltimore
20 Road to Route 355 (Frederick Road); then south along Route 355 to Brink Road;
21 then southeast on Brink Road to the Town of Laytonsville; then along the northern
22 boundary of the Town of Laytonsville to Route 420 (Sundown Road); then east
23 along Route 420 to Route 650 (Damascus Road); then southeast along Route 650 to
24 Route 97 (Georgia Avenue); then south along Route 97 to Brighton Dam Road; then
25 northeast along Brighton Dam Road to Route 650 (New Hampshire Avenue); then
26 south along Route 650 to Route 108; then east along Route 108 to the Potomac
27 Electric Power Company transmission line property; then southeast along the east

28 side of the Potomac Electric Power Company right-of-way to Batson Road; then
 29 following along the southern boundary of the Washington Suburban Sanitary
 30 Commission property to Kruhm Road; then southeast along Kruhm Road to the
 31 Potomac Electric Power Company right-of-way; then southeast along the east side
 32 of the Potomac Electric Power Company right-of-way to Route 198; then east along
 33 Route 198 to the Prince George's County/Montgomery County boundary line; then
 34 southwest along the Montgomery County/Prince George's County boundary line to
 35 the Montgomery County/District of Columbia boundary line; then along the
 36 Montgomery County/District of Columbia boundary line to the beginning point.

37 * * *

38 **Sec. 57-3. Change in urban area boundary.**

39 On February 1 each year, the County Executive, after consulting with the
 40 Firearm Safety Committee, ~~[[must]]~~ may recommend to the County Council any
 41 appropriate change in the boundary of the urban area based on new development or
 42 reported incidents of weapons ~~[[discharge]]~~ discharged near developed areas. In
 43 addition, the County Executive, without consultation, may recommend any
 44 amendment to the boundary of the urban area at any other time.

45 **Sec. 2. Expedited Effective Date.**

46 The Council declares that this legislation is necessary for the immediate
 47 protection of the public interest. This Act takes effect on the date on which it
 48 becomes law.

49 *Approved:*

50

Nancy Navarro, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 38-18

Weapons – Urban Area - Boundary

DESCRIPTION: This Bill revises the boundaries of the urban area under § 57-1 and makes other clarifying and stylistic changes.

PROBLEM: Reports of increased firearm discharge necessitate changing the boundaries of the urban area, which has remained static for over 20 years. 1997 Montgomery Cty. Laws ch. 3.

GOALS AND OBJECTIVES: Redefine the boundaries of the urban area under § 57-1.

COORDINATION: Police Department.

FISCAL IMPACT: Office of Management and Budget.

ECONOMIC IMPACT: Office of Finance.

EVALUATION: Subject to the general oversight of the County Executive and the County Council. The Office of the County Attorney will evaluate for form and legality.

EXPERIENCE ELSEWHERE: Unknown

SOURCE OF INFORMATION: Commander William Montgomery, MCPD

APPLICATION WITHIN MUNICIPALITIES: Applies in those municipalities that have adopted that have adopted Chapter 57.

PENALTIES: As provided in Chapter 57, Montgomery County Code.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 5, 2018

TO: Hans Riemer, President, Montgomery County Council

FROM: Isiah Leggett, County Executive 

RE: Bill XX-18E, Weapons - Urban Area - Amendments

The purpose of this memorandum is to transmit a proposed expedited bill to amend the boundaries of the urban area by amending Section 57-1 of the County Code. Chapter 57 limits the discharge of firearms within the urban area. The boundaries of the urban area have not changed in over 20 years (1997 Montgomery Cty. Laws ch. 3). Reports of increased firearm discharge necessitate a change to those boundaries at this time.

Thank you for your expedited consideration.

IL:el

Attachment

cc: Timothy L. Firestine, Chief Administrative Officer
Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance
J. Thomas Manger, Chief of Police
Bonnie Kirkland, Assistant Chief Administrative Officer



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

November 15, 2018

TO: Hans Riemer, President, County Council
FROM: Jennifer A. Hughes, Director, Office of Management and Budget
SUBJECT: FIS for Bill 38-18E – Weapons – Urban Areas - Amendments

Please find attached the fiscal impact statements for the above-referenced legislation.

JAH:df

c: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Alexandre A. Espinosa, Director, Department of Finance
David Platt, Department of Finance
Jacqueline Carter, Department of Finance
Rich Harris, Office of Management and Budget
Helen Vallone, Office of Management and Budget
Darlene Fairfax, Office of Management and Budget

Office of the Director

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Fiscal Impact Statement
Bill 38-18E – Weapons – Urban Areas – Amendments

1. Legislative Summary

This bill proposes to change the definition of “urban area” in Section 57-1 of the Montgomery County Code, which concerns the discharge of firearms within the County.

There are tighter restrictions for discharging firearms in the land deemed an “urban area” under the statute, which is a contiguous region starting at Seneca Creek State Park on the County’s boarder with the Potomac River and heading north to Black Hill Regional Park before turning east past Laytonsville and then southwest roughly paralleling the County’s northwest boarder before it ends at the Prince George’s County line in Burtonsville. The bill proposes to add a small portion of Burtonsville to the “urban area” region.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

This legislation will likely have a minimal impact on County revenues. By adding land to the area in which weapons laws are enforced, it is possible that some number of additional citations and fines could be levied on individuals committing violations in the newly-added area. The violation is a Class A Civil Violation, which carries a fine of \$500 for the first offence and \$750 for repeat offenses.

MCPD responded to 21 firearms-related calls for service in the area subject to Bill 38-18E in 2018 through November 1st, and initiated three police reports related to safety concerns. Using these figures as a guide, total fines collected could range from \$1,500 to \$15,500, depending on the number of first-time violations there are.

There could also be a minimal impact on County expenditures as well. County employees responding to the violations would be on-duty Police officers. However, to the extent the officer responds to a violation near the end of his or her shift, the individual may earn overtime pay while they complete the call, and these potential costs are estimated to total less than \$2,500.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.


If it proves to have an impact on revenues and expenditures, the 6-year impact of Bill 38-18E would be negligible. Assuming individuals alter their behavior based on Bill 38-18E, revenues could range between \$0 and \$7,500 per year. Therefore, the 6-year estimate would be from \$0 to \$45,000. Assuming the same change in behavior, overtime expenses could range between \$0 and \$1,500 per year, for a 6-year range of \$0-\$9,000.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Bill 38-18E does not have an impact on pension or insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.
Not applicable.
6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.
The bill does not authorize future spending.
7. An estimate of the staff time needed to implement the bill.
No staff time is needed to implement the bill.
8. An explanation of how the addition of new staff responsibilities would affect other duties.
The amount of land added by the change to the definition of "urban area" in Section 57-1 is small and is not estimated to materially add to staff responsibilities.
9. An estimate of costs when an additional appropriation is needed.
It is anticipated that Bill 38-18E will not require additional appropriation.
10. A description of any variable that could affect revenue and cost estimates.
The main variable that could affect revenue and costs would be the number of calls for weapons violations that occur in the area that Bill 38-18E adds to the definition of "urban area" in Section 57-1 of the County Code.
11. Ranges of revenue or expenditures that are uncertain or difficult to project.
See #2 and #3.
12. If a bill is likely to have no fiscal impact, why that is the case.
Not applicable.
13. Other fiscal impacts or comments.
None.
14. The following contributed to and concurred with this analysis:
Capt. William Montgomery, 3rd District Commander, Montgomery County Police Department

Richard H. Harris, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

11/15/18
Date

Economic Impact Statement
Bill XX-18E, Weapons – Urban Area – Amendments

Background:

This legislation would revise the boundaries of the urban area under Section 57-1 of Chapter 57 of the Montgomery County Code. The purpose for extending the boundaries is in response to an increase in the discharge of weapons thereby reducing the noise from such discharge in urban areas not covered under current law and the “protection of public interest”.

1. The sources of information, assumptions, and methodologies used.

There are no sources of information, assumptions, and methodologies used by the Department of Finance in the preparation of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

There are no variables that could affect the economic impact estimates.

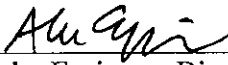
3. The Bill’s positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Bill XX-18E has no positive or negative economic impact. The purpose of extending the boundaries is in response to reducing the noise from the discharge of weapons and protection of public interest in those areas amended by Bill XX-18E.

4. If a Bill is likely to have no economic impact, why is that the case?

Bill XX-18E would have no economic impact. Please see paragraph 3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Alexandre Espinosa, Director
Department of Finance

11/5/2018

Date