

**MEMORANDUM**

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** 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 public hearing was held on June 14 (see testimony, ©12-27). While the County Noise Control Advisory Board (NCAB) did not testify at this hearing, they submitted a comprehensive memo (see ©9-11) which raised many significant issues.

**Summary** 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 specified 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 65 dBA 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.

**Noise measurement** Stan Edwards of DEP helpfully provided the following explanation of the dBA method of measuring sound, which one person had questioned:

Sound can be measured using several different "weightings" but the A-weighting is used universally (as far as I know) in community noise monitoring. The excerpt below is from the background section of a report done by the Federal Transit Administration on noise from transit systems. I think it has a nice explanation why measuring in dBA is appropriate:

The basic noise unit for transit noise is the A-weighted Sound Level. It describes a receiver's noise at any moment in time and is read directly from noise-monitoring equipment, with the "weighting switch" set on "A." The letter "A"

indicates that the sound has been filtered to reduce the strength of very low and very high-frequency sounds. Without this A-weighting, noise-monitoring equipment would respond to events people cannot hear, events such as high-frequency dog whistles and low-frequency seismic disturbances. On the average, each A-weighted sound level increase of 10 decibels corresponds to an approximate doubling of subjective loudness. Other frequency weighting such as B, C, and linear weights have been used to filter sound for specific applications.

A-weighted sound levels are adopted here as the basic noise unit because: (1) they can be easily measured, (2) they approximate our ear's sensitivity to sounds of different frequencies, (3) they match attitudinal-survey tests of annoyance better than do other basic units, (4) they have been in use since the early 1930s, and (5) they are endorsed as the proper basic unit for environmental noise by nearly every agency concerned with community noise throughout the world.

If you are interested in the full report (all 261 pages of it!) you can find it at [http://www.fta.dot.gov/documents/FTA\\_Noise\\_and\\_Vibration\\_Manual.pdf](http://www.fta.dot.gov/documents/FTA_Noise_and_Vibration_Manual.pdf).

Also see the County Civic Federation testimony on ©23-24 for data on and examples of noise measurements at specific decibel levels.

### **Policy and Legislative Issues**

The central policy issue posed by this Bill, in Council staff's view, is: **how should the County noise law balance the legitimate interests of urban residents and urban entertainment providers?** The issues discussed below all revolve around this core notion of *balance*.

*Before turning to the specific legislative issues this Bill raises, the Committee should explore two general policy issues:*

*What are the legitimate interests of urban residents regarding environmental noise?*

Proponents of this Bill argue that urban residents both expect and (at least in some cases) desire a higher background noise level than other County residents. That may be true for some residents, but clearly is not the whole story. As the Noise Control Advisory Board observed:

The NCAB agrees that urban areas have a higher level of background noise, but strongly questions the statement that "residents and occupants of those areas generally expect higher levels of noise." The NCAB recognizes that urban areas have a complex demographic comprised of families with children, "empty nesters" seeking to downsize and be close to amenities, residents who have migrated to transit oriented developments for convenience and economic necessity, as well as residents who enjoy being close to entertainment centers.

As the NCAB and other commentators pointed out, not all these residents (and potential residents) will easily tolerate the higher levels of noise that proponents of this Bill assume should be accepted as a matter of course.<sup>1</sup> While, as with many other social issues, no one can have their way all the time, many of the various types of urban dwellers that NCAB described will not expect (or put up with) the relatively unrestricted noise levels that this Bill, as introduced, would allow.<sup>2</sup> In Council staff's view, the success of "smart growth" land use patterns will depend, in large part, on the attractiveness of housing and living in the downtown areas to a wide variety of potential condominium buyers. While a lively, Adams Morgan-type environment may appeal to some potential buyers, it will certainly turn off others. As a matter of economic development policy, which risk does the County want to take?

A recent email exchange between an aggrieved Bethesda resident and the Bethesda Urban Partnership (BUP) management on ©28-29 illustrates the potential for urban district management (let alone private parties), essentially ungoverned by external controls, to ignore reasonable noise level expectations of neighborhood residents. (Also see the *Gazette* article on ©33 and the detailed letter from another resident of the same complex on ©30-32.) While proponents of this Bill prefer to play down these complaints as isolated incidents, in Council staff's view they are likely to be more common in the future if the looser (in some cases, effectively non-existent) level of regulation allowed under this Bill prevails. And, of course, to affected residents, it's irrelevant how often this kind of incident happens; their personal peace and quiet has been seriously violated, and they are not ready to sacrifice it to some supposedly greater purpose.

*What types of entertainment providers does the County want to encourage?*

As we discuss further below, this policy question is how broadly the County wants to encourage outdoor entertainment in urban areas. Proponents of this Bill generally point to the County's need to sponsor or foster major events, such as street festivals or concerts. However, the Bill is not limited to events put on by public or quasi-public organizations, such as the Silver Spring Urban District or BUP. It was intended to include events sponsored by commercial organizations, such as the development firm that owns Ellsworth Drive in Silver Spring (which, the Silver Spring Chamber of Commerce informed Council staff, puts on over 100 concerts a year). But it also covers bars or restaurants that provide outdoor music or broadcast indoor music to the outside, as long as they are located in an urban district or other designated urban noise area.<sup>3</sup>

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<sup>1</sup>Some proponents of this Bill prefer to use the term "sound" (see, for example, the Silver Spring Urban District Advisory Board testimony on ©16). In our view, this verges on euphemism. The County noise control law, in County Code §31B-2(k), defines "noise" as "sound, created or controlled by human activity, from one or more sources, heard by an individual". In standard usage, noise means a loud, unpleasant, or unwanted sound. In other words, one person's sound can be another's noise.

<sup>2</sup>As we discuss later, the NCAB memo on ©12 pointed out that, if the 75 dBA noise limit in this Bill is measured as the urban district boundary as the Bill directs, *the law would effectively allow noise levels up to 99 dBA or higher inside the urban district*: "Noise levels at the source of 99 dBA could measure 75 dBA at 320 feet from the district boundary line." 99 dBA is just under the 100 dBA emitted by a tractor or power saw at a distance of 6 feet.

<sup>3</sup>The clause which broadens the scope of this Bill to urban noise areas designated by a municipality (see ©3, line 34), was inserted to let Gaithersburg allow a restaurant in Kentlands to offer outdoor live music.

Under ©2-3, lines 27-30, an outdoor arts and entertainment activity is defined by where it occurs, not who presents it. The term “arts and entertainment activity” was inserted in the County noise law by previous Bill 6-10.<sup>4</sup> It covers certain types of activities, such as a play, film, music, or dance, but does not limit who presents that activity. Whether it includes, to use the example cited by the NCAB, a broadcast of a sports event such as a football game or soccer match, is not completely clear, although we doubt that those events qualify as “artistic or creative work” as that phrase is used in the law.

Under Bill 16-11, an outdoor activity also includes an indoor event broadcast to the outdoors (see ©2-3, lines 28-30). This would allow the Fillmore concert hall, for example, to broadcast a concert held inside to the street outside without violating current noise level standards.

*With this broad policy analysis as background, we turn to the more specific legislative issues this Bill raises.*

**1) Is this Bill necessary?** If this Bill is not enacted, several other provisions of current law could be used to allow more flexible noise standards for outdoor arts and entertainment activities:

- *DEP waiver* The sponsors of any event or series of events could file an application under County Code §31B-11(a) for a temporary waiver of the applicable noise limits with the County Department of Environmental Protection (DEP), which enforces the County noise law. DEP could approve a waiver, after at least 10 days’ notice to the public, if “the noise the event will create or cause in excess of the limits established under this Chapter is offset by the benefits of the event to the public.” DEP would set the allowable noise limits when it approves the waiver; they could be higher than 75 dBA but would be measured at the property line rather than further away.
- *County facility limits* The Council enacted Bill 6-10 in May to allow County-owned or -operated outdoor performing arts facilities designated by the County Executive to meet higher noise limits (75 dBA, measured at the receiving property) from April through October.<sup>5</sup> This could cover the urban noise areas the County owns, such as Veterans Plaza in Silver Spring, but not those on private property. And the closer measurement of noise limits would not offer the same degree of flexibility as this Bill does.

Neither of these provisions goes as far as this Bill. Using the statutory waiver process would create much more work for both event sponsors and DEP, even though in our view DEP could issue a long-term but not permanent waiver for, say, concerts held on Ellsworth Drive. But the waiver process does allow DEP and the public to focus on each separate event or type of event and, in the case of recurring events, evaluate how well the law was complied with and the effects of a waiver on nearby residents.

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<sup>4</sup>County Code §31B-2:

**Arts and entertainment activity** means a performance of artistic or creative work, such as a play, film, music, or dance, which is readily accessible to the public, whether or not admission is charged. **Arts and entertainment activity** includes the time necessary to set up and remove any structure or equipment used in the activity.

<sup>5</sup>A “clean copy” of the operative provision of Bill 6-10 is shown on ©34.

**Council staff recommendation:** explore whether a combination of Executive designation for public events and temporary waivers for private parties would work better than the blanket area-wide waivers allowed under this Bill.

**2) Do the legislative policy amendments in the Bill fairly reflect the desired balance between residents and entertainment providers?**

Critics of this Bill focused, along with its operational details, on the statement on ©2, lines 7-9, that residents and occupants of urban areas “generally expect higher levels of noise”. As the NCAB pointed out, this is at best a gross generalization, and it ignores the preferences of many if not most urban residents. Similarly, at least one resident challenged the assertion on lines 12-16 that outdoor arts and entertainment activities reduce crime; Council staff has not been cited any empirical evidence to back up that statement.

**Council staff recommendation:** rather than quibble endlessly about each assertion, delete all amendments on ©2 to the current law’s declaration of policy. They are not essential for this Bill to pass or to stand up to any court challenge; in fact, these kinds of statements often backfire during court reviews of County laws.

**3) Which outdoor arts and entertainment activities should higher noise levels apply to?**

“Outdoor arts and entertainment activity” is defined on ©2-3, lines 27-30. As previously noted, the term does not limit who provides the activity. To narrow the scope of this definition in ways that resolve the problems discussed in the policy issues part of this memo, two amendments are advisable.

**Council staff recommendation:** revise the definition of “outdoor arts and entertainment activity” to:

- require case-by-case DEP approval before noise from an activity conducted indoors that exceeds current allowable noise levels can be broadcast outside. This will prevent routine or continuous broadcasting of loud indoor sounds to the outside, whether by businesses or government agencies. This can be done by inserting after broadcast on line 28: with the Department’s approval.
- exclude bars and restaurants (holders of alcoholic beverage licenses) from the scope of any blanket waiver. This can be done by inserting on line 30: Outdoor arts and entertainment activity does not include any activity conducted by or at any business that holds a license to serve or sell alcoholic beverages.

**4) Which “urban noise areas” should higher noise levels be allowed in?**

As introduced, Bill 16-11 applies higher noise limits to an “urban noise area”. This term is defined (see ©3, lines 32-37) as a “definable area” that is either located in a County urban district (currently Bethesda, Silver Spring, or Wheaton), located in and designated by a municipality, or designated by the Executive as suitable for outdoor arts and entertainment activities. The area must also be either a space designed and programmed for events or a

publicly-owned space in a commercial area and not next to a single-family residential property (see ©3, lines 38-46).

Some critics of this Bill suggested that higher noise limits might be appropriate in one or more “core areas” in an urban district, but should not apply in the entire urban district. Rather than try to specifically define such geographic areas, Council staff suggests two other modifications to the Bill’s criteria for “urban noise areas”.

a) *Bordering single-family areas* In its testimony (see ©25), the Garrett Park Estates - White Flint Park Citizens’ Association expressed concern about the compatibility of higher noise limits in the White Flint area (which could be either designated by the Executive or soon become an urban district) with the single-family neighborhoods around the Sector Plan area. The Association recommended that the restriction which the Bill applies to publicly-owned spaces – that it not be located next to a single-family residential property – be applied as well to the private spaces. Council staff concurs.

**Council staff recommendation:** reconfigure lines 38-46 so that the exclusion on lines 45-46 also applies to the spaces defined in lines 39-41.

b) *Urban district designation* Under lines 35-37, for the higher noise limits to apply to an area that is not located in an urban district, the Executive must designate it in the County Register as suitable for outdoor entertainment activities. This is parallel to the similar designation requirement for County-owned or –operated performing arts facilities in Bill 6-10. Logically, the same requirement should apply in the urban districts; this would further define, and avoid questions over, the private spaces covered in lines 39-41.

**Council staff recommendation:** insert after is on line 39: designated by the County Executive as suitable for outdoor arts and entertainment activities.<sup>6</sup>

**5) What, if any, higher noise limits should apply in urban noise areas? Where should that noise be measured?**

As the NCAB noted:

If the proposed acceptable noise level is increased to 75 dBA at the urban district boundary from the current acceptable noise levels for non-residential areas of 67 dBA (day time) and 62 dBA (night time), the NCAB is very concerned about the potential noise levels emanating from the source which could be several hundred feet from the measurement and enforcement boundary. Noise levels at the source of 99 dBA could measure 75 dBA at 320 feet from the district boundary line. Noise levels in excess of 99dBA closer than 320 feet would be a violation of the ordinance. High noise levels within the urban district could impact the quality of life and health of the residents within.

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<sup>6</sup>This Bill should also clarify, as Bill 6-10 did, that the Executive can revoke a designation at any time by publishing the revocation in the County Register.

In other words, as this Bill is drafted, when the noise is measured at the boundary of an urban district (see ©4, lines 61-65), the effective noise level allowed at any given place inside the urban district is virtually unlimited. This effect is less acute in urban noise areas that are not located in urban districts because there the noise is measured at the property boundary of the urban noise area, which is likely to be a smaller area.

To lessen the impact of this provision, two approaches are possible:

- reduce the allowable limit from 75 dBA to a lower level;
- measure the noise closer to its source.

At this point, Council staff is not ready to suggest a specific lower noise level; that would require more empirical data than we have available now, and probably some field testing. But we can recommend that the noise from outdoor arts and entertainment activities in urban districts be measured at a closer point, the nearest residential property. That would give some leeway to urban districts but still recognize the legitimate interests of nearby residents. However, it would not accomplish the goal of the Garrett Park Estates - White Flint Park Citizens' Association, which urged (see ©25) that this Bill should not allow any violation of the current noise standards for single-family residential areas.

**Council staff recommendation:** on ©4, line 65, replace outer boundary of the urban district with residential property.

**6) What other operational limits should apply to the use of higher noise limits in urban noise areas?**

For example, as the NCAB asked on ©10, should the higher noise limits apply only during summer months (as those under Bill 6-10 do), or on weekends? Should the duration of any event using the higher limits be restricted to, for example, 3 hours, which is long enough for any film or single musical performance?

Council staff does not recommend any of these alternatives because, at best, they would be palliative rather than curative – that is, they would temporarily alleviate objectionable conditions without preventing or resolving them.

**7) What if any further enforcement and monitoring measures would be necessary to cope with higher urban noise limits?**

a) *DEP enforcement* Some critics such as the County Civic Federation (see testimony, ©22) suggested that, since DEP often seems unable or unwilling to monitor after-hours or weekend events because of staff or overtime limits, the nominally applicable noise limits are less likely to be observed and enforced. One solution may be to authorize the urban districts to use their funds to supplement DEP's enforcement capabilities – that is, to authorize the urban districts to transfer funds to DEP for that purpose.

**Council staff recommendation:** amend Bill 16-11 to authorize the urban districts to transfer funds as appropriated to DEP to enforce noise requirements in those districts.

b) *Police Department enforcement* At least one critic (see letter, ©30) alleged that County police don't always understand their role in enforcing the noise laws. This may be due in part to an ambiguity in the current noise law. The current law, §31B-12(a), says:

The Department (DEP) must enforce this Chapter. The County Executive may delegate in writing the authority to enforce parts of this Chapter to the Police Department or any other Executive agency.

However, since the Police Department would be already authorized by Code §35-3(b) to enforce the noise law, the delegation authority in §31B-12(a) is confusing and unnecessary.

**Council staff recommendation:** clarify §31B-12(a) as follows:

The Department and the Police Department must enforce this Chapter. The County Executive may delegate in writing the authority to enforce parts of this Chapter to [[the Police Department or]] any other Executive [[agency]] Department or Office.

This packet contains:	Circle #
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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**

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By: Council President at the Request of the County Executive

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**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

<b>Boldface</b>	<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



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



NOISE CONTROL ADVISORY BOARD

**MEMORANDUM**

June 21, 2011

**TO:** Isiah Leggett  
County Executive

Valerie Ervin, President  
Montgomery County Council

**FROM:** John Fuchs, Chair  
Noise Control Advisory Board

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

The Montgomery County Noise Control Advisory Board (NCAB) has reviewed the proposed Expedited Bill 16-11, Noise Control – Urban Areas sponsored by Council President at the request of the County Executive. Expedited Bill 16-11 would modify the existing county noise ordinance, Montgomery County Code Chapter 31B, by allowing higher noise levels during longer periods of the day and night within certain urban districts to accommodate outdoor arts and entertainment activities. Furthermore, this bill redefines the distance at which noise is measured for compliance in the urban districts, moving it from the receiving property line to the urban district's exterior boundary.

The NCAB is mandated by law to advise the County Executive, County Council, and the Director of the Department of Environmental Protection (DEP) on noise control issues. Pursuant to this mandate, at its last two monthly meetings, the Board discussed several concerns regarding Expedited Bill 16-11 and requests clarification and provides the following comments:

- The intent of this bill is unclear; it seems to remove the beneficial County Code Chapter 31B - Noise Control protection from the thousands of residents that currently reside within the already established urban districts. Furthermore, there is the possibility of impacting additional residents if a non-urban area is designated an Urban Noise Area by Executive Order. Does the County Council have an estimate of the number of county residents that may be impacted by the changes?
- The NCAB agrees that urban areas have a higher level of background noise, but strongly questions the statement that “residents and occupants of those areas generally expect higher levels of noise.” The NCAB recognizes that urban areas have a complex demographic comprised of families with children, “empty nesters” seeking to downsize and be close to amenities, residents who have migrated to transit oriented developments for convenience and economic necessity, as well as residents who enjoy being close to entertainment centers.

- The NCAB seeks clarification on the arts and entertainment venues that this bill intends to promote. Is this bill intended for special community events or the economic benefit of commercial entities? The language and definitions are vague and allow for broad interpretation.
- It is unclear if the intent of this bill is to designate as an “urban noise area” the entire urban district or a smaller geographic area, i.e. “core area” within the urban district that would affect fewer residents.
- The definition of art and entertainment is vague and can include everything from festivals, club music and/or the broadcasting of sporting events e.g. Monday night football games.
- Does the definition of an urban noise area in 31B-2(b)(2) include sidewalks adjacent to restaurants, bars and clubs thereby making it allowable for commercial establishments to broadcast entertainment activities outside?
- There is a disparity given to single family, multi-family and mixed-use developments that should be addressed. The urban noise area definition in 31B-2(b)(2)(B) specifically excludes areas adjacent to single family residents but is silent on multi-family residences. Like urban areas, multi-family dwellings share a complex demographic comprised of families with children, senior citizens, and persons of all ages and economic circumstances. Although some choose to live in urban areas for an enhanced lifestyle others are economically prohibited from living elsewhere.
- If the proposed acceptable noise level is increased to 75 dBA at the urban district boundary from the current acceptable noise levels for non-residential areas of 67 dBA (day time) and 62 dBA (night time), the NCAB is very concerned about the potential noise levels emanating from the source which could be several hundred feet from the measurement and enforcement boundary. Noise levels at the source of 99 dBA could measure 75 dBA at 320 feet from the district boundary line. Noise levels in excess of 99dBA closer than 320 feet would be a violation of the ordinance. High noise levels within the urban district could impact the quality of life and health of the residents within.
- The NCAB notes that limitations relating to time of year and days of the week e.g. June to October, Friday to Saturday, etc. are noticeably absent from the proposed language of this bill. Such limitations would grant some provision for night time quiet periods during school days and the school year. The NCAB seeks clarification on this point.

It seems that this bill makes the erroneous assumption that the residents living in mixed-use housing and multifamily dwellings within urban districts do so to enjoy late night and loud activities. The urban districts are made up of residents in multifamily buildings that are comprised of adults with children, senior citizens, and persons of all ages and economic circumstances. Although some choose to live in urban areas for an enhanced lifestyle, others live there due to economical constraints.

The NCAB seeks clarification on the following statement in Section 2 - Expedited Effective Date. “The Council declares that this Act is necessary for the immediate protection of the public interest.” This should be justified based upon the public comments and the Board’s

Isiah Leggett and Valerie Ervin  
June 21, 2011  
Page 3

comments. It would appear that the purpose of this bill and its expedited nature is unclear especially when the noise health and welfare of so many county residents are at risk.

The NCAB welcomes the opportunity to attend the upcoming work session and discuss their comments before the County moves forward with Expedited Bill 16-11. Thank you for your attention to this matter.

**TESTIMONY OF DIANE SCHWARTZ JONES  
ASSISTANT CHIEF ADMINISTRATIVE OFFICE  
ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT IN SUPPORT OF  
EXPEDITED BILL 16-11, NOISE CONTROL - URBAN AREA  
June 14, 2011**

Good afternoon. My name is Diane Schwartz Jones. I am an Assistant Chief Administrative Officer in the Office of the County Executive. I am pleased to provide testimony on behalf of County Executive Isiah Leggett in favor of Bill 16-11 which will create urban noise areas to facilitate the programming of outdoor arts and entertainment activities in urban areas on space that is accessible to the public and designed and programmed for outdoor performances and events.

Urban noise areas will be limited in application, location and duration. These areas are intended to facilitate the provision of outdoor arts and entertainment programming such as community serving summer concerts in locations created for these types of activities between the hours of 11 am and 11 pm.

The bill will apply in the County's designated Urban Districts in Silver Spring, Bethesda, and Wheaton, as well as in other urbanized areas as designated by the County Executive in an Executive Order. Additionally, for municipalities that are covered by the noise ordinance, this standard for outdoor arts and entertainment activities will apply in areas designated by such municipalities as urban noise areas.

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. This bill reflects the reality that there is an expectation of vibrancy in our urban areas and that such vibrancy is accompanied by increased noise levels. The expectations and standards that apply in a suburban or rural area simply do not apply in an urban area and it is appropriate to create a noise standard that recognizes this difference and allows for

the type of arts and entertainment activities that contribute to the activity and vibrancy of an urban area.

The new standard will apply to activities conducted in space that is accessible to the public and designed and programmed for performances and events, or on a publicly owned plaza, right-of-way, or open space that is adjacent to or confronts property used for commercial or mixed use that is not adjacent to and does not confront any property that is used for single-family residential use.

The County Executive supports this modest approach to facilitating desirable outdoor arts and entertainment activities. It is reasonable and allows for the many benefits that result from these activities. County Executive Leggett appreciates your introduction of this bill and urges the Council to adopt it as expeditiously as possible. Thank you for the opportunity to testify.



**THE GREATER  
BETHESDA-CHEVY CHASE  
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Your Business Is  
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**Testimony of Andrew P. Shulman on behalf of  
The Bethesda-Chevy Chase Chamber of Commerce  
Before The Montgomery County Council  
Expedited Bill 16-11 Noise Control – Urban Area and  
Zoning Text Amendment 11-04 –  
Central Business District Zones – Public Facilities**

Good afternoon President Ervin and Members of the County Council. My name is Andy Shulman and I am testifying on behalf of the Greater Bethesda-Chevy Chase Chamber of Commerce in support of two items you will be reviewing this afternoon. The first is the Noise Legislation – Expedited Bill 16-11 Noise Control-Urban Area. The other is the Zoning Text Amendment 11-04 – Public Facilities.

The Chamber strongly supports the noise legislation that is before you today. With the daily activities taking place in our urban areas, the ambient noise levels are currently in direct violation of the existing noise laws, let alone the weekly music concerts in the park or events such as Taste of Bethesda. We understand the necessity for noise limits in “suburban” residential areas, but the Central Business Districts and Arts & Entertainment Districts are urban areas with nightlife and noise levels to be expected from an urban area. With close to 200 restaurants in Bethesda alone, it is unreasonable to expect this urban area to limit outdoor music or even music in the restaurants to the same levels found in suburban neighborhoods. The noise you hear in Bethesda is a product of a vibrant and successful community where activity and commerce are taking place – it is a sign of vitality! We believe that the legislation as presented is appropriate for our urban areas and we urge you to approve this legislation.

In regards to ZTA 11-04, this amendment would allow publicly owned or operated government facilities to be incorporated in an Optional Method of Development Project Plan application to satisfy the public facilities and amenities and public use space requirements.

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The proposed ZTA is consistent with the Council's recent adoption of the CR zone – that is, governmentally owned or operated public facilities are considered a public benefit. This ZTA would provide for an excellent way for the County and the local community to realize much needed and meaningful public facilities and amenities, particularly during economically challenging times. We concur with the concept contained in the ZTA that preserves the Planning Board's discretion to approve or disapprove a proposed public facility as a public amenity. The Planning Board should have the ultimate authority to approve or deny the arrangement.

We are aware that the JBG Companies is in the process of developing an optional method project in the Bethesda Central Business District. The project proposes the replacement of the District 2 Police Station, which is a priority for Bethesda. This ZTA (much like the CR zone) would help facilitate not only the redevelopment of a portion of the Woodmont Triangle but also would permit the replacement police station to be treated as the amenity for the project, if approved by the Planning Board. This seems like a win-win for everyone.

Of great importance, the ZTA would have broad application in all of the County's Central Business Districts, including but not limited to the Bethesda CBD. As Staff notes, the ZTA provides another tool in the toolkit to obtain meaningful public amenities and public use space in optional method projects. This certainly could help to deliver needed public amenities and facilities to the entire central business district. We see a broad, positive application of this ZTA in the future.

We respectfully urge the County Council to approve the expedited bill on noise control and the zoning text amendment.

Thank you for your consideration.

**Testimony of  
The Silver Spring Urban District Advisory Board  
Public Hearing – expedited Bill 16-11, Noise Control – Urban Area  
Montgomery County Council  
Tuesday June 14<sup>th</sup>, 2011**

Good Afternoon Council President Ervin, and members of the Council. My name is Julie Statland and I am the acting Chair of the Silver Spring Urban District Advisory Committee. I come before you today on behalf of The Silver Spring Urban District Advisory Committee to express our support for Expedited Bill 16-11, because the Noise Control Ordinance directly impacts many activities and events that already exist in and are vital to the success of the Urban District.

Our first recommendation is to request that the name of the bill be changed to “Urban Sound Areas” instead of “Urban Noise Areas” We believe we should point out Sound Level Meters measure sound rather than noise. And, after all we consider the Jazz Festival, our concerts on the mall in Downtown Silver Spring -- including music from our own Committee member Ernest Bland, the laughter and applause from the crowd for the Thanksgiving Day Parade, and laughter from children at the fountain to be beautiful sound, not noise.

These kinds of positive, family-friendly activities bring audiences together from the community, providing much enjoyment for our citizens and serving as a force to keep our downtown safe and secure. These kinds of activities also support the mission of the Urban District.

According to the County’s website, the mission of the Silver Spring Urban District is to:

1. maintain downtown Silver Spring in a clean, safe, and attractive manner,
2. promote a strong sense of identity in downtown,
3. ensure that downtown Silver Spring has adequate infrastructure and the enhanced services required to foster a vibrant social and business climate,
4. ensure long-term economic viability and vitality.

These goals are accomplished through enhanced maintenance, sponsorship of community events such as **Silver Spring Swings Concerts**, the **Thanksgiving Parade**, **Silver Spring Jazz Festival**, and **Magical Montgomery Cultural Fair**.

We must have legislation to assure that the already successful events that have been done for years in Silver Spring can continue to happen in Silver Spring. These events are important to those who live in our community, and to the businesses that benefit from the audiences they attract.

Many of you know that the citizens of Silver Spring are among the most vocal in our County. Our Urban District often hears from our citizens on a variety of issues. Concerns about the level of noise generated by these successful activities has never been an issue. Based on my time with the Urban District, I can say that our citizens want to make sure that these arts and entertainment events continue.

Furthermore, it is important to remember that many citizens and business are attracted to live in or around an urban area in order to take advantage of the amenities provided. The arts and entertainment activities – the outdoor concerts, exercise classes, dance and theatrical performances and others -- covered under this legislation provide free enjoyment and bring vibrancy to Silver Spring.

For these reasons, they support the mission of the Urban District and must be allowed to continue.

# Holland & Knight

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June 13, 2011

VIA HAND DELIVERY

The Honorable Valerie Ervin  
President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

Re: Expedited Bill No. 16-11; Noise Control - Urban Areas

Dear Council President Ervin and Members of the Council:

This letter is submitted on behalf of our client, United Therapeutics Corporation, a biotechnology company with its world headquarters campus located in the Silver Spring Central Business District ("CBD") at the intersection of Spring and Cameron Streets. The purpose of this letter is to support Expedited Bill No. 16-11 that would allow higher sound level standards for outdoor arts and entertainment activities in urban noise areas during certain limited times of the day.

The United Therapeutics campus is located on both southern corners of the intersection of Spring Street with Cameron Street (the "Property"). United Therapeutics has constructed and occupied its laboratory building and the first of its two office buildings. The second office building is currently under construction and is expected to be completed within twelve months. United Therapeutics contributes financially and otherwise to the economy and vibrancy of downtown Silver Spring, through its participation in activities that help to energize the community.

The Property is located within the Silver Spring Urban District -- an area that also encompasses virtually all of the Silver Spring Central Business District, the Silver Spring Arts and Entertainment District, and the Silver Spring Enterprise Zone. United Therapeutics has created this campus over the last six years, bringing revitalization to the

area through its groundbreaking biotechnology laboratory and office complex, its creative architecture, and its employees and those who visit the site.

As part of optional method development of the Property, public use spaces were created. These were designed as unique, inviting, and exciting spaces that would entice passersby, enliven the streets, and contribute both "art and entertainment" to the Arts and Entertainment District. The public was expected to enter the public spaces to explore the attractions within, including the artistically designed and interactive "sculptural seating elements" that light up, the BioWalk of Fame that will honor Marylanders who have made important contributions to the life sciences, and the BioWall -- public space art in the form of bio-media performance art -- that will feature a wide variety of non-commercial life sciences-oriented programming. The excitement created by the public spaces is expected to create a "buzz" that will attract those seeking an unusual experience and an opportunity to mingle and share the experience with others.

Proposed Bill No. 16-11 would amend certain provisions of the Noise Control Law, Section 31B, Montgomery County Code, to allow higher sound level standards for certain outdoor arts and entertainment activities in an urban district. The Bill would raise the allowable noise levels from 65 dBA during the day and 55 dBA at night, to 75 dBA from 11:00 a.m. to 11:00 p.m. The measurement would be taken at the edge of the urban district. The Bill seeks to confirm, support, and continue the current character of activities now being undertaken in the CBD.

United Therapeutics supports these proposed changes to the Noise Law. The existing sound standards have not increased significantly since they were adopted, when the County was less developed and less populated. During the same period, the County has become more urbanized, especially in those areas that were designated CBDs in 1974 and urban districts in 1986. Smart growth and a desire to experience urban life has caused a greater migration to these transit-oriented parts of the County. These areas are desired particularly for the activity that occurs there, attracting residents and businesses with the hustle and bustle of urban life. With this activity comes greater sound and greater ambient sound levels.

Sound level standards should reflect the realities of these urban areas and the expectations of those living, working, visiting, and passing through the Silver Spring Urban District. Both residents of and visitors to the Urban District expect that thriving urban areas will be more active, more vibrant, and as a result, somewhat noisier than bedroom communities. The proposed changes to the Noise Law reflect that expectation.

United Therapeutics believes that the proposed Bill represents an appropriate balance of sound level standards with the needs of the Silver Spring Urban District as a "destination location" and an activity center that includes the Central Business District,

The Honorable Valerie Ervin  
June 13, 2011  
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the Arts and Entertainment District, and the Enterprise Zone. The hum of a thriving urban area is part of what defines its character. Activity of commerce and entertainment is what energizes and invigorates the visitors and residents. A higher level of sound is expected, and this translates into the greater vibrancy of the area. Limiting the higher sound levels to occurring between 11:00 a.m. and 11:00 p.m. is appropriate in coinciding with those times that arts and entertainment events occur and that background sound levels can also be expected to be higher.

For the above reasons, we urge the District Council to adopt Expedited Bill No. 16-11. Thank you for your consideration of these comments.

Sincerely yours,

HOLLAND & KNIGHT LLP



William Kominers



Susan M. Reutershan

cc: Councilmember Phil Andrews  
Councilmember Roger Berliner  
Councilmember Marc Elrich  
Councilmember Nancy Floreen  
Councilmember George Leventhal  
Councilmember Nancy Navarro  
Councilmember Craig Rice  
Councilmember Hans Riemer  
Mr. Avi Halpert  
Paul Mahon, Esquire

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**Testimony of  
The Greater Silver Spring Chamber of Commerce  
Public Hearing – Expedited Bill 16-11, Noise Control - Urban Area  
Montgomery County Council  
Tuesday, June 14, 2011**

Council President Ervin, members of the Council, good afternoon. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. I am here today to express our support for Expedited Bill 16-11, Noise Control – Urban Area.

The Chamber strongly supports this legislation because it will effectively extend to urban districts the same protections afforded to outdoor entertainment activities conducted at County-owned and operated facilities under Council Bill 06-10, which the Council passed last month.

Indeed, Expedited Bill 16-11 is necessary in order for the kinds of family-friendly outdoor entertainment activities that have been occurring and are so desired in downtown Silver Spring to continue to occur in Downtown Silver Spring.

As specified in the bill, “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 and generally enhancing quality of life.”

This legislation acknowledges the reality that the kinds of arts and entertainment activities that bring these benefits may also create noise that exceeds the current restrictive levels in the County's noise ordinance. It's worth noting that the 75 dba allowed in the new legislation is the level of an average radio or vacuum cleaner. We're not talking about levels generated by a typical rock concert, or even a jack hammer on the street.

Urban areas like Silver Spring, which has both an Urban District and an Arts & Entertainment District specially designated to facilitate arts and entertainment activities, already have a higher level of background noise from multiple sources. Residents and business owners in urban areas generally expect a higher level of noise. Indeed many folks move to urban areas specifically because of the increased excitement and liveliness they provide.

This legislation focuses on spaces designed for these types of public gatherings, such public plazas, rights-of-ways, and public amenity space included in development plans for certain zones. These areas are ideal for the kinds of desirable arts and entertainment activities that bring communities together and serve to deter criminal activity.

Expedited Bill 16-11 is a logical extension of Bill 06-10 and is essential to continuing the kinds of arts and entertainment activities that bring diverse groups into downtown Silver Spring and help keep it safe and secure.



June 14, 2011

Subject: MCCF Testimony to Council on Bill 16-11, Noise Control - Urban Areas

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of their Planning and Land Use Committee.

This testimony was unanimously approved for transmittal at our meeting last night. In it we pose a few questions about proposed Bill 16-11 that explain some of the concerns that Civic Federation members have with this legislation.

- 1) How will the general public be informed if and when the County Executive designates an "urban noise area" by Executive Order published in the County Register? (since most Civic Federation members were not aware there was such a document as the "County Register," and have no idea how or where to access it)
- 2) If Bill 16-11 allows as acceptable a noise level of 75 dBA (the equivalent of an "un-silenced wood shredder at 10 meters distance"--see Attachment 1) at the outer boundary of an Urban District or designated Urban Noise Area, then how loud must the sound be for audience members in the immediate area of the outdoor arts or entertainment activity? Is this an acceptable noise level to allow from 11 a.m. to 11 p.m. in mixed use areas that contain housing?
- 3) Who would someone call in county government to lodge a complaint outside of normal business hours (after 5 p.m. on weekdays or all day Saturday or Sunday) alleging the sound generated by an outdoor arts or entertainment activity exceeds the allowable noise level, or that a 75 dBA level was reached before 11 a.m. or after 11 p.m.? We understand that one must make an appointment to have a staffer from the Department of Environmental Protection investigate an alleged violation of the noise control ordinance; and by the time a DEP staffer arrived at an outdoor arts or entertainment venue the event would, in all likelihood, be over. If this is the case, and it is unenforceable, of what use is this amendment to the county noise control ordinance?

We have attached some basic information, captured from an internet search, on the measurement of sound by dBA level and some concerns with it, and on the dBA equivalent of everyday sounds.

captured 6/2/11 from <http://hyperphysics.phy-astr.gsu.edu/hbase/sound/acont.html>

## Sound Measurement in dBA

When making practical assessments of the sound level of a concert or as a part of a general survey of ambient sound levels, the type of measurement which is usually made is that of the level in dBA. This measurement is made with a sound level meter with an A contour filter which provides the best instrument match of the ear's equal loudness curves for soft sounds in the neighborhood of 40 dB.

### A Contour Filter

The A-contour filters out significantly more bass than the others, and is designed to approximate the ear at around the 40 phon level. It is very useful for eliminating inaudible low frequencies.

captured 6/1/11 from [www.sengpielaudio.com/TableOfSoundPressureLevels.htm](http://www.sengpielaudio.com/TableOfSoundPressureLevels.htm)

## How loud is dangerous? Typical dbA levels

190 dBA	Heavy weapons, 10 m behind the weapon (maximum level)
180 dBA	Toy pistol fired close to ear (maximum level)
170 dBA	Slap on the ear, fire cracker explodes on shoulder, small arms at a distance of 50 cm (maximum level)
160 dBA	Hammer stroke on brass tubing or steel plate at 1 m distance, airbag deployment very close at a distance of 30 cm (maximum level)
150 dBA	Hammer stroke in a smithy at 5 m distance (maximum level)
130 dBA	Loud hand clapping at 1 m distance (maximum level)
120 dBA	Whistle at 1 m distance, test run of a jet at 15 m distance
	<b>Threshold of pain, above this fast-acting hearing damage in short action is possible</b>
115 dBA	Take-off sound of planes at 10 m distance
110 dBA	Siren at 10 m distance, frequent sound level in discotheques and close to loudspeakers at rock concerts, violin close to the ear of an orchestra musicians (maximum level)
105 dBA	Chain saw at 1 m distance, banging car door at 1 m distance (maximum level), racing car at 40 m distance, possible level with music head phones

100 dBA	Frequent level with music via head phones, jack hammer at 10 m distance
95 dBA	Loud crying, hand circular saw at 1 m distance
90 dBA	Angle grinder outside at 1 m distance
<b>Over a duration of 40 hours a week hearing damage is possible</b>	
85 dBA	2-stroke chain-saw at 10 m distance, loud WC flush at 1 m distance
80 dBA	Very loud traffic noise of passing lorries at 7.5 m distance, high traffic on an expressway at 25 m distance
75 dBA	Passing car at 7.5 m distance, un-silenced wood shredder at 10 m distance
70 dBA	Level close to a main road by day, quiet hair dryer at 1 m distance to ear
65 dBA	<b>Bad risk of heart circulation disease at constant impact is possible</b>
60 dBA	Noisy lawn mower at 10 m distance
55 dBA	Low volume of radio or TV at 1 m distance, noisy vacuum cleaner at 10 m distance
50 dBA	Refrigerator at 1 m distance, bird twitter outside at 15 m distance
45 dBA	Noise of normal living; talking, or radio in the background
40 dBA	<b>Distraction when learning or concentration is possible</b>
35 dBA	Very quiet room fan at low speed at 1 m distance
25 dBA	Sound of breathing at 1 m distance
0 dBA	Auditory threshold

From a dB-A measurement no accurate description of the expected noise volume is possible.

Pro audio equipment often lists an A-weighted noise spec – not because it correlates well with our hearing – but because it can "hide" nasty hum components that make for bad noise specs.

**Words to bright minds: Always wonder what a manufacturer is hiding when they use A-weighting.**

captured from <http://www.rane.com/note145.html>

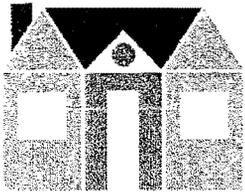
## Audio Specifications

Dennis Bohn, Rane Corporation

RaneNote 145, written 2000; last revised 1/03

Pro audio equipment often lists an A-weighted noise spec -- not because it correlates well with our hearing -- but because it can "hide" nasty hum components that make for bad noise specs. *Always wonder if a manufacturer is hiding something when you see A-weighting specs.* A-weighting rolls off the low-end, thus reducing the most annoying 2<sup>nd</sup> and 3<sup>rd</sup> line harmonics by about 20 dB and 12 dB respectively. Sometimes A-weighting can "improve" a noise spec by 10 dB.

The argument used to justify this is that the ear is not sensitive to low frequencies at low levels (à la Fletcher-Munson equal loudness curves), but that argument is false. Fletcher-Munson curves document equal loudness of single tones. Their curve tells us nothing of the ear's astonishing ability to sync in and lock onto repetitive tones -- like hum components -- even when these tones lie beneath the noise floor. This is what A-weighting can hide. For this reason most manufacturers shy from using it; instead they spec S/N figures "flat" or use the ITU-R 468 curve (*which actually makes their numbers look worse, but correlate better with the real world*).



# GARRETT PARK ESTATES - WHITE FLINT PARK CITIZENS' ASSOCIATION

11111 Jolly Way  
Kensington, Md. 20895  
June 14, 2011

Re: Expedited Bill 16-11, Noise Control - Urban Areas

President Ervin, Members of the County Council, I am Natalie Goldberg representing Garrett Park Estates / White Flint Park Citizens Association. Our community of single family homes is located just south of the White Flint Sector Plan area with residences abutting the Sector Plan boundary at the White Flint Mall property. We are concerned that Bill 16-11, Noise Control - Urban Areas will negatively impact our quality of life.

During development of the White Flint Sector Plan, council members were very supportive of the need to maintain compatibility with existing residential communities. Density and height transition from higher and denser buildings at the core, to the lower densities and heights at the edges bordering existing neighborhoods. We believe that compatibility is more than just density and height, but includes noise as well. Accordingly, we believe that existing single family residential homes should be protected from excessive noise by maintaining the current standards for single-family residential areas.

We would like to see some changes to this proposed bill both in the definition of an urban noise area and in the noise standards themselves. We ask for protection within this bill for existing single family residential homes located in proximity to urban noise areas.

The urban noise area, Section 31B-2, is defined in terms of location (Paragraph (a) lines 33 -37) and property characteristics (Paragraph (b) lines 39 -46). The property characteristic section seems broken down into two categories: (1) a space accessible to the public or (2) a publically owned space. We support the exclusion provided in the publically owned areas which states:

“(B) is not adjacent to and does not confront any property that is used for single-family residential use”

We ask that this exclusion be applicable to privately owned space described in paragraph (1) and well as the public space in paragraph (2). Perhaps this exclusion should be moved below both (1) and (2) and modified to be a separate phrase reading “(3) in either (1) or (2) above, not adjacent to and not confronting any property that is used for single-family residential use.”

We also believe that there should be a modification to the Section 31B-6B, Noise standards in urban noise areas, to insure that noise levels at the boundary of single family residential neighborhoods not exceed the standards of 65dBA during the day and 55dBA at night, as currently defined in Section 31B-5 for residential areas. We ask that a new paragraph (d) be added to Section 31B-6B stating:

(d) nothing in the above sections shall cause the noise level and noise disturbance standards in Section 31B-5 for single family residential areas to be exceeded.

Thank you for considering our concerns.

Thank you for allowing me to address the Council this afternoon. I am Diana Holland, the Property Manager of and a resident at Triangle Towers Apartments located at 4853 Cordell Avenue in the heart of downtown Bethesda.

I would like to quickly recount for you the concerns my residents have regarding Expedited Bill 16-11, Noise Control – Urban Area. It is my understanding that the Council is considering raising the decibel levels allowed during the myriad street festivals enjoyed by County residents in what is defined as an Urban Area.

The particular concern revolves around festivals sponsored by the Bethesda Urban Partnership. Most of the residents at Triangle Towers enjoy living in the midst of all these vibrant cultural activities, such as the Taste of Bethesda and the Bethesda Art Festival. These venues feature wonderful food, artistic vendors and live music. However, it is challenging to peacefully co-exist while they are going on. Here is an example. On Saturday and Sunday, May 14 and 15, 2011, during the Bethesda Art Festival, a sound stage was located near our building and the residents were subjected to music so loud on both days that you could feel the floors shaking. This is not a good quality of life for those who choose not to attend the festivals.

If you can't beat 'em – join 'em ... some might say. But that is not always possible if you are elderly, partake in shift work at Bethesda Naval Hospital, are studying medicine at the Armed Forces medical school Uniformed Services University of the Health Sciences or are working from home.

I would ask that the Council keep in mind that approximately 350 tax paying Montgomery County residents live at our building and would be directly affected by the increase in the decibel level. From what I can read in the Expedited Bill an Urban Noise Area is defined in part as, (and I quote) ***“only a publicly owned plaza, right of way, or open space that is adjacent to or confronts property used for commercial or mixed use and is not adjacent to and does not confront any property that is used for single family residential use”*** (end quote). What about apartment buildings located in an Urban Noise area? No mention is made of apartment buildings in located in Urban Noise areas. The impact to my residents would be greater than residents in single family homes!

On behalf of the Triangle Towers Apartments residents I respectfully request that the Montgomery County Council leave the current standards of 67 dBA and 62dBA in place and I thank you for your consideration.

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  
7700 Old Georgetown Road  
Bethesda, Maryland 20814  
[www.bethesda.org](http://www.bethesda.org)  
301-215-6660 extension 122  
240-876-8492 cell

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**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 14<sup>th</sup> and 7 hours between 9:45am-nearly 5pm on May 15<sup>th</sup> 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](mailto:doll.amy@gmail.com)

cc:

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

4853 Cordell Ave #614  
Bethesda, MD 20814  
June 13, 2011

Honorable Roger Berliner  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Councilmember Berliner:

As a long-time resident of Montgomery County, currently living in the Woodmont Triangle area of downtown Bethesda, I wish to express my strong opposition to Expedited Bill 16-11, which establishes urban noise areas to which are applied more relaxed standards on noise control. My objections to this bill are detailed below.

- 1) Existing noise standards are already inadequate. There are numerous occasions on weekend evenings when I have to wear earplugs indoors (with the windows closed) because of the noise from amplified music presented outdoors at various local bars and restaurants. On a few notable occasions, I was unable to hear my own television due to the amplified music. Such disturbance occasionally lasts until 1 AM, shortly before the bars close. The most notorious source of disturbance is Caddies on Cordell.
- 2) There is no adequate means of enforcement even of the current noise standards. The police have told me that they do not have the authority to enforce the noise ordinance, and the Department of Environmental Protection, which is theoretically responsible for enforcing noise control rules, does not appear to carry out evaluations on weekend evenings; they also appear to have no means for rapid response to a source of disturbance.
- 3) The bill is poorly drafted and lacking in proper definition. The definition of "outdoor arts and entertainment activities" would seem to include a bar that broadcasts amplified music outdoors on its patio or to tables set up on the sidewalk. Was it the intent of the bill to cover such attempts by for-profit entities that are not generally free and open to the public (minors are not allowed where alcohol is sold) or rather to limit the coverage to free outdoor concerts put on by government or non-profit entities?
- 4) The definition of where the noise limits apply ("boundary of the property") are not sufficiently explicit. In many cases, the speakers broadcasting the amplified music are pointed at an upward angle. In such situations, the noise level may be louder 15 or 20 feet above ground level at the property line rather than at ground level. The placement of speakers becomes critical for those of us living in high-rise apartments which have a direct line-of-sight to the source of amplified music.

- 5) The public sidewalk in front of a bar in downtown Bethesda would seem to qualify as an “urban noise area” under the provisions of the bill. No doubt this proposed legislation would encourage bar owners to place additional tables for patrons on the sidewalk so that they can listen to the amplified music from the bar (“outdoor arts and entertainment activity”), as other entities in downtown Bethesda have done. As a result, a “public right of way” will no longer be a “right of way” – there are already many areas where sidewalk tables have so encroached on sidewalk space that only a single file of pedestrians is feasible – walkers going in one direction may have to stop and wait until those going in the opposite direction are finished. [Aside: does the county regulate the setting up of tables on public sidewalks? I haven’t been able to find any regulations or permitting process – the establishments seem to be able to do as they wish].
- 6) The presumptions of the bill are incorrect. The statement that “residents and occupants of those [urban] areas generally expect higher levels of noise” is totally unsupported. I, like many other residents, moved to this area well before the advent of amplified music broadcast outdoors. Many choose to live in downtown Bethesda because of its proximity to NIH, USUHS, or Bethesda Naval Hospital, not because of a desire to live in a noisy environment. I would note that people are being encouraged to live near Metro to avoid creating more traffic congestion, and these areas around Metro are often urbanized and heavily developed – just the location where one would find urban noise areas.
- 7) The bill is discriminatory against low-income residents. Many of the moderately-priced dwelling units required by the county are being constructed as part of high-rises in urban areas, including Bethesda, in accord with the county plan. Low-income residents live in these locations not because they would like to live in a noisy area but because that is where the county is establishing housing for lower-income individuals. The new low-income housing facility on Cordell Avenue, for example, is in close proximity to many of the sources of amplified music.
- 8) The number of people impacted is huge. My apartment building alone (Triangle Towers) has 266 units, including families with children, and the apartment building next door (Palisades) has 314 units. Does the council really believe that disrupting the lives of 1000+ individuals on one block alone is a “public benefit”? I would note that several additional new high-rise apartment buildings are under construction just in the Woodmont Triangle area , some right across the street from bars playing amplified music, so that the number of people impacted by this proposed law (many of whom vote) is likely to be in the many thousands.
- 9) The bill states that crime prevention is one of the public benefits seen from outdoor arts and entertainment activities. In my experience, just the opposite is true: loud amplified music played until late hours at local drinking establishments seems to attract patrons who are predisposed to public drunkenness, disturbance of the peace, driving while intoxicated, and violation of laws prohibiting the serving of alcohol to minors.

- 10) This bill will certainly increase the income of local bar owners, but the resulting increase in noise level will almost certainly adversely affect the desirability of nearby apartments and consequently the income of apartment owners, ultimately leading to a net overall decrease in business activity and a consequent decrease in tax revenue to the county.
- 11) The council should not use the relative low number of formal noise complaints with DEP to indicate that residents in urban areas are satisfied with the noise level. Rather, this lack of written documents reflects the complexity of filing formal noise complaints with DEP and the difficulty for an individual to prove a violation as defined by law. I personally have started the process of filing a noise complaint several times, only to stop halfway through because of the apparent futility. I can assure council members that if they hold an evening town hall in the meeting room of one of the apartment buildings in downtown Bethesda, they will receive numerous noise complaints which will be verified by multiple residents, not just a single individual with an axe to grind.

I would strongly encourage members of the County Council to make their own visits to downtown Bethesda on weekend evenings when the noise is greatest (I suggest Caddies on Cordell). The council members should also avail themselves of an opportunity to have staff from the noise control division play amplified music for them at the specified legal limits of the current law and the new bill. The Department of Environmental Protection may wish to put some monitoring devices in apartments that are subject to noise even under the current rules.

This bill appears to have been hastily drafted, likely with good intention, but suffers from numerous serious deficiencies. This legislation would adversely impact numerous constituents, and any benefit of the legislation is far outweighed by its harm. This bill should be withdrawn.

*Allan R. Glass*

Allan R. Glass

cc: Valerie Irvin, Council Chair  
Michael Faden, Senior Legislative Attorney



TIN NGUYEN/THE GAZETTE

Paul Haar of Chevy Chase and his daughter Sophie move to the rock and pop music by The Crimestoppers band at Veterans Park in Bethesda on May 19 as part of the weekly Thursday summer concerts in downtown Bethesda.

# Urban areas get second shot at increasing noise levels

## ■ Sounds at events in Bethesda could reach up to 75 decibels

BY ALISON BRYANT  
STAFF WRITER

Musicians at the Bethesda Fine Arts Festival jammed a little too loud in May, prompting complaints from neighbors that coincide with a potential change in law for noise levels in urban areas.

Outdoor arts and entertainment activities in downtown Bethesda, Wheaton and Silver Spring could reach volumes of 75 decibels — roughly the level of sound a vacuum cleaner makes — between 11 a.m. and 11 p.m. Standards now allow a volume of 67 decibels during the day and 62 decibels during the night in non-residential areas. Conversation speech ranges around 60 decibels.

Municipalities can also designate areas, and the county executive can designate any other areas.

At the request of County Executive Isiah Leggett (D), Council President Valerie Ervin (D-Dist. 5) of Silver Spring introduced the bill May 18. A public hearing is tentatively scheduled at 1:30 p.m. June 14 at 100 Maryland Ave. in Rockville.

A county bill requested a year ago by the Strathmore Hall Foundation Inc. to preserve its outdoor concert series passed May 18, increasing noise standards to 75

decibels between 11 a.m. and 11 p.m.

The new bill for urban areas follows suit.

The new bill allows for public input, which County Council Vice President Roger Berliner (D-Dist. 1) of Pötomac said makes the approach more reasonable.

"I do believe that it is important for our urban districts to be able to provide entertainment, but not at a noise level that disturbs the community," Berliner said. "And since we feel like we have achieved that balance roughly in Strathmore, I am hopeful that the same balance will occur for the urban districts."

Some residents of Triangle Towers complained during the arts festival May 14 and 15 because an entertainment stage was outside their building on Del Ray Avenue.

From May 2010 through April 2011, the Montgomery County Police Department received 138 calls from downtown Bethesda that were classified as noise complaints when they came in, said Angela Cruz, police department spokeswoman.

In a formal complaint to Berliner, Amy Doll, a Triangle Towers resident, said she experienced a serious noise problem from 10 a.m. to 6 p.m. May 14, and from 9:45 a.m. to nearly 5 p.m. May 15.

"On Del Ray Avenue, literally right under my apartment windows, [Bethesda Urban Partnership'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," she said in her formal complaint.

Doll contacted the partnership and Southern Management Corporation, the company that manages Triangle Towers, with her complaint, a sentiment she said others in her building felt as well.

Both groups were receptive to the complaints.

Partnership representatives want to strike a balance between providing good music during festivals and respecting residents, said Stephanie Coppula, director of marketing and communications at the partnership, a group that markets downtown Bethesda and produces cultural events and festivals for the community.

"Even if legislation is in place and says you can go to a certain decibel level, we'll still work with our community," Coppula said.

Partnership representatives told residents who complained about noise levels that the entertainment stage would not be located near residential properties at next year's festival, Coppula said.

The noise complaint, Coppula said, was one of the first the partnership has received in a long time.

"I think music greatly enhances an event," she said. "But we have to have a middle ground."

abryant@gazette.net

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

- (a) Each outdoor **arts and entertainment activity** held at a **qualifying performing arts facility** must not exceed the following noise decibel limits:
  - (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
  - (2) at all other times, the maximum allowable noise level set in Section 31B-5.
- (b) A **qualifying performing arts facility** which has complied with this Section must not cause or permit noise levels from an outdoor **arts and entertainment activity** to exceed the standards in subsection (a).
- (c) Any outdoor **arts and entertainment activity** conducted at a **qualifying performing arts facility** which has complied with this Section must not be cited as causing a noise disturbance.
- (d) The Department must annually advise the Executive and Council, and the operator of each **qualifying performing arts facility**, whether the noise levels specified in this Section remain appropriate for that **facility** and the extent of compliance with those levels.