

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 6-10, Noise Control – Arts and Entertainment Activities

Bill 6-10, Noise Control – Arts and Entertainment Activities, sponsored by Councilmember Elrich and Council President Floreen, was introduced on March 2, 2010. A Transportation, Infrastructure, Energy and Environment Committee (T&E) worksession will be scheduled at a later date.

Bill 6-10 would set different noise level standards for certain arts and entertainment activities. It would also exempt certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance. In addition, a potential homebuyer would be given a notice about certain arts and entertainment activities near those areas.

This Bill would allow a performing arts facility (such as, but not limited to, Strathmore Hall) which conducts at least 5 outdoor arts and entertainment activities (such as concerts or films) each year to file a noise mitigation plan with the Department of Environmental Protection (DEP). DEP would review but would not approve the plan. The facility would then be subject to a higher maximum noise level from April through October – 75 dBA versus the normal 65 (daytime) or 55 (nighttime) levels that apply to residential areas. If an arts facility conducts fewer than 5 outdoor events, it could apply for an event-by-event waiver under the current law and would not have to file a plan.

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Bill No. 6-10  
Concerning: Noise Control – Arts and Entertainment Activities  
Revised: 2-25-10 Draft No. 1  
Introduced: March 2, 2010  
Expires: September 2, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Elrich and Council President Floreen

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**AN ACT** to:

- (1) set different noise level standards for certain arts and entertainment activities;
- (2) exempt certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance;
- (3) require certain notices to be given to certain potential homebuyers near certain arts and entertainment activities; and
- (4) generally amend the County noise control law.

By amending

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

By adding

Chapter 31B, Noise Control  
Section 31B-6A  
Chapter 40, Real Property  
Section 40-12D

<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:*

1           **Sec. 1. Sections 31B-2 and 31B-5 are amended, and Section 31B-6A is**  
2 **added, as follows:**

3 **31B-2.       Definitions.**

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

6           **Arts and entertainment activity** means a performance of artistic or creative  
7 **work, such as a play, film, music, or dance.**

8           [(a)] \*       \*       \*

9           [(b)] \*       \*       \*

10          [(c)] \*       \*       \*

11          [(d)] \*       \*       \*

12          [(e)] \*       \*       \*

13          [(f)] \*       \*       \*

14          [(g)] \*       \*       \*

15          [(i)] \*       \*       \*

16          [(j)] \*       \*       \*

17          [(k)] \*       \*       \*

18          [(l)] \*       \*       \*

19          [(m)] \*       \*       \*

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

23          [(n)] \*       \*       \*

24          [(o)] \*       \*       \*

25          **Performing arts facility** means a building, outdoor seasonal, temporary, or  
26 **permanent stage, or other clearly defined area or space, which is located at a venue**  
27 **that primarily presents live theatrical, musical, or dance performances.**

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

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

34 (a) Maximum allowable noise levels.

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

38 \* \* \*

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

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

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

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

55 (b) If the owner or manager of a performing arts facility submits a  
 56 completed noise-mitigation plan to the Department and conducts at  
 57 least 5 outdoor arts and entertainment activities each year in  
 58 accordance with that plan, each outdoor arts and entertainment  
 59 activity held at the facility must not exceed the following noise decibel  
 60 limits:

61 (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75  
 62 dBa, as measured on the receiving property; and

63 (2) at all other times, the maximum allowable noise level set in  
 64 Section 31B-5.

65 (c) A person must not cause or permit noise levels from an outdoor arts  
 66 and entertainment activity which is subject to this Section to exceed  
 67 the standards in subsection (b).

68 (d) Any outdoor arts and entertainment activity subject to this Section  
 69 which meets the standards in subsection (b) must not be cited as causing  
 70 a noise disturbance.

71 (e) For a performing arts facility to remain in compliance with this  
 72 Section, its owner or manager must update its noise mitigation plan as  
 73 necessary to reflect significant changes in programming and noise  
 74 control technology, and must file an updated plan with the Department  
 75 not later than March 15 each year.

76 **Sec. 2. Section 40-12D is added as follows:**

77 **40-12D. Disclosure of noise from certain arts and entertainment activities.**

78 (a) If any residential real property is located within 300 yards of a  
 79 performing arts facility where 5 or more outdoor arts and  
 80 entertainment activities which are subject to special noise level  
 81 standards under Section 31B-6A have been conducted during the

82 previous 12 months or are scheduled to be conducted in the next 12  
83 months, any seller of that property must disclose to each prospective  
84 buyer, before the buyer signs a contract to buy the property, that certain  
85 seasonal outdoor **arts and entertainment activities** conducted at that  
86 facility are subject to special noise level standards which may exceed  
87 otherwise applicable noise limits.

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

91 (1) the seller has provided the information required by subsection (a);  
92 and

93 (2) the buyer understands that:

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

96 (B) the buyer may obtain more information about noise limits  
97 on these activities from the County Department of  
98 Environmental Protection.

99 *Approved:*

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Nancy Floreen, President, County Council

Date

101 *Approved:*

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Isiah Leggett, County Executive

Date

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

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Linda M. Lauer, Clerk of the Council

Date

# LEGISLATIVE REQUEST REPORT

Bill 6-10

## *Noise Control – Arts and Entertainment Activities*

<b>DESCRIPTION:</b>	Sets higher noise level standards during specific hours and seasons for certain arts and entertainment activities. Exempts certain noise levels created by certain arts and entertainment activities from being treated as a noise disturbance. Requires potential homebuyers near covered outdoor performance areas to be notified about potential noise from arts and entertainment activities at those areas.
<b>PROBLEM:</b>	Certain outdoor performing arts activities with substantial community support may violate current evening noise standards.
<b>GOALS AND OBJECTIVES:</b>	To allow reasonable, enforceable standards to apply to seasonal outdoor performances, and to notify potential neighbors that outdoor performances with different noise standards may be held nearby.
<b>COORDINATION:</b>	Department of Environmental Protection
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Michael Faden, Senior Legislative Attorney, 240-777-7905
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Class A



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

March 17, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 6-10, Noise Control – Arts and Entertainment Activities

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

**LEGISLATION SUMMARY**

This bill will establish a “seasonal noise level standard” that exceeds otherwise applicable noise standards for qualifying outdoor arts and entertainment activities that consist of more than five performances at a performing arts facility. To qualify for the seasonal noise level standard, the owner of the facility must file a noise mitigation plan, prepared by an acoustical engineer or consultant, with the Department of Environmental Protection. The plan must specify, among other things, the types of noise mitigation measures that the facility will employ and the impact of the proposed arts and entertainment activity and of the noise mitigation measures on the performers, the audience, and nearby properties. The Department of Environmental Protection must make the plan available to the public and send a copy to the Noise Control Advisory Board.

In addition, potential buyers of residential real property located within 300 yards of a performing arts facility subject to the seasonal noise level standard must be notified by the seller that there may be periodic noise from nearby seasonal outdoor arts and entertainment activities that may exceed otherwise applicable noise limits.

**FISCAL AND ECONOMIC SUMMARY**

This legislation does not appear to have a fiscal impact on the County, although the exact scope of the facilities affected is still to be determined. The noise mitigation plan submitted by the owner of a performing arts facility will not require processing or approval by the Department of Environmental Protection, except for making it available to the public and to the Noise Advisory Board. However, it is uncertain at this time whether the legislation will affect County-sponsored seasonal outdoor activities, either by restricting them or by requiring the County to pay for the preparation and implementation of a noise mitigation plan.

Office of the Director

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The Department of Finance has determined that this bill will not have an overall economic impact. However, it is unclear what effect, if any, the notification requirements contained in the proposed bill may have on sellers of property in the vicinity of performing arts facilities, or on the real estate industry.

The following contributed to and concurred with this analysis: Stan Edwards, Department of Environmental Protection; Mike Coveyou, Department of Finance; and John Greiner, Office of Management and Budget.

JFB:jg

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Dee Gonzalez, Offices of the County Executive  
Bob Hoyt, Director, Department of Environmental Protection  
Stan Edwards, Department of Environmental Protection  
Mike Coveyou, Department of Finance  
John Greiner, Office of Management and Budget  
John Cuff, Office of Management and Budget