

MEMORANDUM

TO: County Council

FROM:  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.

This packet contains:

Bill 6-10
Legislative Request Report
Fiscal Impact Statement

Circle #

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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

By: Councilmember Elrich and Council President Floreen

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

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

31B-2. Definitions.

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

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

[(a)] * * *

[(b)] * * *

[(c)] * * *

[(d)] * * *

[(e)] * * *

[(f)] * * *

[(g)] * * *

[(i)] * * *

[(j)] * * *

[(k)] * * *

[(l)] * * *

[(m)] * * *

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

[(n)] * * *

[(o)] * * *

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

[(p)] * * *

[(q)] * * *

[(r)] * * *

[(s)] * * *

[(t)] * * *

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

(a) Maximum allowable noise levels.

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

* * *

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

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

(1) performance requirements;

(2) the types of noise mitigation measures that the facility will use;
and

(3) information about the impact of the proposed arts and entertainment activity and the planned noise mitigation measures on the performers, the audience, and the occupants of nearby properties.

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

(b) If the owner or manager of a **performing arts facility** submits a completed **noise-mitigation plan** to the Department and conducts at least 5 outdoor **arts and entertainment activities** each year in accordance with that **plan**, each outdoor **arts and entertainment activity** held at the **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.

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

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

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

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

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

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

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

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

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

(2) the buyer understands that:

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

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

Approved:

Nancy Floreen, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 6-10

Noise Control – Arts and Entertainment Activities

DESCRIPTION:	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.
PROBLEM:	Certain outdoor performing arts activities with substantial community support may violate current evening noise standards.
GOALS AND OBJECTIVES:	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.
COORDINATION:	Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A



OFFICE OF MANAGEMENT AND BUDGET

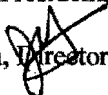
Isiah Leggett
County Executive

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