

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2016 Legislative Session

Reference No.: CB-014-2016

Draft No.: 2

Committee: PLANNING, ZONING AND ECONOMIC DEVELOPMENT

Date: 05/04/2016

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 3-0-2 (In favor: Council Members Glaros, Taveras and Toles. Abstain: Council Members Harrison and Franklin)

Council staff summarized the purpose of the legislation and informed the committee of written referral comments that were received. CB-14-2016, legislation for the Prohibited Commercial Use of Residential Property, was transmitted by the County Executive for the Council's consideration. The transmittal letter summarizes the proposed legislation as follows. This legislation prohibits the use of residential property for parties, events, assemblies, or gatherings open to the public in return for payment. The Police Department, the Department of Permitting, Inspections and Enforcement, the Department of Public Works, and other County agencies, spend hundreds of hours attempting to prevent, investigate, and clean-up trash from these events. This misuse of residential property is adversely impacting the surrounding residential neighborhoods with increasing criminal activity (including human trafficking, homicides, robberies, and other violent crimes), illegal adult entertainment, litter, noise, and traffic, by inhibiting ingress and egress of vehicles (including emergency vehicles).

This legislation will allow the Police Department or Code Inspector the ability to issue an immediate order to cease and desist the prospectively planned prohibited activity, to the owner, lessee, resident or apparent occupier of the property, and posting the front door of the property. If the event has occurred, a fine is levied for each offense.

Nathaniel Tutt, representing the County Executive's Office and proposer of the legislation, requested the Committee's support to address the increasing problems associated with commercial use of residential property in the County.

The Planning Board supports CB-14-2016 with recommended amendments provided in a letter dated April 14, 2016 to Council Chairman Davis. The suggested amendments include adding language prohibiting commercial uses under Section 27-115 (Prohibited Uses) to ensure that the language under Section 27-441.01 (Prohibited Commercial Use of Residential Property) is consistent within all affected places in the Zoning Ordinance. On page 3, lines 13-16, add the

words “social media” to the list of ways to advertise promoting the use of residential property for the purpose of holding commercial parties, events, assemblies, or gatherings. On page 3, line 28, one thousand dollars (\$1,000) fine should be revised. In the Maryland Land Use Code under Title 27 (Enforcement) §27-101 (Violation; penalty) the civil citation fee for violating this division is five hundred dollars (\$500). In addition, each day that a violation of the division continues, is a separate violation. The Planning Board letter also noted that the Prince George’s Department of Parks and Recreation has had difficulty with people renting recreational facilities for events and finding commercial parties are being held instead.

The Chief Zoning Hearing Examiner reviewed the legislation and offered the following comments in an April 29, 2016 memorandum to the PZED Committee Director. The bill generally prohibits the use of a residence for the purpose of holding “commercial parties, events, assemblies or gatherings” except as otherwise provided in the Zoning Ordinance. This caveat would permit home occupations, which are defined as “an occupation or enterprise for gain or profit.” (Section 27-107.01(a)(118)). Thus, the bill should not prevent a resident from having jewelry parties, or selling wares in the home so long as it does not detract from the residential character of the neighborhood, despite the fact that the language on page 2, lines 25-31, and page 3, lines 1-6, arguably would prevent such sales. It would be best to clarify this in the background information for the bill.

On page 3, lines 12-16, make it a prohibited commercial use of the property if there is an advertisement “that promotes the occupancy or use of the residential property for the purpose of holding commercial parties, events, assemblies, or gatherings.” This language is troublesome because there is no link between the person owning or occupying the residence and the person or entity advertising the event, and it is a type of prior restraint on a right (freedom of assembly) generally recognized as one bestowed by the First and Fourteenth Amendments to the United States Constitution. When these types of rights are impacted the legislation must be drafted in a way that is unambiguous, is in furtherance of a substantial governmental goal, and provides the least means of infringement. This language needs further revision to meet the first and last prongs.

The penalty for such advertisement is the issuance of an immediate cease and desist order with an undefined “expedited” appeal to the boss of the officer issuing the order (page 3, lines 23-27). If this paragraph is not deleted from the bill, the appeal process should be further clarified, and possibly heard by an impartial third party (such as the Board of Appeals).

On page 3, lines 28-31, impose a \$1,000 civil fine “if prohibited activity has already occurred.” First, civil citations may not exceed \$500 per each violation pursuant to provisions of the State Land Use Article. Second, Subtitle 28 of the Prince George’s County Code presently imposes fines of either \$100 or \$250 for civil citations. Accordingly the amount of the fine must be reduced and language should be added to Subtitle 28 if the amount is set higher than \$250 but in accordance with the Land Use Article.

On page 4, lines 1-4 provide an appeal for “any decision of the Chief of Police, Department Director, or civil citation issued under this Section” to the Board of Administrative Appeals.

When considering appeals concerning the application of the Zoning Ordinance the Board is the “Board of Zoning Appeals”, and this is the language that should be inserted. “Department Director” is not defined. Generally, the Director should be the Director of the Department of Permitting, Inspections and Enforcement, and the language should be amended accordingly. Finally, Sections 28-121, 28-122, 28-130 and 28-131 set forth the procedure for appeal of civil citations and the District Court of Maryland (not the Board of Appeals) is the body authorized to hear the appeal.

Major George Nader and Major Charles Hamby, of the Prince George’s County Police Department, testified in support of the legislation to address a growing problem of illegal underground parties that are a public safety threat. Major Nader provided copies of flyers that are circulated to advertise parties at an address to be disclosed at a later time (“24 hours before the party” or “once purchased”).

Based on discussion of referral comments received concerning Draft-1 of the legislation, the Committee amended the legislation as follows:

- On page 3, in line 5, after "personal property of the owner, lessee" insert “, occupier,”.
- On page 3, in line 15, after “direct mail, blogs” insert “or social media, including”.
- On page 3, in line 19, after “or resident for” strike “purposes for” and substitute “the purpose of”.
- On page 3, in line 22, after "Any police officer or" strike “code enforcement”.
- On page 3, in line 24, after "prohibited activity to the owner, lessee, resident or" strike “apparent”.
- On page 3, in line 26, after "request an expedited hearing before the Chief of Police or" strike “Department” and substitute “the”.
- On page 3, in line 26, after “Director” insert “of the Prince George’s County Department of Permitting, Inspections and Enforcement”.
- On page 3, in line 28, after “issue a” strike “one thousand” and substitute “five hundred”.
- On page 3, in line 29, after “dollar (\$)” strike “1,000” and substitute “500”.
- On page 3, in line 29, after “dollar (\$1,000)” insert “civil”.
- On page 4, in line 1, after “Any decision of the Chief of Police” strike “, Department” and substitute “or the”.
- On page 4, in line 1, after “Director” strike “, or civil citation” and substitute “of the Prince George’s County Department of Permitting, Inspections and Enforcement, or their respective designees,”
- On page 4, in line 3, after “of the decision” strike “or civil citation”.
- On page 4, in line 3, after “to the Board” strike “Administrative”.
- On page 4, in line 3, after “Appeals.” strike “All such appeals to the Board of Administrative Appeals shall proceed according to existing Code provisions.”