

# PRINCE GEORGE'S COUNTY COUNCIL

## COMMITTEE REPORT

2017 Legislative Session

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**Reference No.:** CB-010-2017  
**Draft No.:** 2  
**Committee:** PLANNING, ZONING AND ECONOMIC DEVELOPMENT  
**Date:** 3/15/2017  
**Action:** FAV (A)

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Committee Vote: Favorable with amendments, 5-0 (In favor: Council Members Harrison, Patterson, Franklin, Glaros, and Toles)

Staff presented a Proposed Draft-2 (DR-2) prepared at the sponsor's request to address written agency referral comments received during the March 1 Committee discussion ensuring that agritourism signs are not treated different than other signs and will not be exempt from a sign permit. Additional amendments concerning maximum sign area, setback from public roadway, minimum acreage of property on which the legally allowed agritourism business is located, and maximum number of days that a temporary agritourism directional sign may be posted were also included in Proposed DR-2.

Matthew Neitzey of the Prince George's County Conference and Visitors' Bureau submitted testimony in support of the legislation. The following individuals testified in support during the Committee worksession: Janna Howley (Maryland Wineries Association), Kim Rush Lynch (University of Maryland Extension, Agriculture Marketing Specialist), Jo-Ann Romano (Romano Vineyard and Winery), Sydney Daigle (Food Equity Council), and Steve Darcey (Prince George's Soil Conservation District).

The Committee voted favorable including the amendments in Proposed DR-2.

Held in committee.

March 1, 2017

Staff provided an overview of the legislation and informed the Committee of written referral comments that were received. Council Member Franklin, the bill's sponsor, informed the Committee that amending the Code to allow agritourism signs will facilitate marketing of agritourism businesses such as vineyards that are located in rural communities of the County.

The Office of Law reviewed CB-10-2017 and provided written comments stating their concerns related to Freedom of Speech issues under the 1<sup>st</sup> Amendment of the U.S. Constitution. Under this clause, a government, including a municipal government vested with state authority, has no power to restrict expression because of its message, ideas, subject matter or its content. Content-based laws are presumptively unconstitutional and are only justified if the government proves that they are narrowly tailored to serve compelling state interest. Here, it is likely that this bill could be found in violation of the 1<sup>st</sup> Amendment because the Agritourism signs would be considered content-based since the exemption is based on the speaker – the Agritourism

business. The bill would have to show that it is narrowly tailored to serve compelling state interest. It is unclear what government interest it is serving.

The Chief Zoning Hearing Examiner (ZHE) reviewed the legislation and provided written comments concerning signs as a protected form of speech under the First Amendment to the Constitution of the United States. CB-10-2017 seeks to increase the number of signs exempted from the permit requirements. This exemption could be found to violate the First Amendment, since the Supreme Court has recently opined that an exemption based on the entity speaking (here, agritourism businesses) is a content-based regulation of speech that violates the First Amendment. The ZHE recommended that the Sign Ordinance be amended to add the language in Draft-1, on page 2, lines 15-26 to Division 3 Design Standards, Subdivision 2. Signs for Specific Uses, to avoid constitutional challenges. Also, revise language on page 2, lines 24-26 since a sign that meets the size and locational requirements generally would not be a hazard. The language could be revised to note that if it is determined that the sign has been erected in a manner that is hazardous to public safety it may be removed.

The Planning Board opposed the legislation with explanation provided in their written comments to the Committee Chair as follows. The District Council should note that if challenged, CB-10-2017 as drafted would be subject to heightened judicial scrutiny because it singles out signage based on content – “Agritourism business” signage is targeted for particular regulations. The bill does not adequately articulate why agritourism signage is being singled out.

The legislation was held to allow time for additional review of and to address agency referral comments.