

MEMORANDUM

April 18, 2023

TO: Public Safety Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 14-23, Police – Late Night Business Safety Plan

PURPOSE: Worksession – Committee recommendation expected

Expected Attendee

Dr. Stoddard, Assistant Chief Administrative Officer
Chief Jones, Montgomery County Police Department
Captain Reed, Montgomery County Police Department

Bill 14-23, Police – Late Night Business Safety Plan, sponsored by the Council President at the request of the County Executive, was introduced on February 28, 2023. A public hearing took place on March 14, 2023. A Public Safety Committee worksession is scheduled for April 21, 2023.

Bill 14-23 would:

- (1) require that certain businesses obtain an approved late night business safety plan before operating in certain areas of the County;
- (2) authorize the Department of Police to review and approve a proposed late night business safety plan;
- (3) authorize the Department of Police to establish the requirements of a late night business plan; and
- (4) generally amend the law regarding public safety and the operation of late night businesses in the County.

BACKGROUND

In a memorandum requesting Bill 14-23, the County Executive explained:

Many businesses have worked collaboratively with the Montgomery County Police Department (MCPD) to enact such measures and have seen significant reductions in calls for service in and around their facilities. Unfortunately, other establishments

have been less cooperative in their engagement with MCPD or unwilling to broaden safety protocols and infrastructure. This Bill would ensure a uniform process for those businesses in areas experiencing higher than normal call volume in the late-night hours.

BILL SPECIFICS

Under Bill 14-23, a late night business would be defined to include a business located within a “priority” police response area if the business: (1) has liquor, tobacco, or food sold and consumed on the premises; and (2) operates between the hours of midnight and 6:00 a.m.

A late night business would be required to submit to the Montgomery County Police Department (MCPD), every three years, a late night business safety plan. The plan would be subject to MCPD approval and, if the plan is disapproved, the late night business would not be permitted to operate from midnight to 6:00 a.m.

The features of a late night business plan would depend upon the business and could include, among other things: security personnel and training; exterior lighting; digital security cameras; and clearing exterior windows. If security cameras are required, then the plan would also have to require that the late night business must provide video recordings to MCPD upon demand if MCPD is investigating a violent felony. MCPD could recommend, but not require, a business to search patrons by the use of metal detectors, magnetometers, or pat downs.

Violations of the late night business requirements would constitute Class A violations. The bill would require MCPD to develop Method (2) regulations to implement the bill’s requirements.

SUMMARY OF IMPACT STATEMENTS

Under the **Racial Equity and Social Justice (RESJ)** Impact Statement, OLO anticipates that Bill 14-23 would have an “indeterminate” impact upon RESJ in the County. OLO recommends consideration of the following option:

- “Assemble a group of diverse stakeholders to update Bill 14-23, draft Method 2 regulations, and develop annual reporting requirements to the Council to prioritize RESJ. The County Council has increasingly adopted strategies aimed at promoting civilian oversight in policing and decision-making to advance RESJ. Council action has included creating the Policing Advisory Commission and the Police Accountability Board and enacting legislation to increase transparency in policing data and operations. The Council can consider tasking MCPD to convene community stakeholders representative of BIPOC communities to craft a revised Bill that explicitly seeks to advance RESJ with public safety. The Council can also consider tasking MCPD to partner with BIPOC community stakeholders to draft Method 2 regulations and annual reporting requirements to the Council that reflect the priorities of disproportionately impacted communities.”

The Office of Management and Budget anticipates that the bill would not have any **fiscal impacts**. OLO does not anticipate any **climate impacts** of the bill. Under **economic impact**

statement, OLO anticipates that the bill's impact upon economic conditions in the County is indeterminate.

SUMMARY OF PUBLIC HEARING

At the public hearing on March 14, 2023, the Greater Silver Spring Chamber of Commerce spoke in favor of the bill. Several individuals, organizations, and businesses spoke in opposition to the bill. Highlights of the testimony included the following:

- The Greater Silver Spring Chamber of Commerce supports the bill as a response to increased violence in the Silver Spring area, and stated that the business safety plans would help assure that businesses “do their part” to improve public safety.
- The Silver Spring Justice Coalition opposes the bill due to racial equity concerns and expressed the following specific concerns:
 - The bill would disproportionately target Black- and Brown-owned businesses and Black and Brown residents;
 - Providing the police with access to surveillance video footage would not prevent crime;
 - The police should not have sole authority to designate priority areas or to approve business plans under the bill;
 - All businesses should have the same requirements, not just those in priority areas that operate during certain hours; and
 - The bill does not provide “due process” for businesses to appeal disapprovals of their plans under the bill.
- A business owner testified in opposition to the bill because it would shift the government's public safety role to businesses, and businesses cannot afford to take on this role. The business owner stated that many businesses are struggling financially after COVID, and the costs of operations have skyrocketed. The County should hire more police officers, or reallocate them, rather than imposing burdens on business that the businesses cannot afford.
- A representative of gas stations stated that the bill is too broad and lacks due process for businesses that may be wrongfully burdened.

ISSUES FOR THE COMMITTEE'S CONSIDERATION

The Public Safety (PS) Committee might wish to consider the following issues and potential amendments in connection with Bill 14-23.

1. Crime Data – Relationship to Hours of Business Operation

Bill 14-23 would apply to businesses in priority areas that – between the hours of 12AM and 6AM – sell food, drinks, or tobacco products for on-site consumption. These businesses would be required to develop late night business safety plans, and to obtain MCPD approval of the plans.

The justification for this requirement would be that, according to the Executive, businesses that have worked with MCPD to develop safety protocols have experienced a reduction of calls in service.

The Committee might wish to ask Executive department representatives to expand upon the available data and rationale for focusing on late night businesses in this legislation.

2. Definition of “Business” – Potential Amendments

The Committee might wish to consider the following amendment to the definition of “business” under the bill. This amendment – which is supported by Chair Katz, Councilmembers Jawando and Stewart, and Council President Glass – would clarify that the bill applies to businesses where on-site consumption is intended (not just incidental), and includes businesses where on-site cannabis consumption occurs (assuming any businesses in the County receive state licensure for on-site consumption).

Amend lines 5-7 as follows.

Business means a business that has an “other tobacco products retailer” license, a food license, a license for on-site cannabis consumption, or a liquor license where the products sold are [[meant to be or are regularly]] consumed on-site at tables or at other areas designated for consumption by the business.

3. Definition of “Late night business” – Potential Elimination of “Priority Areas”

Several public speakers, and the RESJ statement, indicated that the bill might disproportionately affect Black- or Brown-owned businesses, depending upon the identification of “priority areas” where safety plans would be required.

To increase the equitable application of the bill, several Councilmembers – including Chair Katz, Councilmembers Jawando and Stewart, and Council President Glass – have indicated support for altering the definition of “late night business” to eliminate the reference to “priority areas”. The amendment would be as follows.

Amend lines 11-16 as follows.

Late night business means any business [[located in a priority area]] that...

[[Priority area means one or more police response areas (PRA) identified and published by the Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.]]

Amend lines 33-34 as follows.

- (1) [[establish the methodology used to identify a police response area (PRA) as a priority area;]]

4. Definition of “Late Night Business” – Potential Amendments to Hours of Operation

As originally drafted, the bill would apply to certain businesses operating between the hours of midnight and 6:00 a.m. The Committee might wish to consider the appropriate timeframe. Two options are provided below.

Option 1 – Councilmember Jawando has suggested altering the timeframe to between midnight and 5:00 a.m. (instead of 6:00 a.m.).

Amend lines 9-10 as follows.

Late night business means any business located [[in a priority area]] that is open to the public at any time between midnight and [[6:00 AM]] 5:00 AM.

Option 2 – Chair Katz, Councilmember Stewart, and Council President Glass support altering the timeframe to 2:00 a.m. to 5:00 a.m., and also including within the definition of “late night business” businesses that operate after midnight and have had 2 or more service calls for serious incidents within the prior 12 months as follow.

Amend lines 9-10 as follows.

Late night business means any business [[located in a priority area]] that:

- (1) is open to the public at any time between [[midnight]] 2:00 AM and [[6:00 AM]] 5:00 AM; or
- (2) is open to the public at any time between midnight and 5:00 AM and, within the previous 12 months, has been the subject of 2 or more service calls for law enforcement regarding alleged serious incidents occurring on the premises.

After line 16, insert the following.

Serious incident means an alleged crime identified as a serious incident by the Department in Method (2) regulations.

5. Bill Implementation – Potential Amendment to Include Multiple Departments

Several Councilmembers – including Chair Katz, Councilmembers Jawando and Stewart, and Council President Glass – have indicated support for amendments to require the involvement of multiple relevant agencies, not only the Police Department, in the implementation of the bill.

Potential amendments include:

Amend line 8 as follows.

Department means the [[Montgomery County Police Department]] Office of the County Executive or one or more offices or departments designated by the County Executive.

After line 16, insert the following.

Relevant departments mean the Montgomery County Police Department, the Department of Environmental Protection, the Department of Permitting Services, and the Board of License Commissioners.

Amend lines 31 through 43 as follows.

(c) Regulations. The Department, after consultation with other relevant departments, must promulgate Method (2) regulations to implement the requirements of this Section. The regulations must:

(1) [[establish the methodology used to identify a police response area (PRA) as a priority area;

(2)]] establish the process for the owner or operator of a late night business to submit a proposed late night business safety plan to the Department;

[[(3)]] (2) establish the process for the Department to consider and approve, after consultation with other relevant departments, a proposed late night business safety plan;

[[(4)]] (3) establish a process for the Department and other relevant agencies to provide training to businesses regarding safety and to periodically verify compliance with a late night business safety plan; [[and]]

~~[(5)]~~ (4) establish, in consultation with relevant departments, a template that a late night business must use to submit a proposed late night business safety plan:

* * *

6. Requirements of a Safety Plan

The following potential amendment – which is supported by Chair Katz, Councilmembers Jawando and Stewart, and Council President Glass – would make certain components of a safety plan mandatory for all late night businesses, and would make additional safety plan components apply at the discretion of the implementing agency.

Amend lines 31 through 53 as follows.

(c) Regulations. The Department, after consultation with other relevant departments, must promulgate Method (2) regulations to implement the requirements of this Section. The regulations must:

* * *

(6) establish the minimum requirements of a late night business safety plan, which:

(A) must require:

(i) an emergency evacuation plan;

(ii) 24-hour contact information for the business owner or manager;

(iii) exterior bathroom doors that are free opening at all times;

(iv) an acknowledgement that the business has received late night business training from the County; and

(v) an acknowledgement that the business is in compliance with applicable law, and a statement regarding any resolved or pending citations issued by a government entity within the prior 3 years; and

(B) may require, with written justification, any or all of the following:

- [(A)] (i) security personnel and training;
- [(B)] (ii) exterior lighting; and
- [(C)] (iii) high-definition digital security cameras that provide continuous, 24-hour video monitoring and recording, without audio recording capacity, of the interior and exterior of each entryway into the late night business and the cash register or till[[:]].
- [(D) clearing all exterior windows of paint or debris such that the interior can be viewed from the outside; and
- (E) a requirement that all exterior bathroom doors must be free opening at all times;]]

7. Ability of a Business to Appeal a Plan Disapproval

Several public speakers expressed concern that businesses whose plans are disapproved should be able to appeal those disapprovals. One option – supported by Chair Katz, Councilmembers Stewart and Jawando, and Council President Glass – would be to allow businesses to appeal disapprovals to the Board of Appeals. Board of Appeals decisions, in turn, could be appealed to the Circuit Court under County Code Section 2A-11.

The amendment would be:

After line 30, insert a new subsection as follows.

- () Appeals. A late night business may appeal the disapproval of a plan to the Board of Appeals under Chapter 2A.

8. MCPD Access to Surveillance Footage

Under the bill as originally drafted, if a security plan requires the use of security cameras, then the plan must also “require that the late night business must provide video recordings to the Department upon demand”. Further, the plan must “provide that the Department may demand a security camera video recording from a late night business only in connection with the investigation or prosecution of a violent felony”.

Under current law, businesses must provide video recordings to the police only in accordance with Forth Amendment requirements. Thus, police generally would need a warrant issued by a court in order to demand video footage of a private business.

If the Committee wishes to retain the requirement that law enforcement would need a warrant in order to inspect private video footage of late night businesses, it could consider the following amendment – which is supported by Chair Katz, Councilmembers Stewart and Jawando, and Council President Glass.

Amend lines 52-74 as follows.

(d) Security Camera Requirements. If a late night business safety plan requires the use of security cameras, then the plan must also[[:

(1)] require that the late night business owner or operator post signage in a conspicuous location on the interior and exterior of the business notifying the public that the late night business is subject to 24-hour video surveillance monitoring[[;

(2) require that the late night business must provide video recordings to the Department upon demand;

(3) provide that the Department may demand a security camera video recording from a late night business only in connection with the investigation or prosecution of a violent felony;

(4) require that the late night business retain the video recordings for not less than 14 but not more than 30 days;

(5) establish requirements for the retention, collection, dissemination, use, and disposal of security camera video recordings by the Department; and

(6) include a time-limited waiver requirement for a late night business that has a noncompliant security camera video recording system already in place]].

(e) The Department [[may recommend, but]] must not require[[,.]] that a late night business:

(1) search patrons by the use of metal detectors, magnetometers, or pat downs;
or

(2) provide video recordings to the Department or other relevant departments except as required by law.

9. Voluntary Plans for Certain Businesses; Grant Program to Support Businesses

Chair Katz and Councilmember Stewart intend to support amendments that would allow businesses that are not “late night businesses” – but that operate after midnight – to voluntarily submit safety plans to the County for the County’s review. These businesses would then qualify to participate in a grant program supporting late night businesses. Councilmember Jawando and Council President Glass have indicated that they also supports a grant program; however, they would propose limiting grants to businesses that meet the definition of a late-night business.

Potential amendment:

Add 2 new subsections as follow.

() Voluntary plans for certain businesses.

(1) Any business that operates between the hours of midnight and 5:00 AM may submit to the Department a late night safety business plan.

(2) The Department must:

(A) review a plan submitted under this subsection; and

(B) provide recommendations to the business regarding the plan.

() Grant program.

(1) Program established. There is a late night business safety grant program.

(2) Criteria to receive a grant. A late night business, or a business that has submitted a plan and implemented Department recommendations under subsection (), may qualify to receive a grant under the program if:

(A) the grant is used solely to offset the costs of implementing an approved or recommended late night business safety plan; and

(B) the grant application is submitted in the form and manner prescribed by the Department.

(3) Funding and limitations.

(A) Grants provided under the program are subject to appropriation.

(B) The Department must prioritize awarding grants to late night businesses over awarding grants to businesses that submit plans voluntarily under subsection ().

(C) The Department may seek federal or state funding to support the program.

10. Expedited Effective Date

Chair Katz, Councilmembers Jawando and Stewart, and Council President Glass intend to support an amendment to expedite Bill 14-23.

Add a new section as follows.

Sec. 3. Expedited Effective Date. The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

11. Reporting Requirements

To monitor the implementation of Bill 14-23, the Committee might wish to add a reporting requirement as follows. This amendment is supported by Chair Katz, Councilmembers Stewart and Jawando, and Council President Glass.

Add the following new subsection:

() Annual Reporting. The Department annually must report to the County Council regarding:

(1) plans reviewed under this Section;

(2) late night businesses that have not submitted late night business safety plans;

(3) recommendations for the improvement of late night business safety;

(4) grants provided under this Section; and

(5) crime data for the area of each late night business before and after the approval of a late night business safety plan for the business.

12. Clarification Regarding the Consequences of an Unapproved Plan

Under the bill as originally drafted, a person in a priority area would need an approved plan in order to continue to “own and operate” a late night business. The Committee might wish to consider the following amendment to clarify that the business would have to cease late-night operations if the plan is disapproved, but the business would continue to be owned and operated by the same person(s).

Amend lines 18-23 as follows.

- (1) A person must not [[own or]] operate a late night business between the hours of midnight and 6:00 a.m. without first submitting a proposed late night business safety plan to the Department.
- (2) A person must not [[own or]] operate a late night business between the hours of midnight and 6:00 a.m. after the Department provides written notice that it has disapproved the proposed late night business safety plan.

13. Regulations – Should Method (2) be Changed to Method (1)?

In the RESJ Impact Statement, OLO recommended that MCPD should convene community stakeholders to develop regulations to implement the bill. To assure greater Council oversight in this process, the Committee might wish to require the regulations to be promulgated through Method (1) as opposed to Method (2).

Whereas Method (2) regulations take effect automatically 60 days after they have been submitted to the Council if the Council does not act on the regulations, Method (1) regulations cannot take effect without Council approval. County Code, Section 2A-15.

The amendment would be to *amend lines 31-32 as follows.*

- (c) Regulations. The Department must promulgate [[Method (2)]] Method (1) regulations to implement the requirements of this Section. The regulations must:

* * *

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Bill No. 14-23
Concerning: Police – Late
Night Business Safety Plan
Revised: 2/23/2023 Draft No. 1
Introduced: February 28, 2023
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) require that certain businesses obtain an approved late night business safety plan before operating in certain areas of the County;
- (2) authorize the Department of Police to review and approve a proposed late night business safety plan;
- (3) authorize the Department of Police to establish the requirements of a late night business plan; and
- (4) generally amend the law regarding public safety and the operation of late night businesses in the County.

By adding
Montgomery County Code
Chapter 35, Police
Section 35-13D

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or a 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. Section 35-13D is added as follows:

35-13D. Late Night Business Safety Plan.

(a) Definitions. In this Section, the following terms have the meaning indicated.

Business means a business that has an “other tobacco products retailer” license, a food license, or a liquor license where the products sold are meant to be or are regularly consumed on-site.

Department means the Montgomery County Police Department.

Late night business means any business located in a priority area that is open to the public at any time between midnight and 6:00 AM.

Late night business safety plan means a plan approved by the Department in accordance with this Section.

Priority area means one or more police response areas (PRA) identified and published by the Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

(b) Requirements.

(1) A person must not own or operate a late night business without first submitting a proposed late night business safety plan to the Department.

(2) A person must not own or operate a late night business after the Department provides written notice that it has disapproved the proposed late night business safety plan.

(3) After the Department approves a proposed late night business safety plan, a person who owns or operates a late night business

must do so in accordance with that approved plan.

(4) A late night business plan expires three years after approval, after which a late night business must obtain a new approved late night business plan from the Department in order to continue operating.

(c) Regulations. The Department must promulgate Method (2) regulations to implement the requirements of this Section. The regulations must:

(1) establish the methodology used to identify a police response area (PRA) as a priority area;

(2) establish the process for the owner or operator of a late night business to submit a proposed late night business safety plan to the Department;

(3) establish the process for the Department to consider and approve a proposed late night business safety plan;

(4) establish a process for the Department to periodically verify compliance with a late night business safety plan; and

(5) establish the requirements of a late night business safety plan, which may require any or all of the following:

(A) security personnel and training;

(B) exterior lighting;

(C) high-definition digital security cameras that provide continuous, 24-hour video monitoring and recording, without audio recording capacity, of the interior and exterior of each entryway into the late night business and the cash register or till;

- 51 (D) clearing all exterior windows of paint or debris such that
 52 the interior can be viewed from the outside; and
 53 (E) all bathroom doors must be free opening at all times.
- 54 (d) Security Camera Requirements. If a late night business safety plan
 55 requires the use of security cameras, then the plan must also:
- 56 (1) require that the late night business owner or operator post signage
 57 in a conspicuous location on the interior and exterior of the
 58 business notifying the public that the late night business is
 59 subject to 24-hour video surveillance monitoring;
- 60 (2) require that the late night business must provide video recordings
 61 to the Department upon demand;
- 62 (3) provide that the Department may demand a security camera
 63 video recording from a late night business only in connection
 64 with the investigation or prosecution of a violent felony;
- 65 (4) require that the late night business retain the video recordings for
 66 not less than 14 but not more than 30 days;
- 67 (5) establish requirements for the retention, collection,
 68 dissemination, use, and disposal of security camera video
 69 recordings by the Department; and
- 70 (6) include a time-limited waiver requirement for a late night
 71 business that has a noncompliant security camera video
 72 recording system already in place.
- 73 (e) The Department may recommend, but must not require, that a late night
 74 business search patrons by the use of metal detectors, magnetometers,
 75 or pat downs.

(f) Penalty for violating Section.

(1) Any violation of this Section is a class A violation.

(2) Each day a violation continues is a separate offense.

Sec. 2. Implementation.

The Department must promulgate and submit proposed regulations to the Council for review within 180 days after this Act becomes law. Within 90 days after notice of the approved regulations is published in the County Register, each late night business must submit a proposed late night business safety plan to the Department for review. The County Executive should make a good faith attempt to notify each affected late night business of its obligation to submit a proposed safety plan.

Approved:

Evan Glass, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Judy Rupp, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

BILL: XX-23

DESCRIPTION:	Bill XX-23 establishes a requirement for certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan. That Safety Plan shall include appropriate lighting, cameras, and other security enhancing measures as defined by regulations developed by the Montgomery County Police Department.
PROBLEM:	Because we have seen an increase in violent crime, associated with or nearby late-night business typically in our urban corridors.
GOALS AND: OBJECTIVES	<ol style="list-style-type: none">1) Ensuring uniformity in collaborating with Montgomery County to ensure safety during late night/early morning hours2) Develop a common operating procedure3) Establish police review of facility-based plans to meet those standards4) Developing penalties for non-participation
COORDINATION:	The Office of the County Executive.
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC: IMPACT	Office of Legislative Oversight
EVALUATION:	N/A
EXPERIENCE: ELSEWHERE	N/A
SOURCE OF: INFORMATION	Earl Stoddard, PhD, MPH, CEM, Assistant Chief Administrative Officer Yaakov “Jake” Weissmann, Esq., Assistant Chief Administrative Officer Edward Lattner, Chief, Division of Government Operations, Office of the County Attorney MCPD
APPLICATION: WITHIN MUNICIPALITIES	N/A
PENALTIES:	Class A violation, each day a violation continues, is a separate offense



Fiscal Impact Statement

Office of Management and Budget

Bill XX-23

Late Night Business Safety Plan

Bill Summary

Bill XX-23 requires businesses that operate late night in areas of high police calls for service develop and operate under a safety plan approved by MCPD. The safety plan requirements will be established by MCPD and MCPD will be responsible for reviewing safety plans for regulatory compliance.

Fiscal Impact Summary

Implementation of the bill will not result in additional expenditures or have an impact on County revenues.

Fiscal Year	0	0	0	0	0	0	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

Fiscal Impact Analysis

There is no anticipated fiscal impact from this legislation, as the work associated with developing regulation, annual review of high call volume areas, and ongoing plan review would be assigned to existing staff within the Department. Staff time to support these activities are expected to be limited, particularly after the initial establishment of regulation and initial plan reviews. There is no anticipated change in revenue.

Staff Impact

It is estimated that approximately 40 hours will be required to establish regulations in the first year of implementation and to support initial plan review for all businesses. Staff time to support the annual update of high call for service areas and annual review of new business plans is estimated to be approximately 20 hours annually after year one.

Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

Other Information

Later actions that may impact revenue or expenditures if future spending is projected

The bill does not authorize future spending.

Contributors

Earl Stoddard, Ph.D., Office of the County Executive
Darren Francke, Montgomery County Police Department
Derrick D. Harrigan, Office of Management and Budget



MEMORANDUM

February 1, 2023

TO: Evan Glass, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Transmission of Proposed Bill XX-23: Late Night Business Safety Plan

A vibrant nightlife is a key goal for the continued economic growth of our urban areas and County as a whole. The County must continue to balance those needs with additional steps to address public safety challenges that the County has experienced during the early morning hours often associated with or occurring nearby late-night establishments. For more than a year, my team and I have engaged in public and private conversations with Councilmembers, business leaders, and members of the public how to best address these issues.

In response, I am transmitting proposed Bill XX-23, which amends Section 35-13D of the Montgomery County Code. This Bill will help to ensure that the County public safety agencies and businesses are working synergistically to ensure there are improvements to the balance of safety and vibrancy throughout our County. Bill XX-23 establishes a requirement for certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan. That Safety Plan shall include appropriate lighting, cameras, and other security enhancing measures.

Many businesses have worked collaboratively with the Montgomery County Police Department (MCPD) to enact such measures and have seen significant reductions in calls for service in and around their facilities. Unfortunately, other establishments have been less cooperative in their engagement with MCPD or unwilling to broaden safety protocols and infrastructure. This Bill would ensure a uniform process for those businesses in areas experiencing higher than normal call volume in the late-night hours.

I believe this Bill is a strong first step in addressing the challenges of balance between vibrancy and safety. However, even if this Bill is enacted, we must continue to maintain vigilance and assess results. If compliance continues to be an issue, it may become necessary for us to collectively revisit the approved operating hours of various business classes in our urban sectors to protect and promote public safety. We hope this Bill, together with cooperation from our business community, and continued enforcement from our county Departments, will serve as an important step that makes any such additional limitations unnecessary.

I look forward to a dialogue with the County Council on these issues. I look forward to engaging on other enhancements to this Bill through a collaborative process, and with additional community input associated with the bill review process. I also look forward to discussing ideas permeating from the Council, as to addressing public safety issues throughout the County.

Staff from my office are available to answer any questions you may have on these bills.

ME:lb

Enclosures

cc: Sidney Katz, Public Safety Chair, County Council
Marlene Michaelson, Executive Director, County Council
Craig Howard, Deputy Director, County Council
Susan Farag, Legislative Analyst, County Council
Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Earl P. Stoddard, PhD, MPH, CEM, Assistant Chief Administrative Officer, Office of the County Executive
Yaakov "Jake" Weissmann, Esq., Assistant Chief Administrative Officer, Office of the County Executive
Debbie Spielberg, Special Assistant to County Executive Marc Elrich, Office of the County Executive
Dale Tibbitts, Special Assistant to County Executive Marc Elrich, Office of the County Executive
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive

Bill No. _____
Concerning: _____
Revised: _____ Draft No.5
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch.____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) require that certain businesses obtain an approved late night business safety plan before operating in certain areas of the County;
- (2) authorize the Department of Police to review and approve a proposed late night business safety plan; and
- (3) authorize the Department of Police to establish the requirements of a late night business plan.

By adding

Montgomery County Code
Chapter 35, Police
Section 35-13D

Boldface	<i>Heading or a 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:

Sec 1. Section 35-13D is added as follows:

35-13D. Late Night Business Safety Plan.

(a) Definitions. In this Section, the following terms have the meaning indicated.

Business means a business that has an “other tobacco products retailer” license, a food license, or a liquor license where the products sold are meant to be or are regularly consumed on-site.

Department means the Montgomery County Police Department.

Late night business means any business located in a priority area that is open to the public at any time between midnight and 6:00 AM.

Late night business safety plan means a plan approved by the Department in accordance with this Section.

Priority area means one or more police response areas (PRA) identified and published by the Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

(b) Requirements.

(1) A person must not own or operate a late night business without first submitting a proposed late night business safety plan to the Department.

(2) A person must not own or operate a late night business after the Department provides written notice that it has disapproved the proposed late night business safety plan.

(3) After the Department approves a proposed late night business safety plan, a person who owns or operates a late night business must do so in accordance with that approved plan.

(4) A late night business plan expires three years after approval, after which

a late night business must obtain a new approved late night business plan from the Department in order to continue operating.

(c) *Regulations.* The Department must promulgate Method (2) regulations to implement the requirements of this Section. The regulations must:

(1) establish the methodology used to identify a police response area (PRA) as a priority area;

(2) establish the process for the owner or operator of a late night business to submit a proposed late night business safety plan to the Department;

(3) establish the process for the Department to consider and approve a proposed late night business safety plan;

(4) establish a process for the Department to periodically verify compliance with a late night business safety plan; and

(5) establish the requirements of a late night business safety plan, which may require any or all of the following:

(A) security personnel and training;

(B) exterior lighting;

(C) high-definition digital security cameras that provide continuous, 24-hour video monitoring and recording, without audio recording capacity, of the interior and exterior of each entryway into the late night business and the cash register or till;

(D) clearing all exterior windows of paint or debris such that the interior can be viewed from the outside; and

(E) all bathroom doors must be free opening at all times.

(d) *Security Camera Requirements.* If a late night business safety plan requires the use of security cameras, then the plan must also:

- (1) require that the late night business owner or operator post signage in a conspicuous location on the interior and exterior of the business notifying the public that the late night business is subject to 24-hour video surveillance monitoring;
 - (2) require that the late night business must provide video recordings to the Department upon demand;
 - (3) provide that the Department can demand a security camera video recording from a late night business only in connection with the investigation or prosecution of a violent felony;
 - (4) require that the late night business retain the video recordings for not less than 14 but not more than 30 days;
 - (5) establish requirements for the retention, collection, dissemination, use, and disposal of security camera video recordings by the Department;
and
 - (6) include a time-limited waiver requirement for a late night business that has a noncompliant security camera video recording system already in place.
- (e) The Department may recommend, but must not require, that a late night business search patrons by the use of metal detectors, magnetometers, or pat downs.
- (f) Penalty for violating Section.
- (1) Any violation of this Section is a class A violation.
 - (2) Each day a violation continues is a separate offense.

Sec. 2. Implementation.

The Department must promulgate and submit proposed regulations to the

76 Council for review within 180 days after this Act becomes law. Within 90 days after
77 notice of the approved regulations is published in the County Register, each late
78 night business must submit a proposed late night business safety plan to the
79 Department for review. The County Executive should make a good faith attempt to
80 notify each affected late night business of its obligation to submit a proposed safety
81 plan.

Approved:

Evan Glass, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Judy Rupp, Clerk of the Council

Date

Approved as to form and legality



Edward B. Lattner
Office of the County Attorney
Jan. 23, 2023

Climate Assessment

Office of Legislative Oversight

Bill 14-23: Police – Late Night Business Safety Plan

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 14-23 will have no impact on the County's contribution to addressing climate change as the changes proposed by the Bill would likely not affect greenhouse gas emissions, nor community resilience.

BACKGROUND AND PURPOSE OF BILL 14-23

According to the County Executive, the intent of Bill 14-23 is to “ensure that the County public safety agencies and businesses are working synergistically to ensure there are improvements to the balance of [nightlife] safety and vibrancy throughout our County.” Towards that end, the Bill proposes requiring “certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan.”¹

Bill 14-23 defines a late night business as “a business located within a ‘priority’ police response area if the business: (1) has liquor, tobacco, or food sold and consumed on the premises; and (2) operates between the hours of midnight and 6:00 a.m.”² If enacted, Bill 14-23 would:

- **Require that designated late night businesses submit a late night business safety plan to the Montgomery County Police Department (MCPD) every three years.** The late night business plan would depend upon the business and could require security personnel and training, exterior lighting, digital security cameras, and clearing exterior windows, among other things. Businesses that are required to install security cameras would have to provide video recordings to MCPD upon demand if MCPD is investigating a violent felony. MCPD could recommend, but not require, a business to search patrons by metal detectors, magnetometers, or pat downs.
- **Authorize MCPD to review and approve a proposed late night business safety plan.** The late night business safety plan would be subject to MCPD approval. If the plan is disapproved, the late night business would not be permitted to operate from midnight to 6:00 a.m.
- **Authorize MCPD to establish the requirements of a late night business plan.** MCPD would be required to develop Method (2) regulations to implement the Bill's requirements. The regulations would need to be submitted to the Council for review and approval within 180 days of the Bill's enactment. Late night businesses would be required to submit a late night business safety plan within 90 days of the approved regulations being published in the County Register.

Violations of the Bill would constitute a Class A violation; each day a violation continues would be a separate offense.³

Bill 14-23, Police – Late Night Business Safety Plan, was introduced by the Council at the request of the County Executive on February 28, 2023.⁴

ANTICIPATED IMPACTS

As Bill 14-23 proposes requirements for late night businesses to develop a safety plan and these actions are not likely to affect greenhouse gas emissions nor community resilience, OLO anticipates that Bill 14-23 will have no impact on the County’s contribution to addressing climate change.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁵ OLO does not offer recommendations or amendments as Bill 14-23 is likely to have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County’s contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County’s contribution to addressing climate change, specifically upon the County’s contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County’s adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ Memorandum from County Executive to Council President, Introduction Staff Report for Bill 14-23, February 1, 2023.

² Bill 14-23 defines a priority area as one or more police response areas (PRA) identified and published by the Montgomery County Police Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

³ Refer to Montgomery County Code, Chapter 1, Article 01, Sec. 1-19 for fines and penalties associated with Class A violations.

⁴ Introduction Staff Report for Bill 14-23, Introduced February 23, 2023.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2789_1_23775_Bill_14-23_Introduction_20230228.pdf

⁵ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 14-23: POLICE – LATE NIGHT BUSINESS SAFETY PLAN

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice (RESJ) impact of Bill 14-23 is indeterminant. There are several unknown factors in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members. This Bill could have a negative RESJ impact on particular communities depending on the demographics of stakeholders in priority police response areas to be defined by the Montgomery County Police Department (MCPD). One policy option is offered for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 14-23

According to the County Executive, the intent of Bill 14-23 is to “ensure that the County public safety agencies and businesses are working synergistically to ensure there are improvements to the balance of [nightlife] safety and vibrancy throughout our County.” Towards that end, the Bill proposes requiring “certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan.”³

Bill 14-23 defines a late night business as “a business located within a ‘priority’ police response area if the business: (1) has liquor, tobacco, or food sold and consumed on the premises; and (2) operates between the hours of midnight and 6:00 a.m.”⁴ If enacted, Bill 14-23 would:⁵

- **Require that designated late night businesses submit a late night business safety plan to MCPD every three years.** The late night business plan would depend upon the business and could require security personnel and training, exterior lighting, digital security cameras, and clearing exterior windows, among other things. Businesses that are required to install security cameras would have to provide video recordings to MCPD upon demand if MCPD is investigating a violent felony. MCPD could recommend, but not require, a business to search patrons by metal detectors, magnetometers, or pat downs.
- **Authorize MCPD to review and approve a proposed late night business safety plan.** The late night business safety plan would be subject to MCPD approval. If the plan is disapproved, the late night business would not be permitted to operate from midnight to 6:00 a.m.

RESJ Impact Statement

Bill 14-23

- **Authorize MCPD to establish the requirements of a late night business plan.** MCPD would be required to develop Method (2) regulations to implement the Bill's requirements. The regulations would need to be submitted to the Council for review and approval within 180 days of the Bill's enactment. Late night businesses would be required to submit a late night business safety plan within 90 days of the approved regulations being published in the County Register.

Violations of the Bill would constitute a Class A violation; each day a violation continues would be a separate offense.⁶ Bill 14-23, Police – Late Night Business Safety Plan, was introduced by the Council at the request of the County Executive on February 28, 2023.

In July 2022, OLO published a RESJIS for Bill 14-22, Police – Private Security Incentive Program – Established. Please refer to this RESJIS for more detailed background on policing, surveillance, and racial equity.⁷

NIGHTLIFE, POLICING, AND RACIAL EQUITY

Nightlife is often recognized as a key component of vibrant communities for its role in fostering local culture, tourism, and economic development.⁸ A bustling nightlife has also been a common theme of thriving Black, Indigenous, and Other People of Color (BIPOC) communities. During the Harlem Renaissance of the early twentieth century, for instance, Black-owned nightlife venues – such as playhouses, nightclubs, and cabarets – were the center of creative expression and entertainment for Black performers and audiences.⁹ Nightlife continues to play an important role in the lives of BIPOC today. As noted by researcher Marcus Anthony Hunter in a study of Black nightclubs, they “can and do provide individuals with a unique space to establish ties that provide social leverage and social support.”¹⁰

Modern policing in the United States is marked by a legacy of racial inequity.¹¹ An article from the Gotham Center for New York City History illustrates how Black New Yorkers were harassed by police in the years surrounding the Harlem Renaissance.¹² Today, racial inequities in policing, including in nightlife settings, continues to be a general condition. Locally, while Black constituents account for 18 percent of the County's population, they account for 30 percent of MCPD traffic stops, 44 percent of MCPD arrests, and 55 percent of MCPD use of force incidents.^{13,14,15}

More attention has been given in recent years to the role of private security staff in policing and perpetuating racial inequities. For instance, an experimental audit study analyzing the relationship between nightclub dress codes and racial discrimination found “systematic evidence that African Americans are denied access to nightclubs [by private security staff] more often than similarly appearing [W]hites and (in some cases) Latinos attempting to enter the same nightclubs.”¹⁶ Further, following the death of three constituents by private security guards in recent years, state lawmakers from Baltimore City recently introduced legislation to regulate private security companies and employees to address concerns over “lack of formal training and little oversight.”¹⁷

ANTICIPATED RESJ IMPACTS

The intent of Bill 14-23 is to increase the safety of nightlife in the County; however, several factors are unknown in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members, including:

RESJ Impact Statement

Bill 14-23

- Specific safety concerns arising around late night businesses and effectiveness of prescribed late night business safety plan measures in addressing safety concerns;
- Data on calls for service that demonstrate need for safety measures in late night businesses in particular; and
- Defined priority police response areas or specific late night businesses that will be required to implement safety plan measures.

While priority police response areas are pending definition by MCPD, available data suggests that downtown Silver Spring would likely be among the included communities. In 2022, one third of police dispatched incidents occurred in Silver Spring (Appendix, Table 1) and the Silver Spring police district had the highest per capita crime rate in 2020 (Appendix, Table 2). Search results from Google show that most late night establishments in Silver Spring are located in downtown (20910 zip code).

Considering these factors, additional potential impacts to stakeholders include:

- **Designated late night businesses** will bear the costs of implementing safety plan measures and risk having to discontinue late night operations if requirements are not met.

Generally, there is insufficient data to determine whether there could be disproportionalities by race and ethnicity among designated late night businesses. However, the enforcement of Bill 14-23 in downtown Silver Spring in particular could disproportionately impact Ethiopian-owned businesses, which have a well-known hub in the area.¹⁸

- **Late night business patrons** risk having less nightlife options should businesses have to discontinue late night operations for not meeting safety plan requirements. The lack of regulation on private security personnel in Maryland could also pose safety concerns for patrons.

Generally, there is insufficient data to determine whether there could be disproportionalities by race and ethnicity among late night business patrons. However, to the extent that BIPOC patrons frequent designated late night businesses, they could experience increased racial discrimination from private security personnel.¹⁹ Further, increased surveillance through security cameras could put BIPOC patrons at a greater risk of law enforcement interactions that could widen existing racial disparities in policing.²⁰

- **Community members residing near late night businesses** could experience increased surveillance through security cameras. As Black constituents are overrepresented in downtown Silver Spring (Appendix, Table 3), the enforcement of Bill 14-23 in this area in particular could put Black constituents at a greater risk of law enforcement interactions that could widen existing racial disparities in policing.

Taken together, OLO finds the RESJ impact of Bill 14-23 is indeterminant. There are several unknown factors in determining how this Bill will impact safety and RESJ for late night business owners, patrons, and surrounding community members. The enforcement of this Bill in downtown Silver Spring in particular could have a negative RESJ impact on Ethiopian-owned businesses and Black constituents residing in the area. This Bill could have a negative RESJ impact on other communities depending on the demographics of stakeholders in priority police response areas to be defined by MCPD.

RESJ Impact Statement

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RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²¹ OLO finds the RESJ impact of Bill 14-23 is indeterminant, with a potentially negative impact depending on police priority response areas defined by MCPD. To reduce the potential negative impact of Bill 14-23 on RESJ, the Council can consider the following policy option:

- **Assemble a group of diverse stakeholders to update Bill 14-23, draft Method 2 regulations, and develop annual reporting requirements to the Council to prioritize RESJ.** The County Council has increasingly adopted strategies aimed at promoting civilian oversight in policing and decision-making to advance RESJ. Council action has included creating the Policing Advisory Commission and the Police Accountability Board and enacting legislation to increase transparency in policing data and operations. The Council can consider tasking MCPD to convene community stakeholders representative of BIPOC communities to craft a revised Bill that explicitly seeks to advance RESJ with public safety. The Council can also consider tasking MCPD to partner with BIPOC community stakeholders to draft Method 2 regulations and annual reporting requirements to the Council that reflect the priorities of disproportionately impacted communities.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

RESJ Impact Statement

Bill 14-23

APPENDIX

Table 1: Montgomery County Police Dispatched Incidents by City, 2022

City	Number of Dispatched Incidents	Percent of Dispatched Incidents
Silver Spring	64,252	33.0
Rockville	32,712	17.0
Gaithersburg	27,161	14.0
Germantown	17,751	9.0
Bethesda	13,873	7.0
Other	8,503	4.0
Montgomery Village	5,536	3.0
Potomac	5,500	3.0
Chevy Chase	4,638	2.0
Derwood	3,268	2.0
Kensington	3,078	2.0
Olney	3,024	2.0
Clarksburg	2,961	2.0

Source: OLO Analysis of Police Dispatched Incidents Dataset, DataMontgomery.

Table 2: Population and Per Capita Crime Rate in Montgomery County Police Districts, Sorted by Highest to Lowest Crime Rate

Police District	Population	Crime rate per 100,000 residents
3 rd - Silver Spring	163,266	3962.2
6 th - Gaithersburg	156,064	3449.2
5 th - Germantown	141,113	2916.8
4 th - Wheaton	216,176	2502.6
2 nd - Bethesda	190,506	2439.3
1 st - Rockville	156,848	2413.8

Source: 2020 Annual Report on Crime and Safety, MCPD.

Table 3: Percent of Residents by Race and Ethnicity, Montgomery County, Downtown Silver Spring²²

Race and Ethnicity	Montgomery County	Silver Spring, 20910
Asian	15.2	7.9
Black	18.4	29.4
Native American	0.4	0.2
Pacific Islander	0.0	0.0
White	48.8	49.8
Latinx	19.7	11.7

Source: Table DP05, 2021 American Community Survey 5-Year Estimates, Census Bureau.

RESJ Impact Statement

Bill 14-23

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.raciaequitytools.org/glossary>

² Ibid

³ Memorandum from County Executive to Council President, Introduction Staff Report for Bill 14-23, February 1, 2023.

⁴ Bill 14-23 defines a priority area as one or more police response areas (PRA) identified and published by the Montgomery County Police Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

⁵ Introduction Staff Report for Bill 14-23, Montgomery County Council, Introduced February 28, 2023.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2789_1_23775_Bill_14-23_Introduction_20230228.pdf

⁶ Refer to Montgomery County Code, Chapter 1, Article 01, Sec. 1-19 for fines and penalties associated with Class A violations.

⁷ RESJIS for Bill 14-22, Office of Legislative Oversight, July 21, 2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill14-22.pdf>

⁸ David Grazian, “Urban Nightlife, Social Capital, and the Public Life of Cities,” Sociological Forum, December 2009.

<https://www.jstor.org/stable/40542603>

⁹ “A New African American Identity: The Harlem Renaissance,” National Museum of African American History and Culture.

<https://nmaahc.si.edu/explore/stories/new-african-american-identity-harlem-renaissance>

¹⁰ Marcus Anthony Hunter, “The Nightly Round: Space, Social Capital, and Urban Black Nightlife,” City & Community, American Sociological Association, June 2010. <https://journals.sagepub.com/doi/pdf/10.1111/j.1540-6040.2010.01320.x>

¹¹ RESJIS for Bill 14-22

¹² Marcy S. Sacks, “‘Skull Trouble’: A Brief History Of Police Harassment Of Black New Yorkers,” Gotham Center for New York City History, April 23, 2020. <https://www.gothamcenter.org/blog/skull-trouble-a-brief-history-of-police-harassment-of-black-new-yorkers>

¹³ Natalia Carrizosa, OLO Memorandum Report 2022-12, Analysis of dataMontgomery Traffic Violations Dataset, Office of Legislative Oversight, October 25, 2022. https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLOREport2022-12.pdf

¹⁴ Elaine Bonner-Tompkins and Natalia Carrizosa, OLO Report 2020-9, Local Policing Data and Best Practices, Office of Legislative Oversight, July 12, 2020. <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/OLOREport2020-9.pdf>

¹⁵ MCPD 2021 Annual Use of Force Report, Montgomery County Police Department.

<https://www.montgomerycountymd.gov/pol/Resources/Files/Annual-Reports/UseOfForce/2021%20MCPD%20Use%20of%20Force%20Report.pdf>

¹⁶ Reuben A. Buford May and Pat Rubio Goldsmith, “Dress Codes and Racial Discrimination in Urban Nightclubs,” Sociology of Race and Ethnicity, American Sociological Association, December 12, 2017.

<https://journals.sagepub.com/doi/full/10.1177/2332649217743772>

¹⁷ David Collins, “Bill Would Require Security Guards in Maryland to be Licensed by the State,” WBAL-TV 11 Baltimore, March 7, 2023. <https://www.wbal.com/article/security-guard-state-license-bill-maryland/43233961>

¹⁸ Silver Spring Downtown and Adjacent Communities Plan, Montgomery Planning, June 2022. <https://montgomeryplanning.org/wp-content/uploads/2022/11/Silver-Spring-DAC-Approved-Adopted-web.pdf>

¹⁹ Buford May and Rubio Goldsmith

²⁰ RESJIS for Bill 14-22

²¹ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

²² Latinx is an ethnicity rather than a race; therefore, Latinx people are included in multiple racial groups throughout this impact statement unless where otherwise noted. Demographic data is on based on U.S. Census Bureau’s Zip Code Tabulation Areas (ZCTA), which may have slightly different boundaries than USPS zip codes.

Economic Impact Statement

Montgomery County, Maryland

Bill 14-23

Police – Late Night Business Safety Plan

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 14-23 would have an indeterminate impact on economic conditions in the County in terms of the Council’s priority indicators. By requiring late night businesses to submit and adhere to MCPD-approved safety plans, the Bill likely would have mixed impacts on certain businesses and their customers. On the one hand, the requirements likely would increase operating costs for late night businesses and prices for customers. However, the Bill likely would increase revenues for businesses that provide security-related goods and services to late night businesses. Moreover, OLO is unable to determine the likelihood the Bill would reduce crime and, therefore, estimate economic benefits of crime reduction on businesses and residents.

BACKGROUND AND PURPOSE OF BILL 14-23

According to the County Executive, the intent of Bill 14-23 is to “ensure that the County public safety agencies and businesses are working synergistically to ensure there are improvements to the balance of [nightlife] safety and vibrancy throughout our County.” Towards that end, the Bill proposes requiring “certain establishments that operate in the late night/early morning hours, in areas with higher calls for service during those hours, to develop a Safety Plan.”¹

Bill 14-23 defines a late night business as “a business located within a ‘priority’ police response area if the business: (1) has liquor, tobacco, or food sold and consumed on the premises; and (2) operates between the hours of midnight and 6:00 a.m.”² If enacted, Bill 14-23 would:

- **Require that designated late night businesses submit a late night business safety plan to the Montgomery County Police Department (MCPD) every three years.** The late night business plan would depend upon the business and could require security personnel and training, exterior lighting, digital security cameras, and clearing exterior windows, among other things. Businesses that are required to install security cameras would have to provide video recordings to MCPD upon demand if MCPD is investigating a violent felony. MCPD could recommend, but not require, a business to search patrons by metal detectors, magnetometers, or pat downs.
- **Authorize MCPD to review and approve a proposed late night business safety plan.** The late night business safety plan would be subject to MCPD approval. If the plan is disapproved, the late night business would not be permitted to operate from midnight to 6:00 a.m.
- **Authorize MCPD to establish the requirements of a late night business plan.** MCPD would be required to develop Method (2) regulations to implement the Bill’s requirements. The regulations would need to be submitted to the

¹ [Introduction Staff Report for Bill 14-23](#).

² Bill 14-23 defines a priority area as one or more police response areas (PRA) identified and published by the Montgomery County Police Department, based upon public safety indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.

Council for review and approval within 180 days of the Bill's enactment. Late night businesses would be required to submit a late night business safety plan within 90 days of the approved regulations being published in the County Register.³

Violations of the Bill would constitute a Class A violation; each day a violation continues would be a separate offense.³

Bill 14-23, Police – Late Night Business Safety Plan, was introduced by the Council at the request of the County Executive on February 28, 2023.⁴

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 14-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁵

The primary economic stakeholders of Bill 14-23 likely would be late night businesses, nearby businesses, their customers, and businesses that provide security-related services and goods to late night businesses. To assess Bill 14-23's impacts on the Council's priority indicators, OLO performs a qualitative assessment based on the security requirements described in the Bill, as well as the following 2022 peer-reviewed research article:

- Fe and Sanfelice, "[How Bad Is Crime for Business? Evidence from Consumer Behavior](#)," *Journal of Urban Economics* (2022).

This article was selected because of its concise overview of the expansive literature on the impact of crime on businesses.

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 14-23 are the following:

- Total cost of preparing safety plans;
- Total cost of implementing MCPD-required security measures; and
- Crime rates in areas around late night businesses.

³ Refer to Montgomery County Code, Chapter 1, Article 01, Sec. 1-19 for fines and penalties associated with Class A violations.

⁴ [Introduction Staff Report for Bill 14-23](#).

⁵ Montgomery County Code, [Sec. 2-81B](#).

IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■ ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Bill 14-23 would have mixed impacts on certain private organizations in terms of the Council’s priority economic indicators. The Bill’s economic impacts would occur through: (a) requiring late night businesses to submit and adhere to MCPD-approved safety plans and (b) the potential for the new requirements to reduce crime.

MCPD-Approved Safety Plans: By requiring late night businesses to submit and adhere to MCPD-approved safety plans, the Bill likely would increase operating expenses for certain late night businesses in several ways. First, late night businesses may need to devote staff hours to prepare and submit safety plans to MCPD every three years. Second, requiring businesses to receive MCPD approval on their safety plans likely would induce certain businesses to adopt security measures they otherwise would not in the absence of the Bill. These measures may include hiring security personnel, undergoing security training, purchasing/installing exterior lighting and digital security cameras, posting required signage, etc.

The Bill also likely would result in loss revenues for late night businesses who would be unable to operate due to failing to submit safety plans or MCPD rejecting them.

In addition to late night businesses, the safety plan requirement likely would impact other County-based businesses. Any businesses that provide security-related goods and services to late night businesses that would adopt additional security measures because of the safety plan requirements would experience increases in business revenues.

Potential Crime Effects: Importantly, it is beyond the scope of this analysis to assess the likelihood that Bill 14-23 would reduce crimes against businesses. However, if the Bill does reduce crime, businesses may be affected in several ways. While “there is not a clear consensus on the effect of crime on business activities,” studies suggest that local crime can increase the cost of doing business through product theft or repairing property damage, reduce revenues by scaring away customers, and potentially affect business inception and survival.⁶ Thus, if it reduces crime, the Bill may prevent operating expenses, revenue loss, and other negative impacts related to crime.

Given uncertainty on the effect of crime on business activities, OLO is unable to determine whether the Bill would affect private organizations in terms of the Council’s other priority indicators.

Residents

OLO anticipates that Bill 14-23 would have mixed impacts on certain residents in the County in terms of the Council’s priority economic indicators. On the one hand, resident customers of late night businesses may experience price increases from businesses that pass on any costs induced by submitting and adhering to MCPD-approved safety plans. Holding all else equal, these residents would experience net decreases in disposable income. On the other hand, if it reduces crime,

⁶ Fe and Sanfelice, “[How Bad Is Crime for Business?](#).”

the Bill may economically benefit certain residents, for example, by preventing price increases to cover crime-related losses.

Given uncertainty on the effect of crime on business activities, OLO is unable to determine whether the Bill would affect residents in terms of the Council's other priority indicators.

Net Impact

OLO concludes Bill 14-23 would have an indeterminate impact on economic conditions in the County in terms of the Council's priority indicators. As discussed above, by requiring late night businesses to submit and adhere to MCPD-approved safety plans, the Bill may increase costs to businesses and customers. However, the Bill likely would economically benefit businesses that provide security-related goods and services to late night businesses. Moreover, OLO is unable to determine the likelihood that the Bill would reduce crime and, therefore, estimate economic benefits of crime reduction on businesses and residents.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Fe, Hao and Viviane Sanfelice. "[How Bad Is Crime for Business? Evidence from Consumer Behavior.](#)" *Journal of Urban Economics* (2022).

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)

Montgomery County Council. [Introduction Staff Report for Bill 14-23.](#) Introduced on February 28, 2023.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

AUTHOR

Stephen Roblin (OLO) prepared this report.

March 23, 2023



Comments and Concerns
CB 14-23 - Late Night Business Safety Plan

Dear Montgomery County Council:

The Restaurant Association of Maryland (RAM) is requesting some fundamental clarifications regarding Council Bill 14-23, *Late Night Business Safety Plan*. While our members share the goal of promoting public safety in our communities, we believe this bill raises a lot of unanswered questions.

Our restaurant members consider themselves to be an important part of the community and are in support of working with local law enforcement. However, this legislation would present significant challenges to the industry. Restaurants operate on very narrow profit margins (averaging 4 percent), and the enhanced security measures that could be prescribed under this legislation could place an immense financial burden on them. Especially for our smaller members, training and hiring security would be extremely costly and not practical. Many of them would be forced to close by midnight or switch to carry-out only after midnight to avoid submitting a "Late Night Business Safety Plan." As a result, restaurants that close early would have to forego potential late-night sales. For restaurants that switch to carry-out only, this could increase loitering around the businesses, as late-night customers may hang out around the business after getting their food.

Because of these concerns, RAM would request that the following issues be defined or clarified before the bill is moved:

- The methodology used to identify "Priority Police Response Areas" -- crime metrics, crime threshold, etc.
- What would the scope of "Priority Police Response Areas" be -- i.e., would they apply to specific streets within a defined radius, zip codes or towns, etc. that are above a specified crime threshold?
- How often would "Priority Police Response Areas" be updated?
- The application process and how the Montgomery County Police Department (MCPD) decides to approve or deny the plans.
- Specify potential requirements for different types of businesses -- i.e., Late-Night Diners vs. other business types.
- Would there be an appeal process for businesses whose plan is denied?
- For businesses that cannot afford the requirements, will there be a financial hardship waiver or grant opportunities?

We appreciate the efforts of the Council to promote public safety in our community. However, the requirements and processes in Council Bill 14-23 need to be more clearly defined.

Thank you for your time and consideration of our concerns.

Sincerely,

A handwritten signature in black ink, reading "Melvin R. Thompson".

Melvin R. Thompson
Senior Vice President
Government Affairs and Public Policy

To:
County Executive Marc Elrich
President County Council Evan Glass
Councilmember Kate Stewart

Re: Feedback on Proposed Late Night Business Safety Plan

I am writing in response to the proposed Late Night Business Safety Plan (Bill 14-23).

The idea of having a safety plan for late night businesses is a step in the right direction. However, I am concerned that the bill isn't quite detailed enough or well-thought-out enough to ensure meaningful accountability on the part of the businesses that it covers, and I want to urge County leadership that any final version contain answers to the following questions and issues that came to mind while reading it:

- How will members of the public know that the safety plan contains to be able to bring to the authorities' attention violations or non-compliance with its terms? Will the text of each business' safety plan be available online?
- The level of detailed oversight required of the police in preventing noncompliance with safety plan obligations is substantial. How will police routinely monitor a plan that is reissued every 3 years, given that the police have repeatedly indicated that they are stretched thin?
- The bill also raises the question of how the police will evaluate the quality of each proposed safety plan. The bill states that "the features of a late night business plan would depend upon the business," and lists many things a plan could, but is not necessarily required to, include. How will the police determine if steps being proposed by a business are appropriate/sufficient for that particular business? Will the police have the resources, data, and expertise necessary to develop benchmarks or requirements that can be applied to each safety plan application to approve or reject proposed safety plans? Will there be a way for community members to comment on a proposed plan?
- It strikes me that there needs to be some teeth to the bill that will allow for a business to be seriously reprimanded (more than just a small fine) where its plan is demonstrably inadequate to address the level of crime related to that business. If violent crime occurs in the close vicinity of any one business and is related to patrons of that business more than two times (as one example, Sweet Sweet Kitchen at the corner of Bonifant and Fenton Street), that business' plan should be deemed ineffective and the business should be shut down or forced to relocate to a non-residential area, if any can be found. It isn't fair to residents and to the business owners that are actually taking efforts to prevent crime and ensure safety if businesses that are non-cooperative can continue to operate in a way that disregards human life and makes the area less safe for everyone.
- In addition, while this is a comparatively minor note, the plan does not address noise disturbances caused by late night businesses. While this issue does not affect me personally, I know neighbors who state that music at nearby establishments at around 3am on weekend nights is so loud that they are unable to sleep.

- While this proposed bill is certainly welcome, I do wish that other action—such as restricting or preventing all-night businesses from operating entirely within 200 feet of a preexisting residential building—would also be considered as an option. I understand the goal is to create a vibrant downtown, but I’m not entirely convinced that the proliferation of so many all-night businesses in mixed-use areas is leading to the kind of vibrancy intended. I’ve lost track of the number of the late-night dangerous criminal incidents that have happened at my address (8310 Fenton Street) alone in the past 2 years, which I believe includes but is not limited to the following:
 - an unsolved incident where someone crashed through and destroyed a section of fencing in my parking lot;
 - a shooting from across the street where two bullets struck the couch in my living room and ricocheted into my wall;
 - at least 3 incidents where someone pounded on and tried to break into my front door at 3-4am (they tried to turn the handle to get in but the door was locked);
 - a shooting where my neighbors’ apartment units were damaged by gunfire;
 - two shootings that did not strike my building but that resulted in hospitalizations and/or deaths that occurred within a block feet of my apartment, including one that occurred yesterday at the building next door;
 - a shooting/armed robbery in the Safeway parking lot next door;
 - 5+ instances of graffiti and/or vandalism of property;
 - a drunken car crash outside my living room window that damaged a neighbor’s car;
 - an incident where someone tried to open the door of my neighbor’s apartment;

This does *not* include a few instances of drunk individuals defecating and urinating on the porch outside my front door. While I understand that crime is unpredictable and not always controllable, this still seems a like a lot for such a short period of time in a single location.

I continue to beg for meaningful, urgent action from our elected representatives before any further loss of life or serious injury occurs.

Sincerely,

Stefan Babich

To:

County Executive Marc Elrich
President County Council Evan Glass
Councilmember Kate Stewart

Re: Feedback on Proposed legislation bill XX-23; Late Night Business Safety Plan

I am writing in response to the recently proposed legislation bill XX-23; Late Night Business Safety Plan.

My wife and I purchased our condo in the Lofts24 building on Fenton Street in 2015, and were thrilled to live in the midst of a vibrant, diverse and lively urban community. Since that time, we have come to feel as though we are living in a war zone, with frequent deadly shootings, and stabbings, and, stray bullets ENTERING OUR BUILDING. To all the Council members I would ask how recently you have had stray bullets enter your home?

This year, one of our adult daughters has become afraid to visit us except during the day. This is not new, it has been going on for years now, and getting progressively worse, despite increased police presence. The council needs to decide whether it wants this neighborhood to be a safe and welcoming place for families to live and businesses to thrive, or just a hot spot for irresponsible businesses that are catering to criminals. It cannot be both. If you choose the latter, we will sell the condo and move someplace where government is more responsible and responsive to the needs of residents.

It seems quite tragic really, in that Silver Spring from the early 70's until recently had achieved so much in becoming a great downtown that attracts people from all over to enjoy it's many attractions. This happened at no small expense, but DTSS is now becoming just a haven for criminals and a place that people are afraid to go. What a waste of so much time, money and effort from so many, if you allow this to continue.

This proposed bill falls short in addressing concerns previously raised by area residents. While we welcome a vibrant night life with restaurants and bars, it should not be at the expense of safety and quality of life for area residents.

Questions and issues raised by this proposed bill's plan include the following:

- Late-night businesses are still permitted to stay open 24 hours therefore not addressing the impact for increased criminal activity during hours when police resources are reduced or the significant noise disturbances that occur routinely between the hours of 2am and 6am, when area residents, young and old, are trying to sleep.
- The loitering of customers leaving the late-night establishments directly contributed to at least three shootings on or near Bonifant Avenue in 2021. Specifically, in late July 21, around 3 a.m. a shooting caused a stray bullet to enter the bedroom of a unit in my building after a scuffle broke out involving late night patrons loitering in the street. In early December 2021, at 2 a.m. five businesses on Bonifant in the same block as my building were riddled by stray bullets as a result of a shooting involving patrons from a nighttime establishment and in late December 2021 around 4 a.m., mere feet away from my building, a shooting occurred involving patrons milling around in front of one off the late-night restaurants on Bonifant Street. The latter incident led to police shooting with the involved shooter and resulted in 4 officers being placed

on administrative leave for many months until cleared of wrongdoing. Note that all these incidents occurred after 2 a.m.

- The level of detailed oversight and verification required of the police in achieving uniformity in the application of the Late-Night Safety Plan Policy is substantial and raises questions as to how police will routinely monitor a plan that is reissued every 3 years. The bill requires no uniformity in requirements such as surveillance, security personnel, or training and implies that some businesses may or may not be required to include all of these items in their plans. ***It also raises concern on how the police will monitor the quality of the technology and manpower employed by all the businesses to prevent crime.***
- The police force is already significantly understaffed. Resources would be better served elsewhere. Closing late night business specifically near residential between 2-6am would reduce the need for police resources to respond to both nuisance calls and criminal activity. ***It is the most effective and efficient plan of action to maximize resource allocation and minimize crime.***
- The county has widely supported smoking restrictions in public areas to meet health standards of its population. It is difficult to understand why the county is in support of Hookah lounges where patrons can smoke 24 hours/day, 7 days a week and not be concerned with the health aspects of this permissive policy, not to mention the loitering, disturbances, and noise it causes in the late hours nearby residences.
- We applaud those business owners who are compliant and have proactively implemented safety measures. However, there are already businesses that have been identified as less cooperative. County agencies like ABS have been lenient with some of these same businesses and in our opinion have not aggressively monitored and enforced establishments for violations. How can we be assured that the Late-Night Safety Plan will be enforced, and non-compliant businesses will be immediately shut down?

In summary, the proposed plan addresses concerns of the business community - that they continue to be allowed to operate all night - but does not account for the impact all night hours have on our ability to feel safe in our homes and be free of nuisances which are a by-product of these businesses and include illegal parking and regularly being awakened by loud music and clientele who frequent these establishments. In addition to restricting hours of late-night businesses, exploring zoning that places ALL-NIGHT businesses in areas that do not affect residential quality of life should be another option that is considered.

We live here in downtown Silver Spring, and we are your constituents. Many of the customers who patronize the local all-night businesses do not reside in downtown Silver Spring. Our feedback should matter.

Sincerely,

Tom and Tracey Nagle
Lofts24 Residents

Late Night Safety Policy for Business in Downtown Silver Spring

What the County Executive proposes comes with too many concerns. I am concerned that by turning the already undermanned police force into administrators requiring them to provide oversight of negligent business owners seems profoundly unproductive. There are owners who have obeyed the law and there are owners who have violated county regulations for years now and have no history of demonstrating a change of strategy. Why are you giving them a second chance when you know that intoxication and 24 hour “unregulated” businesses serving smoke and alcohol promote disturbances, noise, loitering, and violence. ABS has done a dismal job in overseeing many of these establishments and has fostered irresponsible management of some owners by conducting hearings at sub-standard levels of investigation and thoroughness. It is the wild west in DTSS with excessive permissiveness attracting criminal elements and at risk youth. Raise the standards of performance of ABS and enforce the law and close all establishments at 2am.

How are the police going to ensure that the quality of their proposed solutions...technology, security guards, cameras..will be uniform and meet their standards. There will be owners who pose their buddies as security guards with a dismal level of training. Why does the County not care about the health of young people promoting drinking and smoking 24 hours? Where is the common sense here. What good happens after 2am? Why did you all articulate decades ago a vision for the downtown area where residents, businesses and employment centers could co-exist peacefully next to a regional transportation center when your actions demonstrate no regard for the welfare of the residents. It was a false vision and we are paying the price. Your so called First Step will put the residents at risk for a few more years and prolong the criminality occurring there. Residents suffer from sleep deprivation from being awoken at early morning hours at noise, guns shots, and disturbances. Families feel unwelcomed in the DTSS due to the unwholesome nature of so many bars and lounges. What major corporation would take up residence there looking at the unwholesomeness of the built environment and the crime problem? This is the best the county council could do in bringing in quality “entertainment”. I think it is time the Council owned up to its poorly thought out decisions that created this mess. Only by doing that, are you going to bring to the table a long term, comprehensive solution. By piecemealing incrementally a solution you are demonstrating weakness, lack of courage, a certain effort to deceive the electorate, and fear of not pleasing everyone to support your progressive agenda.

For a business owner to operate 24 hours, he or she is dependent on the behavior of a majority of high risk youth and felons congregating to make the economies of scale that owner targets to make profits. You are not solving the problem. You are supporting the magnates that attract the elements that make up the problem.

The solution that demonstrates intelligent thinking, comprehensiveness in resolution, common sense, effectiveness and efficiency is closing all establishments at 2am. We need elected officials to act more like public servants than imperial monarchs, to demonstrate courage and to think deeply on what is the right ethical decision to promote well-being, harmonious living and justice.

TO: Montgomery County Council
FROM: Celine-Marie Pascale and Mercedes Santos
SUBJECT: Bill 14-23, Police – Late Night Business Safety Plan
DATE: March 12, 2023

Dear Montgomery County Council,

We lived in Lofts 24 for ten years and enjoyed a flourishing community of professionals living in Silver Spring City Center. In a very short period of time, bars and hookah lounges proliferated around our home at Bonifant & Fenton. With these businesses came carjackings, shootings and stabbings; three units in our building took gun fire in the middle of the night. Large numbers of intoxicated and armed men were partying on Bonifant near Sweet Sweet Kitchen, often until 6:00 am. Residents stopped going to the gym before work because it wasn't safe.

Along with Lofts 24 residents, we attended community meetings, wrote letters, and worked with community partners to regain a sense of safety. Cities across the country faced similar increases in crime associated with hookah lounges and late-night bars. Our community did research and found that Baltimore successfully implemented legislation to regulate these businesses; we asked the County to use that legislation as a model. Lofts 24 collected 600 signatures from local businesses, residents, and local residents who frequent the downtown. County government never so much as acknowledged of our petition, letters, or emails.

Now, Montgomery County has produced bill 14-23 and we want to be hopeful, but we are not. If all of these measures in this bill could be required (they are not) and effectively enforced (unlikely) this bill does not address what is happening in the streets as a result of these businesses in the community. People come out of these establishments and continue to party in parking lots and on the street. None of the violence that we have experienced would be prevented by these measures.

In July 2022, we left friends behind and moved out of Montgomery County. Our move to Western New York was not based on the violence but our move out of the neighborhood absolutely was. We've lost a lot by leaving Silver Spring. But we no longer worry about being shot while sleeping. We have little confidence that any of our voices will be heard. But we want to be clear: This bill doesn't go far enough to protect those who by choice or circumstance remain. **Listen to the residents of Lofts 24.**



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**Bill 14-23 Late Night Business Safety Plan
Public Hearing Testimony
Tuesday, March 14, 2023**

Council President Glass, 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, for one more week. I'm here today in support of Bill 14-23, that would require certain businesses, open to the public during the late night and early morning hours in "priority" police response areas, to obtain and operate under an approved business safety plan.

The Chamber has always been about making Silver Spring a thriving business community, a place where people want to live, work, and come to enjoy what so many of us love about Silver Spring – our wonderful arts and entertainment venues, our breweries, what I like to call our "United Nations" of restaurants, and our nightlife. All this, our diverse community, and our location, are the reasons so many people also want to live here.

We are committed to making Silver Spring safe, comfortable, and welcoming for everyone who lives, works, and visits here. It's why we have worked to nurture a long-standing partnership with the Third District Police officers to whom we entrust our public safety.

But we have been distressed about the increased violence that has invaded our community. Sadly, it's not just here, but here is where we live and work. That's why, in December of 2021, as many of you might remember, the Chamber brought together a group of business owners, residents, and County officials seeking to address the public safety challenges we had experienced, often associated with establishments that operate in the very late-night or wee hours of the morning.

We asked for a greater police presence in the area which, thanks to Chief Jones and the team at the Third District has made a huge difference. We asked for an interagency task force to jointly address violations and enforce laws currently in place. We asked for better security lighting and more cameras. And, we asked for legislation to make sure that establishments in places requiring a high police presence did their part to assure the safety of the overall community. This legislation is finally another important step toward a safer environment for all to enjoy.

A couple details to note: We ask that the "priority police response areas" be tightly focused, so as not to encompass those businesses that do not have a history of police response for violence. And, for businesses required to obtain and operate under a safety plan, we ask that the department take into account measures provided by the business's landlord – security cameras, additional lighting, and other safety protocols.

We want all businesses to succeed. And we believe that assuring a safe and welcoming environment for everyone is key to a thriving business community, a thriving Silver Spring, and a thriving Montgomery County. Safe for those who live here, who work here, and who come here to enjoy the wonderful amenities we have to offer.

LATE NIGHT BUSINESS SAFETY PLAN

Hello,

I am a resident of Lofts 24 located at the intersection of Bonifant and Fenton Streets in Silver Spring.

I raised four sons in Silver Spring and feel very connected to the city.

Living in Lofts 24 for the last several years has been a roller coaster ride.

I love the vibrancy, diversity, residential/commercial mix that the city offers.

I hate the fear, anxiety, and sadness that the city, its residents, business owners and visitors, have to deal with related to killings, carjackings, robberies, etc.

Crime is increasing in Silver Spring at an exponential rate and people are getting KILLED here on a REGULAR basis! My family has experienced THREE deaths outside our building over the last year. That's insane! It is very traumatic.

The city is in danger of dying if a life-line is not put in place.

It is imperative that Silver Spring gets the help it needs to not only survive but thrive.

So many people have invested in the city to allow it to be killed off by a few people doing bad things.

Please start the process of helping Silver Spring grow and blossom by initiating the late night business safety plan. This plan is a BASIC, FIRST step in the right direction.

I personally call the "non emergency" help line once/week and ask that someone be dispatched to one of the night clubs on Bonifant Street to enforce the noise ordinance. The noise is deafening and it happens between 2AM and 6AM on a nightly basis. This does not seem to be a prudent use of the police. Respect of the community and compliance with the law would be appreciated but neither of these things are happening.

As a real estate agent who wants to encourage people to move to Silver Spring and add to the complexity and vibrancy of the city, it is becoming more and more challenging to make deals happen here. Silver Spring's reputation is falling further and further into a dark hole. People are scared to move here. They do not want to raise a family in a city where crime is rampant and no one seems to care. They hear about the killings and car hijackings and decide to look at other areas where crime is not an accepted way of life. I am even thinking about whether or not to move. This thought makes me so sad. However, as an older woman, I know I am at a higher risk of experiencing crime. My twin granddaughters come over to my condo everyday and the fact that I have to consider whether or not they are safe here is a tragic reality that I have to face.

PLEASE pay attention to Silver Spring. It is a lovely place full of amazing people. It needs help.

A beginning step would be to pass the late night business safety plan.

We all need to work together to make sure Silver Spring becomes the thriving, healthy community it's meant to be. I'm on board, I hope you are too.

Thank you.

Ruth Schilling

[REDACTED]

Dear County Council,

As an 85-year-old longtime resident of Silver Spring and most recently downtown Silver Spring, I am appalled at the lack of concern elected officials have for its most vulnerable residents— seniors and children. To allow several all-night businesses within the same block as a senior building including one directly across the way, that blasts loud music from 2-6am in the morning is unconscionable. Are there any rules or regulations set forth before an all night business can be given a permit? Or is this a free for all without regard for order? I can't have my grandnieces or nephews stay over for fear they are awoken at night like me to the constant noise disturbances. Seven days a week/24 hours a day, I can not be assured of peace because the council is more concerned about allowing certain businesses to stay open all night than it does about the welfare of me or my fellow senior citizens in the neighborhood. Nor is there concern for the children in the neighborhood who are not afforded a good night's sleep, so they function well in school.

So, NO – the Late-Night Business Safety Plan does not go far enough to address how the plan will be enforced or to address the issue of public safety and quality of life. It may serve business, but it does not serve the citizens who reside here.

Thank you for allowing me to express my concerns.

Sincerely,

L. Smit

March 13, 2023

Re: Proposed Legislation Bill 14-23; Late Night Business Safety Plan

Council President Glass, Council Vice-President Friedson and members of the County Council:

I am a life-long resident of Silver Spring, Maryland who has resided in the downtown area for over 12 years. Over the past three years, the downtown area has grappled with a dramatic increase in violent and quality-of-life crimes that have been a blight on the vibrant community that I love.

I have personally been impacted by this surge in crime when on July 21, 2021, a stray bullet entered a bedroom in my condo unit mere feet from where my 85-year-old mother was sleeping. The gunfire which caused the incident was from a fight which broke out between patrons from the all-night business who were loitering on Bonifant Street at 4:00 am. On December 13, 2021, in the early morning hours, five businesses on Bonifant Street were riddled by stray bullets because of another shooting involving - yet again - patrons loitering in the street after leaving a nighttime establishment. On December 28, 2021, mere feet away from my condominium, a third shooting occurred involving patrons milling around in front of the all-night restaurant on Bonifant Street.

Most recently, on March 5, 2023, there was a fatal shooting in front of the same all-night eating establishment involved in the December 28, 2021, shooting.

The common denominator in these shootings is the location in which they occurred - Bonifant Street. On that street alone, in a single block situated between Georgia Avenue and Fenton Street, four all-night Hookah Lounges and one all night eating establishment are allowed to operate 24/7. These businesses operate in close proximity to a senior residential building housing the elderly and vulnerable and a condominium community that both young families and single adults call home.

It is with this historical chronology in mind that it is apparent that Bill 14-23 falls far short in addressing concerns previously raised by area residents related to safety. Bill 14-23 should have been proactive legislation introduced when the County undertook its plan to make the area a nightlife destination in a mixed-use community. In its current form, Bill 14-23 is untimely and stronger legislation is necessary to protect residents - particularly in hotspot crime zones such as Bonifant Street.

The specific deficiencies in the proposed bill plan which must be considered so that the legislation can be re-worked include the following:

- Late-night businesses are still permitted to stay open 24 hours therefore not addressing the impact for increased criminal activity during hours when police resources are reduced or the significant noise disturbances that occur routinely between the hours of 2am and 6am, when area residents, young and old, are trying to sleep. As set forth above the loitering of customers leaving the late-night establishments directly contributed to three shootings on Bonifant Street in 2021. It is only a matter of time, unless addressed by our leaders, before an innocent resident is murdered from random gunfire related to the loitering of patrons who frequent these establishments.
- The level of detailed oversight and verification required of the police in achieving uniformity in the application of the Late-Night Safety Plan Policy is substantial and raises questions as to how police will routinely monitor a plan that is reissued every 3 years. The bill requires no uniformity in requirements such as surveillance, security personnel, or training and implies that some businesses may or may not be required to include all of these items in their plans. ***It also raises concern on how the police will monitor the quality of the technology and manpower employed by all the businesses to prevent crime.***
- The police force is already significantly understaffed, and resources are stretched to capacity. Resources would be better served elsewhere. A legislative plan closing late night businesses specifically near residential properties and in identified hotspot crime zones between 2am-6am would reduce loitering which leads to criminal activity. ***It is the most effective and efficient plan of action to maximize resource allocation and minimize crime.***
- The county has a legislative blueprint which the Courts have upheld that is available to it from Baltimore County which imposed operational hour restrictions on Hookah lounges. Baltimore County's [legislation](#) had the dual benefits of reducing certain all-night establishments in hotspot crime zones and providing health oversight for its constituents by prohibiting the sale of tobacco products and smoking 24 hours/day, 7 days a week. A similar [ordinance](#) was enacted in Daytona Beach. ***It is difficult to understand why the County will not use the legislative power it has and why it is unwilling to confront the statistical evidence from Bonifant Street alone that all-night establishments create a conducive environment for loitering and allow patrons who have been heavily drinking during the night to mill about and increase the likelihood that quality-of-life criminal activity will escalate to violent crime.***
- While I applaud those business owners who are compliant and have proactively implemented safety measures there are already businesses that

have been identified as less cooperative. In my opinion, County agencies like ABS have been lenient with some of these same businesses and have not aggressively monitored and enforced establishments for violations. ***At this time, there is no assurance that the Late-Night Safety Plan will be uniformly, and aggressively enforced, and non-compliant businesses immediately shut down.***

In summary, the proposed plan is inadequate to address the significant rise in violent and quality-of-life crimes known to escalate to violent crime in Downtown Silver Spring. ***When notice of the substantial risk to life and limb has been given, it should not be bold, risky, or controversial to political careers for our elected leaders to enact effective legislation to keep residents safe and free of crime.*** As an attorney I am routinely asked to identify risks and develop solutions to mitigate risk exposure. As such, I implore you to work harder for the constituents you swore an oath to serve and protect and to rewrite the existing Safety Plan for Downtown Silver Spring to include a limitation on operational hours in designated high crime zones. I leave you with two questions to ask yourself and hope they will guide you to do the right thing: (1) What would you do to protect yourself and your family if the likelihood of a stray bullet entering your home was statistically significant?; and (2) How will you explain to a grieving family who's loved one is murdered from a stray bullet related to the loitering from all-night establishments that it was more important to keep the night life going 24/7 than to protect people?

Sincerely,

Gina Marie Smith

Gina Marie Smith, Esquire

March 9, 2023

Montgomery County Council
100 Maryland Ave
Rockville, MD

Re: BILL XX-23; Establishment of Safety Plans for late night/early morning business operation; Support for Bill

Attention All:

My name is Lottie Sneed and I live in downtown Silver; My Senior Building is located on Bonifant Street. I moved to the area @ nine months ago. I chose the area for its vibrancy and walkable community score. I enjoyed walking and exploring block by block and through the help of my neighbors found some pretty amazing jewels.

The violent crimes of recent months have seriously impacted my confidence. I am much more careful in my outings now. I check in with family to assure that I am safely inside if I arrive in the evening hours. I plan my hours for outings. While parking, I watch to see if there is anyone approaching. I am much more careful and mindful now.

I love the diversity of my neighborhood – the restaurants especially. But, there have been several violent crimes of late. I want to feel that it is safe to invite family and friends for visits and to enjoy the community.

I think that the merits of this Bill are completely sound. I cannot imagine that a business would not want to have a safety plan for the reassurance of their customers. It certainly would make me feel better - that we have responsible businesses in our community. For them, it seems a sound business. For us – residents of the community, it is a matter of personal safety and assurance of a great quality of life.

I support and look forward to the positive impact of this bill: XX-23. Thank you.



Lottie Sneed

To:

County Executive Marc Elrich

President County Council Evan Glass

Councilmember Kate Stewart

Re: Feedback on Proposed legislation bill XX-23; Late Night Business Safety Plan

I am writing in response to the recently proposed legislation bill XX-23; Late Night Business Safety Plan. This proposed bill falls short in addressing concerns previously raised by area residents. While we welcome a vibrant night life with restaurants and bars, it should not be at the expense of safety and quality of life for area residents.

Questions and issues raised by this proposed bill's plan include the following:

- Late-night businesses are still permitted to stay open 24 hours therefore not addressing the impact for increased criminal activity during hours when police resources are reduced or the significant noise disturbances that occur routinely between the hours of 2am and 6am, when area residents, young and old, are trying to sleep.
- The loitering of customers leaving the late-night establishments directly contributed to at least three shootings on or near Bonifant Street in 2021. Specifically, in late July 21, around 3 a.m. a shooting caused a stray bullet to enter the bedroom of a unit in my building after a scuffle broke out involving late night patrons loitering in the street. In early December 2021, at 2 a.m. five businesses on Bonifant in the same block as my building were riddled by stray bullets as a result of a shooting involving patrons from a nighttime establishment and in late December 2021 around 4 a.m., mere feet away from my building, a shooting occurred involving patrons milling around in front of one off the late-night restaurants on Bonifant Street. The latter incident led to police shooting with the involved shooter and resulted in 4 officers being placed on administrative leave for many months until cleared of wrongdoing. Note that all these incidents occurred after 2 a.m.
- The level of detailed oversight and verification required of the police in achieving uniformity in the application of the Late-Night Safety Plan Policy is substantial and raises questions as to how police will routinely monitor a plan that is reissued every 3 years. The bill requires no uniformity in requirements such as surveillance, security personnel, or training and implies that some businesses may or may not be required to include all of these items in their plans. ***It also raises concern on how the police will monitor the quality of the technology and manpower employed by all the businesses to prevent crime.***

- The police force is already significantly understaffed. Resources would be better served elsewhere. Closing late night business specifically near residential between 2-6am would reduce the need for police resources to respond to both nuisance calls and criminal activity. ***It is the most effective and efficient plan of action to maximize resource allocation and minimize crime.***

- The county has widely supported smoking restrictions in public areas to meet health standards of its population. It is difficult to understand why the county is in support of Hookah lounges where patrons can smoke 24 hours/day, 7 days a week and not be concerned with the health aspects of this permissive policy, not to mention the loitering, disturbances, and noise it causes in the late hours nearby residences.

- We applaud those business owners who are compliant and have proactively implemented safety measures. However, there are already businesses that have been identified as less cooperative. County agencies like ABS have been lenient with some of these same businesses and in our opinion have not aggressively monitored and enforced establishments for violations. How can we be assured that the Late-Night Safety Plan will be enforced, and non-compliant businesses will be immediately shut down?

In summary, the proposed plan addresses concerns of the business community - that they continue to be allowed to operate all night - but does not account for the impact all night hours have on our ability to feel safe in our homes and be free of nuisances which are a by-product of these businesses and include illegal parking and regularly being awakened by loud music and clientele who frequent these establishments. In addition to restricting hours of late-night businesses, exploring zoning that places ALL-NIGHT businesses in areas that do not affect residential quality of life should be another option that is considered.

We live here in downtown Silver Spring, and we are your constituents. Many of the customers who patronize the local all-night businesses do not reside in downtown Silver Spring. Our feedback should matter.

Sincerely,

Claudia Torrico



TESTIMONY IN OPPOSITION TO BILL 14-23 - LATE NIGHT BUSINESS SAFETY PLAN

My name is Dr. Robert Veiga. I have been a resident of Silver Spring for 47 years and I am testifying on behalf of the Silver Spring Justice Coalition. SSJC represents community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing.

In furtherance of this goal, we oppose Bill 14-23 because it imposes a coercive regime that gives far too much power to police – power that would be exerted over the Black and brown business community and its customers. This bill is not evidence based or tailored to meet the asserted safety need, and it will increase surveillance over communities already overpoliced and at risk of police harm.

The problems with this bill are many. First, this bill gives MCPD the extraordinary power to decide whether Black and immigrant owned businesses can operate by allowing MCPD to approve each business' safety plan. The bill also gives the police the power to decide which businesses will be subject to the bill's requirements by entrusting the police to designate a location as a "priority area." And, there are no checks on this power because missing from the bill is any appeal process if a plan is rejected or if a business objects to being included in the priority area. Nor is there a plan for oversight or data collection.

Second, we know that "priority area" is shorthand for "high crime area," which is shorthand for areas frequented by Black and other marginalized community members. This bill is not going to impact late night businesses in downtown Bethesda. Instead, it will subject the predominantly Black and brown customers of businesses in areas like Silver Spring to even more surveillance than they already experience just living day to day in our community, as we've seen in data from traffic enforcement and use of force.

Third, the bill has an outsized focus on surveillance video as a core component of the safety plans and creates an unnecessary and unwarranted exception to the rule that police must get a court order before seizing video footage from a business. This infringement on the rights of the businesses and deputizing of private businesses as agents of the government is troubling from

a constitutional standpoint¹ and reveals the bill to be more about making it easier for the police to investigate crimes after the fact than it is about preventing crime in the first place. This aspect of the bill also lacks any oversight mechanism, with no way to track how often police are demanding video-footage and no way for businesses to challenge these requests.

Fourth, this incredible grant of power to our police is not supported by the available data and is not tailored to meet the asserted need to address rising rates of violent crime associated with late night businesses in Silver Spring. [An examination of crime data in the County reveals that violent crime is highest from 3 pm to midnight](#), dropping significantly during the very hours the late night businesses operate. In informal remarks at a community meeting in downtown Silver Spring, Captain McBain admitted this fact to be true for that particular area of the county. Moreover, [as reported in a 2022 article in the New York Times](#), an examination of 40 years of data on security cameras revealed that surveillance cameras do not have an impact on violent crime. Thus, the core component of this bill is unlikely to have its intended effect.

While we do not want to see any businesses, especially Black and immigrant-owned businesses, at risk of not being permitted to operate at all because their neighbors are concerned with the nuisance they may cause and the small possibility of violent crime, we reject this bill as the solution. This bill reflects a lack of imagination in advancing positive multicultural/multiethnic growth that has attracted businesses that are not “traditional” in the mindset of some. Our county can and must do better; we must grow and accommodate the needs of all businesses regardless of their optimal working hours.

We also understand that the Black-owned businesses targeted by this bill actually wanted the county to address the external safety of their surrounding streets and alleys, not just safety within their businesses. If the county wants to require safety plans for late night businesses to operate, these views and others should be included in the approval of each plan, with a board or commission composed of a range of interests making the decision, not the police. And any required plans should be required equitably, regardless of the business location, so that members of traditionally over-policed communities are not subjected to greater surveillance than others.

However, SSJC believes that participatory and voluntary incentive-based plans are more in line with reimagining public safety than the coercive model set forth in this bill. Solutions to problems like those presented by late-night businesses should be evidence-based and not police-controlled; they should not require businesses to act as agents of the government without court oversight; they should come from the community and reflect the needs of the community; and they should focus on making the business environments safe for everyone. Thank you.

¹The government surveillance that results from this bill is reminiscent of the types of programs prohibited by Fourth Amendment jurisprudence in recent years. See, e.g., *Leaders of a Beautiful Struggle v. Baltimore Police Department*, 2 F.4th 330 (4th Cir. 2021).

DRAFT – FOR DISCUSSION – April 18, 2023

This draft reflects amendments supported by Chair Katz and Councilmember Stewart. Note: Councilmember Jawando and Council President Glass support many of the amendments in this draft, with some variations described in detail in the Staff Memorandum dated April 18, 2023).

Expedited Bill No. 14-23
Concerning: Police – Late
Night Business Safety Plan
Revised: 2/23/2023 Draft No. 1
Introduced: February 28, 2023
Expires: December 7, 2026
Enacted:
Executive:
Effective:
Sunset Date:
Ch., Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) require that certain businesses obtain an approved late night business safety plan ~~[[before operating in certain areas of the County]]~~;
- (2) authorize the ~~[[Department of Police]]~~ Office of the County Executive, or an office or department designated by the Executive, to review and approve a proposed late night business safety plan;
- (3) authorize the ~~[[Department of Police]]~~ Executive to establish the requirements of a late night business plan;
- ~~(4)~~ establish a grant program to promote late night business safety; and
~~[[(4)]]~~ (5) generally amend the law regarding public safety and the operation of late night businesses in the County.

By adding
Montgomery County Code
Chapter 35, Police
Section 35-13D

Boldface	<i>Heading or a 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. Section 35-13D is added as follows:**

2 **35-13D. Late Night Business Safety Plan.**

3 (a) Definitions. In this Section, the following terms have the meaning
4 indicated.

5 Business means a business that has an “other tobacco products retailer”
6 license, a food license, a license for on-site cannabis consumption, or a
7 liquor license where the products sold are [[meant to be or are
8 regularly]] consumed on-site at tables or at other areas designated for
9 consumption by the business.

10 Department means the [[Montgomery County Police Department]]
11 Office of the County Executive or one or more offices or departments
12 designated by the County Executive.

13 Late night business means any business [[located in a priority area]]
14 that:

15 (1) is open to the public at any time between [[midnight]] 2:00 AM
16 and [[6:00 AM]] 5:00 AM; or

17 (2) is open to the public at any time between midnight and 5:00 AM
18 and, within the previous 12 months, has been the subject of 2 or
19 more service calls for law enforcement regarding alleged serious
20 incidents occurring on the premises.

21 Late night business safety plan means a plan approved by the
22 Department in accordance with this Section.

23 [[Priority area means one or more police response areas (PRA)
24 identified and published by the Department, based upon public safety

indicators, including crime levels, as areas where late night businesses would benefit by operating in accordance with a late night safety plan.]]

Relevant departments mean the Montgomery County Police Department, the Department of Environmental Protection, the Department of Permitting Services, and the Board of License Commissioners.

Serious incident means a crime identified as a serious incident by the Department in Method (2) regulations.

(b) Requirements.

(1) A person must not [[own or]] operate a late night business between the hours of 2:00 AM and 5:00 AM without first submitting a proposed late night business safety plan to the Department.

(2) A person must not [[own or]] operate a late night business between the hours of 2:00 AM and 5:00 AM after the Department provides written notice that it has disapproved the proposed late night business safety plan.

(3) After the Department approves a proposed late night business safety plan, a person who owns or operates a late night business must do so in accordance with that approved plan.

(4) A late night business plan expires three years after approval, after which a late night business must obtain a new approved late night business plan from the Department in order to continue operating between the hours of 2:00 AM and 5:00 AM.

(c) Regulations. The Department, after consultation with other relevant departments, must promulgate Method (2) regulations to implement the requirements of this Section. The regulations must:

(1) [[establish the methodology used to identify a police response area (PRA) as a priority area;

(2)]] establish the process for the owner or operator of a late night business to submit a proposed late night business safety plan to the Department;

[[(3)] (2) establish the process for the Department to consider and approve, after consultation with other relevant departments, a proposed late night business safety plan;

[[(4)] (3) establish a process for the Department and other relevant agencies to provide training to businesses regarding safety and to periodically verify compliance with a late night business safety plan; [[and]]

[[(5)] (4) establish, in consultation with relevant departments, a template that a late night business must use to submit a proposed late night business safety plan; and

[[(6)] (5) establish the minimum requirements of a late night business safety plan, which:

(A) must require:

(i) an emergency evacuation plan;

(ii) 24-hour contact information for the business owner or manager;

- 73 (iii) exterior bathroom doors that are free opening at all
74 times;
- 75 (iv) an acknowledgement that the business has received
76 late night business training from the County; and
- 77 (v) an acknowledgement that the business is in
78 compliance with applicable law, and a statement
79 regarding any resolved or pending citations issued
80 by a government entity within the prior 3 years; and
- 81 (B) may require, with written justification, any or all of the
82 following:
- 83 [(A)] (i) security personnel and training;
- 84 [(B)] (ii) exterior lighting; and
- 85 [(C)] (iii) high-definition digital security cameras that provide
86 continuous, 24-hour video monitoring and
87 recording, without audio recording capacity, of the
88 interior and exterior of each entryway into the late
89 night business and the cash register or till[;].
- 90 [(D) clearing all exterior windows of paint or debris such that
91 the interior can be viewed from the outside; and
- 92 (E) a requirement that all exterior bathroom doors must be free
93 opening at all times;]
- 94 (d) Security Camera Requirements. If a late night business safety plan
95 requires the use of security cameras, then the plan must also[:
96 (1)] require that the late night business owner or operator post signage

in a conspicuous location on the interior and exterior of the business notifying the public that the late night business is subject to 24-hour video surveillance monitoring[;

(2) require that the late night business must provide video recordings to the Department upon demand;

(3) provide that the Department may demand a security camera video recording from a late night business only in connection with the investigation or prosecution of a violent felony;

(4) require that the late night business retain the video recordings for not less than 14 but not more than 30 days;

(5) establish requirements for the retention, collection, dissemination, use, and disposal of security camera video recordings by the Department; and

(6) include a time-limited waiver requirement for a late night business that has a noncompliant security camera video recording system already in place]].

(e) The Department [[may recommend, but]] must not require[.] that a late night business:

(1) search patrons by the use of metal detectors, magnetometers, or pat downs; or

(2) provide video recordings to the Department or other relevant departments except as required by law.

(f) Appeals. A late night business may appeal the disapproval of a plan to the Board of Appeals under Chapter 2.

(g) *Penalty for violating Section.*

(1) Any violation of this Section is a class A violation.

(2) Each day a violation continues is a separate offense.

(h) *Voluntary plans for certain businesses.*

(1) Any business that operates between the hours of midnight and 5:00 AM may submit to the Department a late night safety business plan.

(2) The Department must:

(A) review a plan submitted under this subsection; and

(B) provide recommendations to the business regarding the plan.

(i) *Grant program.*

(1) *Program established.* There is a late night business safety grant program.

(2) *Criteria to receive a grant.* A late night business, or a business that has submitted a plan and implemented Department recommendations under subsection (h), may qualify to receive a grant under the program if:

(A) the grant is used solely to offset the costs of implementing an approved or recommended late night business safety plan; and

(B) the grant application is submitted in the form and manner prescribed by the Department.

(3) *Funding and limitations.*

(A) Grants provided under the program are subject to appropriation.

(B) The Department must prioritize awarding grants to late night businesses over awarding grants to businesses that submit plans voluntarily under subsection (h).

(C) The Department may seek federal or state funding to support the program.

(j) *Annual Reporting.* The Department annually must report to the County Council regarding:

(1) plans reviewed under this Section;

(2) late night businesses that have not submitted late night business safety plans;

(3) recommendations for the improvement of late night business safety;

(4) grants provided under this Section; and

(5) crime data for the area of each late night business before and after the approval of a late night business safety plan for the business.

Sec. 2. Implementation. The Department must promulgate and submit proposed regulations to the Council for review within 180 days after this Act becomes law. Within 90 days after notice of the approved regulations is published in the County Register, each late night business must submit a proposed late night business safety plan to the Department for review. The County Executive should make a good faith attempt to notify each affected late night business of its obligation to submit a proposed safety plan.

170 **Sec. 3. Expedited Effective Date.** The Council declares that this legislation
171 is necessary for the immediate protection of the public interest. This Act takes effect
172 on the date on which it becomes law.

173

Approved:

Evan Glass, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Judy Rupp, Clerk of the Council

Date



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

M E M O R A N D U M

DATE: April 18, 2023
TO: Public Safety Committee
FROM: Council President Evan Glass, Councilmember Kate Stewart
SUBJECT: Late Night Safety Bill 14-23

In recent years, council members have worked with residents, businesses and public safety leaders to create and put in place safety measures to address late night disturbances and crime in Silver Spring. We appreciate the Public Safety Committee for deliberating and taking up Bill 14-23, Late Night Safety Bill, and offer additional background for your consideration.

Together, our offices hosted a community conversation at the Silver Spring Civic Building in which hundreds of residents attended to share their concerns about safety issues and to hear from a panel about ongoing public safety improvements in the community, as well as talk with local non-profits working in the area.

The event culminated in a safety walk around the neighborhood led by Third District Commander David McBain and Captain Ed Reed, leaders of the MCPD area that includes downtown Silver Spring. The safety walk gave MCPD the opportunity to highlight the improvements the county has made to address public safety concerns.

This includes and not limited to:

- Increased the number of police officers in DTSS and added a District Community Action Team or DCAT;
- Officers and security guards added to garages;
- State troopers assisting on Friday and Saturday evenings;
- Foot patrols seven days a week from 4pm to 10pm;
- Increase partnership with businesses to hire security;
- Additional cameras including mobile cameras placed around the central business district;
- The placement of cruisers in highly visible areas in DTSS to deter crime;
- The re-launch of Bike patrols by MCPD;
- And, surrounding neighborhood patrols.

In addition to these efforts, the Late Night Business Safety Plan will build on work that has already been taking place between some business owners and the police in the Silver Spring area under the leadership and initiative of Captain Reed.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

As we have been listening to local residents, businesses, and the police department, we have heard the need for a uniform public safety standard and approach combined with financial assistance for businesses to meet the standard.

These efforts have reduced public safety issues in the hours between 2am-5am. While some have noted the fact that late night crime has fallen in these hours, it is because of an increase in public safety presence. For a police department that is stretched thin, a feasible plan like the Late Night Business Safety Bill will reduce the number of police needed in these hours, and will make more police available during hours where incidents have become more frequent. This will allow greater coverage across the county of our public safety resources, to deter crimes of opportunity when more residents are out in our business districts, and in neighborhoods that have seen an uptick in activities that require a police presence.

We must have a strategy that improves public safety, reduces crime and supports businesses not only in downtown Silver Spring but across the county – in an equitable and fair manner.

We thank you again for taking up this matter and look forward to working with members of the Committee and Council to address these issues.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER, AT-LARGE
CHAIR, EDUCATION & CULTURE COMMITTEE
PLANNING, HOUSING, AND PARKS COMMITTEE

April 18, 2023

Dear Colleagues -

I appreciate the collaborative spirit with Chair Katz and other colleagues on a package of proposed amendments to Bill 14-23 (Late Night Business Safety Plan). These amendments are necessary following the thoughtful response from the public urging improvements to the bill. The County Executive and his team are equally committed to improving public safety for all of our community, including through this bill.

An effective safety strategy for late night businesses must be inclusive and countywide. To that end, I am pleased to join Chair Katz and colleagues on several amendments, including proposing that this bill cover late night businesses all over the county, rather than focusing only on "priority areas." It is clear we need an equitable, comprehensive, and proactive approach, and I hope the Public Safety Committee will support this proposed change.

I am also offering a separate proposal for the definition of "Late night business" for the Committee's consideration. We must have equitable treatment of businesses, and I would not recommend creating categorizations of late night businesses based on hours of operation (12am-2am or 2am-5am) and calls for service, which may create significant community confusion, discriminatory application, and administrative challenges. I urge the Committee to support defining "Late night business" to include every "business" (as defined in the bill) operating between midnight and 5am.

It is essential that all late night businesses have a basic safety plan for the well-being of their customers as well as the community. We need to be able to address safety concerns that are known today as well as those that arise in the future in a proactive and fair manner. I also think it makes sense to require the safety plans for all businesses operating from 12 to 5am rather than leaving some businesses to "opt in," which will mean that some businesses will not opt in, and certain communities will thus not benefit from this bill. For all of those reasons, an objective time cut off makes much more sense to me, as originally envisioned by the County Executive, and I hope the committee will support it.

Again, I am grateful to all for thoughtfully considering this bill. While I am unable to participate in the Committee worksession, I would of course be happy to discuss my proposed amendments with any of you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Will Jawando".

WILL JAWANDO