



Committee: Joint
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #LateNightEstablishments

AGENDA ITEM #12A
February 13, 2024
Introduction

SUBJECT

Bill 3-24, Late Night Establishments – Hours of Operation

Lead Sponsors: Council Vice-President Stewart, Councilmembers Albornoz and Glass
Co-Sponsors: Councilmembers Luedtke, Katz, Fani-González, and Balcombe

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 3-24 would:

- (1) define hookah lounge;
- (2) limit the hours of operation for a hookah lounge, tobacco shop, and vape shop;
- (3) establish penalties for violation of this Chapter; and
- (4) generally amend the law governing certain establishments in the County.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

| | |
|--|-----------|
| Staff Report | Pages 1-3 |
| Bill 3-24 | ©1 |
| Calls for Service Beat Comparison (January 2022 to January 2024) | ©5 |

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MEMORANDUM

February 8, 2024

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: **Introduction:** Bill 3-24, Late Night Establishments – Hours of Operation

Bill 3-24, Late Night Establishments – Hours of Operation, sponsored by Lead Sponsors Council Vice-President Stewart, and Councilmembers Albornoz and Glass, with Co-Sponsors Councilmembers Luedtke, Katz, Fani-González, and Balcombe is scheduled to be introduced on February 13, 2024. A public hearing is tentatively scheduled for March 5, 2024 at 1:30 p.m. A Joint Economic Development and Public Safety Committee worksession will be scheduled at a later date.

Bill 3-24 would define a “hookah lounge,” set restrictions on the operating hours for certain late night establishments, hookah lounges, tobacco shops, and vape shops; and establish penalties for a violation.

PURPOSE

Bill 3-24 is intended to address issues of public safety concerns relating to secondary effects like crime, which has increased significantly because of late night hookah establishments. There has been an increase in the number of arrests, police presence in central business districts, and excess overtime expenditure for the police department.

Data provided by Montgomery County Police Department (MCPD) illustrates the call for service beat comparison in Downtown Silver Spring between the hours of 2 a.m. to 7 a.m. had the highest overall count across all of Montgomery County. © 5

BACKGROUND

While the State has primary jurisdiction over the sale of tobacco and cigarettes and licensure of hookah shops this authority does not preempt local jurisdictions from enacting legislations to regulate hookah bars and/or lounges.

Accordingly, the County has the authority to pass local laws upon all matters covered by its grant of express powers from the General Assembly. Those express powers specify that, as a charter county, the County may pass any ordinance, resolution, or bylaw not inconsistent with State law that may aid in maintaining the peace, good government, health, and welfare of the county. Md. Code Ann., Local Government Article, § 10-206(a)(2). In short, the County has the express power to pass laws to protect the public's health and safety.

The Court of Special Appeals¹ in *Baddock, et al., v. Baltimore County*, 239 Md. App. 467 (2018), held that: 1) restricting a hookah lounge was a valid exercise of police power; and 2) requiring hookah lounges in the [Baltimore] County to close at midnight was rationally related to public safety concerns, as well as to public health concerns about exposure to tobacco smoke, and therefore did not violate due process.

There are several jurisdictions that have passed legislation to restrict the operating hours for hookah lounges, some include Baltimore County, Prince George's County, Washington D.C., and Virginia.

Separately, under §25-2005 of the Maryland Alcoholic Beverage Article, the State restricts the days and hours for an establishment that holds a Class B license (beer, wine, and liquor). The general restriction prohibits the consumption and sale of alcohol between certain hours (Monday – Thursday between 2am – 9am; Friday and Saturday between 3am – 9am; and Sunday between 2am – 9am unless the next day is a public holiday then 3am – 9am).

Bill 3-24 seeks to align and restrict the hours of operation for hookah lounges, smoke shop, and vape shop to mirror the same hours for establishments where alcohol (beer, wine, or liquor) is consumed.

BILL SPECIFICS

This Bill would set certain days and time for the hours of operation for a hookah lounge, tobacco shops, and vape shops. Specifically, a hookah lounge, tobacco shop, or vape shop may only allow patrons to smoke, vape, or use hookah pipes during these hours:

- (1) on Monday through Thursday, from 9 a.m. to 2 a.m. the following day;
- (2) on Friday and Saturday, from 9 a.m. to 3 a.m. the following day; and
- (3) on Sunday:
 - (A) from 9 a.m. to 2 a.m. the following day; or
 - (B) from 9 a.m. to 3 a.m. the following day, if the federal government has designated the following day as a public holiday.

An owner that operates after the permitted hours would be subject to Class A penalty (\$500 for the initial offense and \$750 for a repeated offense). Each day the violation occurs is considered a separate offense.

¹ In December 2022, the Court of Special Appeals was renamed the Appellate Court of Maryland by constitutional amendment ratified by the voters on November 8, 2022. Maryland State Archives: <https://msa.maryland.gov/msa/mdmanual/30sp/html/spf.html>. Last accessed on February 6, 2024.

The County Executive may designate a specific department to enforce the provisions under this Chapter.

This packet contains:

Bill 3-24

Calls for Service Beat Comparison (January 2022 to January 2024)

Circle #

1

5

Bill No. 3-24
Concerning: Late Night Establishments
- Hours of Operation
Revised: 02/05/2024 Draft No. 3
Introduced: February 13, 2024
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Council Vice President Stewart and Councilmembers Alborno and Glass.
Co-Sponsors: Councilmembers Luedtke, Katz, Fani-González, and Balcombe

AN ACT to:

- (1) define hookah lounge;
- (2) limit the hours of operation for a hookah lounge, tobacco shop, and vape shop;
- (3) establish penalties for violation of this Chapter; and
- (4) generally amend the law governing certain establishments in the County.

By adding

Montgomery County Code
Chapter 32, Offenses - Victim Advocate
Section 32-19D

| | |
|-------------------------------------|--|
| 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 32-19D is added as follows:**

2 **Sec. 32-19D. Hookah lounges - hours of operation.**

3 (a) Legislative Findings.

4 (1) The County has a responsibility to address public safety issues in an
 5 effective and rapid manner. There has been a rise in certain crimes,
 6 including armed robberies, carjackings, drug use, drunk driving, and
 7 car rallies, especially in central business districts (CBD) in
 8 Montgomery County with heightened risks during the early morning
 9 hours.

10 (2) The Montgomery County Police Department have responded to these
 11 challenges by deploying more police officers in CBDs; however, the
 12 increased police presence during overnight hours has led to significant
 13 overtime cost for the Department, reaching tens of thousands of dollars
 14 per month with a high point of \$70,000 in overtime expenses. In
 15 addition, because of the concentration of police officers in CBDs there
 16 are also opportunity costs that have led to longer police response times
 17 during late nights for incidents outside of the CBD areas.

18 (3) In *Baddock, et al., v. Baltimore County*, 239 Md. App. 467 (2018), the
 19 Court of Special Appeals held that requiring hookah lounges in the
 20 County to close at midnight was rationally related to public safety
 21 concerns, as well as to public health concerns about exposure to tobacco
 22 smoke, and therefore did not violate due process; and that “requiring
 23 hookah lounges - but not similar businesses [...] to close at midnight
 24 was not an arbitrary distinction that violated [the] Equal Protection
 25 Clause and the Maryland Declaration of Rights.” *Id.* at 480.

26 (4) There are neighboring jurisdictions that have implemented certain
 27 restrictions on the operation of hours, including:

28 (A) Baltimore County require hookah lounges close between the
29 hours of 12 p.m. and 6 a.m.; and

30 (B) Prince George’s County has limited the operation of hookah
31 lounges to close at 8 p.m. seven days a week and has made
32 changes to its zoning law that require certain businesses operate
33 only in light industrial areas due to public safety concerns.

34 (5) Jurisdictions across the country and region routinely require restaurants
35 and bars that serve alcohol to stop serving or close its operation late at
36 night in recognition of the public safety and health benefits.

37 (b) Definitions. As used in this Section:

38 Hookah lounge means any facility, establishment, or place whose business
39 operation, whether as its primary use or as an ancillary use, includes the
40 smoking of tobacco, flavored tobacco, nicotine, or other substances, including
41 vaping liquid, through one or more hookah pipes (also known as a hookah,
42 electronic hookah, waterpipe, shisha or narghile). A hookah lounge may
43 include a hookah bar or hookah cafe.

44 Tobacco shop has the same meaning as in Section 24-9.

45 Vape shop has the same meaning as in Section 24-9.

46 (c) Hours of operation - limited. A hookah lounge, tobacco shop, or vape shop
47 may operate:

48 (1) on Monday through Thursday, from 9 a.m. to 2 a.m. the following day;

49 (2) on Friday and Saturday, from 9 a.m. to 3 a.m. the following day; and

50 (3) on Sunday:

51 (A) from 9 a.m. to 2 a.m. the following day; or

52 (B) from 9 a.m. to 3 a.m. the following day, if the federal government
53 has designated the following day as a public holiday.

54 (d) A hookah lounge, tobacco shop, or vape shop that operates outside of the

55 hours permitted under subsection (c) is in violation of this Section.

56 (e) Penalty. A violation of this Section is a Class A violation. Each day a violation
57 occurs is a separate offense.

58 (f) Enforcement.

59 (1) The Executive may, under Method (2), adopt regulations to designate
60 an agency or department to enforce this Chapter.

61 (2) The County Attorney may file an action in a court with jurisdiction to
62 enjoin a violation of this Section.

Downtown Silver Spring (DTSS) – CFS Beat Comparison | Jan 2022 – Jan 31 2024**

0200 hrs – 0700 hrs



****All data on this page is based on Calls For Service (CFS) or reported incidents that generated a police report with an arrest.**

The Incident Start Time field is used to determine temporal information.

| ClassDesc | 1A3 | 3G1 | 3I1 | 4K1 | 5N1 | Total |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| ⊕ Aggravated Assault | 4 | 21 | 10 | 8 | 12 | 55 |
| ⊕ All Other | 1810 | 2710 | 1649 | 1469 | 1619 | 9257 |
| ⊕ Auto Theft | 12 | 53 | 57 | 48 | 25 | 195 |
| ⊕ Burglary | 20 | 46 | 25 | 23 | 14 | 128 |
| ⊕ Homicide | | 1 | 1 | | | 2 |
| ⊕ Rape | 2 | 5 | 4 | 3 | 5 | 19 |
| ⊕ Robbery | 1 | 40 | 9 | 7 | | 57 |
| ⊕ Theft from Auto | 14 | 98 | 48 | 57 | 26 | 243 |
| Total | 1863 | 2974 | 1803 | 1615 | 1701 | 9956 |

| LEGEND – Heat Matrix | | |
|----------------------|--------|------|
| Low | Medium | High |

- The George 1 (3G1) Beat, which is largely comprised of the geographic footprint of DTSS, has the highest overall counts of CFS (2,974) between 0200 hrs – 0700 hrs across all of Montgomery County, MD.
 - 3G1 had a 9.6% increase in CFS from 2022 to 2023.
 - The Beat with the second highest CFS count is 1A3, with a count of 1,863.
 - 3G1 Beat is geographically the smallest Beat of the top 5 CFS Beats across the County.
- When comparing Class Descriptions of the CFS counts, the 3G1 Beat has higher counts compared to the other top 5 Beats across the County in every category except for two:
 - 3I1 Beat has four more Auto Theft CFS than 3G1 (57 to 53).
 - 3I1 Beat ties with 3G1 Beat in Homicide CFS (1 to 1).

