



Howard County

Internal Memorandum



Subject: Council Testimony and Fiscal Impact Statement for legislation that changes Sec 6.104 of the Howard County Code – Executive authority during a state of emergency

To: Lonnie Robbins
Chief Administrative Officer

From: Ryan A. Miller
Office of Emergency Management

Date: September 15, 2017

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HOWARD COUNTY
ADMINISTRATION

The Administration is seeking Council approval of changes to Sec 6.104 of the County Code – Executive authority during a local state of emergency.

During the blizzard that occurred in January 2016 and the flooding of Ellicott City in July 2016, it was discovered that there are legal issues with the section of the County Code relating to the County Executive's emergency powers. When Howard County's emergency provisions were enacted, the governor's emergency powers (enumerated in the Public Safety Article) were copied and placed in the County Code as the powers that the County Executive has in an emergency. However, the General Assembly has delegated certain powers solely to the Governor; therefore, the County cannot pass an ordinance delegating those powers to the County Executive. The Administration would like to remedy the existing problems in the Code by eliminating two of the listed executive emergency powers, as these two powers are not actually vested with the County Executive. Additionally, the current section of the Code on the County Executive's emergency powers contains no enforcement mechanism. The Administration is requesting that an enforcement mechanism consistent with the enforcement provisions in neighboring jurisdictions and in State Code be added.

Current County Code Section 6.104(a)(8) allows the County Executive to “control the sale, transportation, and use of alcoholic beverages.” According to the Office of Law, the state delegates to the County Council (sitting as the liquor board) the authority to regulate the retail sale of alcohol. Everything else regarding the regulation of alcohol is vested in the State. Assuming that Howard County had to enact an emergency change to the sale of alcohol during a disaster, it would be the County Council, not the County Executive, who has the authority.

Current County Code Section 6.104(a)(9) allows the County Executive to “control the possession, sale, carrying, and use of firearms, other dangerous weapons, and ammunition.” According to the Office of Law, Criminal Law 4-209 states that the State “preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of firearms.” While current County Code delegates this power to the County Executive during an emergency declaration, the actual authority remains solely with the Governor.

Finally, the current Code has no enforcement mechanism to hold individuals accountable for willfully violating these public safety provisions during an emergency. Without such a mechanism, enforcing these provisions, and even discouraging violations, can be difficult. Therefore, the Administration is requesting that a penalty section be added. The proposed penalties are comparable to and/or match the penalties imposed by neighboring jurisdictions and/or by the State for violating the respective Executive Powers provisions. As usual, actual charges related to violating this section would be at the discretion of law enforcement.

The fiscal impact from these amendments to Title 6 of the Howard County Code is minimal and would only be realized if citations were issued and fines were collected.

cc: Jennifer Sager