

Introduced 10/2/17
Public Hearing 10/16/17
Council Action 11/6/17
Executive Action 11/8/17
Effective Date 1/8/18

County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 13

Bill No. 78-2017

Introduced by: Greg Fox, Mary Kay Sigaty, and the Chairperson at the request of the County Executive

AN ACT amending the Howard County Fire Prevention Code in order to require that piles of certain material regulated by the Fire Prevention Code be turned or reclaimed in accordance with State law; specifying the height requirement for certain materials; adding that certain materials may constitute a public nuisance; clarifying that the right to farm does not apply when an agricultural operation does not comply with the Fire Prevention Code; and generally relating to fire safety requirements and fire prevention in Howard County.

Introduced and read first time October 2, 2017. Ordered posted and hearing scheduled.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on October 16, 2017.

By order Jessica Feldmark
Jessica Feldmark, Administrator

This Bill was read the third time on November, 2017 and Passed , Passed with amendments , Failed .

By order Jessica Feldmark
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7th day of November, 2017 at 3 a.m./p.m.

By order Jessica Feldmark
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive Nov 8, 2017

Allan H. Kittleman
Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is amended as follows:

3
4 *By amending:*

5 *Title 17 "Public Protection Services"*

6 *Subsection (c)(258) and (c)(259) of Section 17.104. Howard County Fire Prevention*
7 *Code.*

8
9 *Title 17 "Public Protection Services"*

10 *Section 17.106. Rubbish, debris, noxious weeds declared to be a nuisance.*

11
12 *Title 12 "Health and Social Services"*

13 *Section 12.111. Nuisance Suits Against Agricultural Operations.*

14
15 **Title 17. Public Protection Services.**

16 **Subtitle 1. Fire and Rescue Services.**

17
18 **Section 17.104. Howard County Fire Prevention Code.**

19 (c) *Local Amendments to the Howard County Fire Prevention Code:* The following
20 amendments modify certain provisions of the adopted code:

21 (258) Subsection 31.3.6.2.2

22 Add new paragraph 9 after paragraph 8 as follows:

23 A pile containing leaves and other extraneous or hogged material, [[such as a
24 whole tree chip pile]]**INCLUDING NATURAL WOOD WASTE**, shall be turned or
25 reclaimed **IN ACCORDANCE WITH STATE LAW AND AT A MINIMUM** every three
26 months.

27 (259) Subsection 31.3.6.3.1

28 Delete this subsection and substitute the following:

29 Piles may not exceed 18 feet in height **FOR UNGROUND MATERIALS OR 10 FEET IN**
30 **HEIGHT FOR GROUND MATERIALS**, 50 feet in width, and 350 feet in length.

31 **[[Two piles]] WHEN MORE THAN ONE PILE EXISTS, PILES** shall be divided by a
32 fire lane having at least 25 feet of clear space at the base of the pile.

1 (260) Subsection 31.3.6.3.2

2 Delete this subsection.

3 (261) Subsection 31.3.6.3.2.1

4 Delete this subsection.

5 (262) Subsection 31.3.6.3.2.2

6 Delete this subsection.

7 (263) Subsection 31.3.6.3.2.3

8 Delete this subsection.

9 (264) Subsection 31.3.6.3.5.1

10 Add new subsection 31.3.6.3.5.1 after subsection 31.3.6.3.5 as follows:

11 If the operation is located outside of a municipal water supply the following will
12 apply:

13 (i) The AHJ will require a reliable certified water supply system with the
14 capability to supply 1000 gallons per every 10,000 cubic feet of pile. The
15 supply system must be capable of producing a minimum of 250 gpm
16 (preferred is 500gpm) for at least 2 hours.

17 (ii) The Mulch/Wood Processing operation shall have a Fire Station located
18 within 5 travel miles of the location.

19 (iii) If the water supply is static it is to be certified by an engineer and capable
20 to supply the amount required by paragraph (i) of this subsection. If the
21 water supply is below the minimum amount, then the supply must be
22 capable of at least 30,000 gallons at all times. The maximum size of water
23 supply needed may be based on the proposed operation and approved by
24 the AHJ.

25 (iv) Based on the amount of material on site, other provisions such as
26 sprinklers, pre-piped systems, or constant monitoring of the pile may be
27 required.

28

29 **Section 17.106. Rubbish, debris, noxious weeds FLAMMABLE MATERIALS MAY BE declared to**

30 **be a nuisance.**

1 (a) ~~What Constitutes a Public Nuisance.~~ Except for weeds, brush and grass on land actively
2 devoted to agricultural or conservation uses, the following are declared a public nuisance:

3 (A) WHAT CONSTITUTES A PUBLIC NUISANCE.

4 (1) THIS SUBSECTION DOES NOT APPLY TO WEEDS, BRUSH AND GRASS ON LAND ACTIVELY DEVOTED
5 TO:

6 (I) AGRICULTURAL USES; OR

7 (II) CONSERVATION USES.

8 (2) A FIRE OFFICIAL MAY DECLARE THE FOLLOWING MATERIALS A PUBLIC NUISANCE, UPON FINDING
9 THAT THEY CREATE OR TEND TO CREATE A FIRE HAZARD ENDANGERING LIFE OR PROPERTY, OR THAT
10 THEY MAY INTERFERE WITH EMERGENCY OPERATIONS OR ENDANGER FIRE SERVICE PERSONNEL:

11 (I) RUBBISH OR TRASH;

12 (II) DRY BRUSH, NOXIOUS WEEDS OR GRASS EXCEEDING 12 INCHES IN HEIGHT;

13 (III) WOOD CHIPS OR HOGGED MATERIAL, INCLUDING NATURAL WOOD WASTE; OR

14 (IV) DEBRIS OR OTHER MATERIAL OF A FLAMMABLE NATURE.

15
16 ~~Rubbish, trash, dry brush, noxious weeds or grass exceeding 12 inches in height, **WOOD CHIPS**~~
17 ~~**OR HOGGED MATERIAL, INCLUDING NATURAL WOOD WASTE,** or debris or other material of a~~
18 ~~flammable nature which creates or tends to create a fire hazard endangering life or property or~~
19 ~~which may interfere with emergency operations or endanger fire service personnel.~~

20 (b) *Unlawful to Permit Public Nuisance.* It shall be unlawful for anyone to permit a public
21 nuisance listed in subsection (a) to remain on any lot or parcel of ground.

22 (c) *Removal; Notice.* The Director of Fire and Rescue Services shall send a notice by registered
23 or certified mail to the owner of any lot or parcel of ground where the Director determines that a
24 public nuisance exists. The notice shall:

25 (1) Require the property owner to abate the nuisance within ten days;

26 (2) State that if the nuisance is not abated within ten days, the County may abate the
27 nuisance at the expense of the property owner.

28 (d) *Extension.* If the property owner is unable to comply with a notice within ten days after its
29 receipt, the property owner shall submit a request for an extension of time. Upon receipt of the
30 request, the Fire Official may grant an extension of time, not to exceed 90 days. The request for
31 an extension shall:

32 (1) Be submitted to the Fire Official; and

1 (2) State the reasons for the request.

2 (e) *Penalties:*

3 (1) A person who fails to comply with a notice issued by the Fire Official is guilty of
4 a misdemeanor and, upon conviction, is subject to a fine, not exceeding
5 \$1,000.00, or imprisonment, not exceeding 30 days, or both. Alternatively, or in
6 addition to and concurrent with all other remedies at law or at equity, the
7 Department of Fire and Rescue Services may enforce the provisions of this
8 section with civil penalties pursuant to title 24, "Civil Penalties" of the Howard
9 County Code. A violation of this section is a Class C offense.

10 (2) The Fire Official may bring action in court to enforce compliance with an order to
11 comply with this subtitle or to correct a nuisance.

12 (3) If a person refuses or fails to comply with the provisions of this subtitle or to
13 correct a nuisance within the time specified in the notice of violation, the Fire
14 Official may petition the court for an order permitting entry upon the property to
15 abate the violation or correct the nuisance at the owner's expense.

16
17 **Title 12. Health and Social Services.**

18 **Subtitle 1. Health Code.**

19
20 **Section 12.111. Nuisance suits against agricultural operations.**

21 (a) *Short Title.* This section shall be known and may be cited as the Howard County Right-To-
22 Farm Act, Bill No. 22, 1989.

23 (b) *Public Policy.* The practice of agriculture has been a mainstay of the economy of Howard
24 County since the land was settled. Agriculture is a valued and respected way of life, and the
25 preferred land use in the Rural Conservation (RC) Zoning District, a valued land use in the Rural
26 Residential (RR) Zoning District and on property that has an agricultural use assessment as
27 determined by the State Department of Assessments and Taxation. The Howard County Council
28 hereby finds and declares that the practice of farming in Howard County should be protected and
29 encouraged.

30 In addition, as Howard County continues to grow, residents are increasingly interacting more
31 with the agricultural community making it extremely important for clear communication and

1 mutual respect for one another. Agricultural operations, in many cases, involve noise, dust, odor,
2 slow moving vehicles, and early morning/late evening activity. Howard County farmers are
3 committed to providing a safe quality product for consumers, preserving the environment for the
4 next generation, and being good neighbors. At the same time these activities may have some
5 effect on adjoining properties. It is important that both the agricultural community and
6 neighboring residents respect one another so that agriculture can continue to serve as the
7 foundation of Howard County.

8 (c) *Definitions.* In this section agricultural operation includes agriculture, apiaries, horticulture,
9 orchards, agricultural nurseries, viticulture, aquaculture, silviculture, animal and poultry
10 husbandry, and farming as defined in the Howard County Zoning Regulations. An agricultural
11 operation may occur without limitation as to hours of operation. The harvesting and processing
12 of agricultural crops and other uses or structures directly related to or accessory to the premises
13 for farming are considered part of an agricultural operation. Agricultural practices included as
14 part of an agricultural operation include, but are not limited to:

- 15 (1) The transportation of agricultural products;
- 16 (2) The transportation, storage, handling, and application of fertilizer, soil
17 amendments, pesticides, and manure; and
- 18 (3) The operation of agricultural machinery and equipment.

19 (d) *Protection for Agricultural Operations.* In RC and RR zoning districts, and on property that
20 has an agricultural use assessment as determined by the State Department of Assessments and
21 Taxation, an agricultural operation may not legally be considered a public or private nuisance;
22 and a private action may not be sustained on the grounds that the agricultural operation interferes
23 or has interfered with the use or enjoyment of other property, whether public or private, if:

- 24 (1) The agricultural operation existed before a change occurred in the adjoining land
25 use or occupancy of land and, before such change in land use or occupancy of
26 land, the agricultural operation did not constitute a nuisance; or
- 27 (2) The agricultural operation, including any change in the operation, has been
28 ongoing for one year or more and the operation or change did not constitute a
29 nuisance from the date the operation began or the date the change in the operation
30 began; and

1 (3) The agricultural operation is conducted in accordance with generally accepted
2 agricultural management practices.

3 (e) *Exceptions.* This section does not apply to:

4 (1) An agricultural operation that does not conform to Federal, State or local health,
5 **HOWARD COUNTY FIRE PREVENTION CODE**, or zoning requirements;

6 (2) A Federal, State or local agency when enforcing air, water quality, or other
7 environmental standards under Federal, State or local law; or

8 (3) An agricultural operation that is conducted in a negligent manner.

9 (f) *Limitations of Actions.* Notwithstanding any provision of this section, no action alleging that
10 an agricultural operation conducted in accordance with generally accepted agricultural practices
11 has interfered with the reasonable use or enjoyment of real property or personal well-being shall
12 be maintained if the plaintiff has not sought mediation through the Maryland Agricultural
13 Conflict Resolution Service within the Maryland Department of Agriculture, as provided for
14 in Title 5, Subtitle 4 of the Courts and Judicial Proceedings article of the Annotated Code of
15 Maryland.

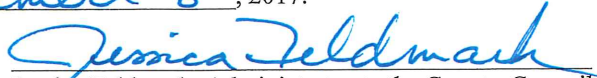
16 (g) *Legal costs.* In any civil action, if a court finds that the agricultural operation alleged to be a
17 nuisance is found not to be a nuisance and that the suit was brought in bad faith or without
18 substantial justification, the court should require the plaintiff to pay the costs of the proceedings
19 and the reasonable expenses associated with the litigation, including reasonable attorney's fees,
20 incurred by the owner, operator or both, the owner and operator, of the agricultural operation in
21 defending against the legal action.

22

23 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
24 *this Act shall become effective 61 days after its enactment.*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on November 8, 2017.



Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council

Amendment 1 to Council Bill No. 78-2017

BY: Mary Kay Sigaty

Legislative Day No. 14

Date: November 6, 2017

Amendment No. 1

(This amendment clarifies when certain materials are public nuisances.)

1 On page 3, in line 29, strike “Rubbish, debris, noxious weeds” and substitute “FLAMMABLE
2 MATERIALS MAY BE”.

3

4 In the same line, strike “to be”.

5

6 Also on page 3, strike lines 30 and 31 in their entirety and substitute:

7

8 “(A) WHAT CONSTITUTES A PUBLIC NUISANCE.

9 (1) THIS SUBSECTION DOES NOT APPLY TO WEEDS, BRUSH AND GRASS ON LAND ACTIVELY DEVOTED

10 TO:

11 (I) AGRICULTURAL USES; OR

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13 (2) A FIRE OFFICIAL MAY DECLARE THE FOLLOWING MATERIALS A PUBLIC NUISANCE, UPON FINDING

14 THAT THEY CREATE OR TEND TO CREATE A FIRE HAZARD ENDANGERING LIFE OR PROPERTY, OR THAT

15 THEY MAY INTERFERE WITH EMERGENCY OPERATIONS OR ENDANGER FIRE SERVICE PERSONNEL:

16 (I) RUBBISH OR TRASH;

17 (II) DRY BRUSH, NOXIOUS WEEDS OR GRASS EXCEEDING 12 INCHES IN HEIGHT;

18 (III) WOOD CHIPS OR HOGGED MATERIAL, INCLUDING NATURAL WOOD WASTE; OR

19 (IV) DEBRIS OR OTHER MATERIAL OF A FLAMMABLE NATURE.”.

20

21 On page 4, delete lines 1-5 in their entirety.

22

ADOPTED 11/6/17
FAILED _____
SIGNATURE Justina Addman