

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. 77-2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT removing certain authority of the County Executive during a local state of emergency; providing for certain penalties for failure to comply with orders implemented during a local state of emergency; and generally relating to a local state of emergency.

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 the 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 6, 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 **WHEREAS**, Section 4-209 of the Criminal Law Article of the Annotated Code of Maryland
2 provides that the State preempts the right of a County to regulate weapons and
3 ammunition; and
4

5 **WHEREAS**, accordingly, the County Executive does not have the authority to control the
6 possession, sale, carrying, and use of firearms, other dangerous weapons, and
7 ammunition during a local state of emergency; and
8

9 **WHEREAS**, pursuant to State liquor laws, local jurisdictions may only regulate the retail sale of
10 alcohol and may not prohibit, without Council action, the sale, transportation or use of
11 alcohol during a local state of emergency; and
12

13 **WHEREAS**, accordingly, these authorities set forth in Section 6.104(a)(8) and (a)(9) must be
14 removed from the County Code to prevent unauthorized directives during a local state of
15 emergency; and
16

17 **WHEREAS**, the County would also like to impose penalties for failing to comply with orders
18 issued during a local state of emergency.
19

20 **NOW, THEREFORE,**
21

22 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that the Howard*
23 *County Code is amended as follows:*
24

25 *By amending Title 6 “County Executive and the Executive Branch”*
26 *Section 6.104 “Executive authority during a local state of emergency.”*
27

28 **Title 6. County Executive and the Executive Branch.**

29 **Subtitle 1. The County Executive.**

30
31 **Section 6.104. Executive authority during a local state of emergency.**

1 (a) *Authority*. During a local state of emergency declared pursuant to section 6.103 of this subtitle,
2 the County Executive may issue executive orders that the Executive considers necessary to
3 implement the emergency operations plan and to protect the health, safety, and welfare of persons
4 within Howard County, including but not limited to orders to:

- 5 (1) Control traffic, including public and private transportation;
- 6 (2) Designate zones in the area of the emergency in which the occupancy and use of
7 buildings and vehicles may be controlled;
- 8 (3) Control the movement of individuals or vehicles in, into, or from the area of the
9 emergency;
- 10 (4) Control places of amusement and places of assembly;
- 11 (5) Control individuals on public streets;
- 12 (6) Establish curfews;
- 13 (7) Establish requirements to shelter in place;
- 14 [(8) Control the sale, transportation, and use of alcoholic beverages;
- 15 (9) Control the possession, sale, carrying, and use of firearms, other dangerous
16 weapons, and ammunition;]]
- 17 ([[10]]8) Control the storage, use, and transportation of explosives, flammable materials,
18 or liquids considered to be dangerous to public safety; and
- 19 ([[11]]9) Extend the deadline for removing snow from sidewalks under subsection
20 18.402(h) of the County Code.

21 (b) *Delegation*. The County Executive may act in accordance with this section by and through the
22 Director of Emergency Management or other County Officials.

23 (c) *Acting County Executive*. If an emergency occurs while the power and office of the County
24 Executive is exercised by an Acting County Executive, the acting County Executive shall have all
25 the powers and authorities of the County Executive under this subtitle.

26 (D) *PENALTIES*.

27 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION:

- 28 (i) A PERSON WHO VIOLATES AN ORDER ISSUED UNDER THIS SECTION IS GUILTY
29 OF A MISDEMEANOR AND ON CONVICTION MAY BE SUBJECT TO
30 IMPRISONMENT NOT EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$1,000
31 OR BOTH.

1 (II) ALTERNATIVELY, AND IN ADDITION TO AND CONCURRENT WITH ALL OTHER
2 REMEDIES, THE DEPARTMENT MAY ENFORCE THE PROVISIONS OF AN ORDER
3 ISSUED UNDER THIS SECTION WITH CIVIL PENALTIES IN ACCORDANCE WITH
4 TITLE 24 OF THIS CODE AS FOLLOWS:

5 A. A VIOLATION OF ANY PROVISION OF AN ORDER ISSUED UNDER THIS
6 SECTION IS A CLASS A OFFENSE; AND

7 B. EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

8 (2) A PERSON WHO VIOLATES AN ORDER EXTENDING THE DEADLINE FOR REMOVING
9 SNOW FROM SIDEWALKS PURSUANT TO SECTION 18.402(H)(2) OF THIS CODE IS
10 SUBJECT TO THE PENALTIES SET FORTH IN SUBSECTION 18.402(H) OF THIS CODE.
11

12 *Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that*
13 *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
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

Sayers, Margery

From: joel hurewitz <joelhurewitz@gmail.com>
Sent: Friday, November 03, 2017 5:45 AM
To: CouncilMail
Cc: Miller, Ryan; Sager, Jennifer
Subject: CB77-2017 An Act removing certain authority of the County Executive during a local state of emergency

Dear Councilmembers,

I would like to point out the following concerns with CB77-2017.

First, there seems to be the legislative intent to strictly limit the emergency powers to those legally authorized. However, by leaving the clause "including but not limited to" in Section 6.104 (a) of the Code, the emergency powers of the County Executive are essentially unlimited. Ironically, it is possible that decades from now in the heat of an emergency situation, the County Executive, without analysis of the state law, could thus interpret the broad provision to authorize restrictions on alcohol or firearms.

Second, the administrative testimony points out that there is "no enforcement mechanism to hold individuals accountable for *willfully violating these public safety provisions* during an emergency." However, the bill as drafted makes it a strict liability crime with no requirement that the violation be either "willful" or "knowingly." Ryan Miller replied to my inquiry on this matter stating: "I'll request that this language be looked at closely so we are consistent in both legislation and testimony." However, as of November 2, 2017, there is no posted amendment to make the bill consistent with the testimony that violations be willful.

Third, an executive order which simply states that the deadline for removing snow is extended technically cannot be violated. It would be more accurate to state beginning on line 8 of page 2 that "A PERSON WHO VIOLATES THE EXTENDED DEADLINE FOR REMOVING SNOW FROM SIDEWALKS PURSUANT TO SECTION 18.402(H)(2) OF THIS CODE IS SUBJECT TO THE PENALTIES SET FORTH IN SUBSECTION 18.402(H) OF THIS CODE."

Thank you for your attention to these issues.

Sincerely,

Joel Hurewitz