

TESTIMONY IN OPPOSITION TO BILL 6-23 AND ZTA 23-01

We the undersigned oppose Bill 6-23 and ZTA 23-01 because they would profoundly alter and degrade neighborhoods in Montgomery County that are currently zoned as Residential, opening the door to substantial increases in noise and traffic, and undermining community health, safety and the environment.

1. Health and Safety

We undertook some limited research into the stance of Health Departments in the States of New Jersey, New York, Minnesota, and Pennsylvania and found all in opposition to the rental of private, residential pools by the general public. These states require that such pools comply with their standards for Public Pools. Most states leave enforcement of State Law to local jurisdictions, providing them with their assistance. Maryland is somewhat unusual in allowing its counties to legislate Health and Safety.

The reasons states require public pool standards are obvious. In the water and around pools, accidents occur. Be it food, glass, vomit, urine, a baby's feces, etc., all constitute a potential health hazard. Public pools are required to conduct a major cleanup if such accidents occur that possibly involves the draining and refilling of the entire pool, and at a minimum often require the pool to be closed for some extended period of time. There is no guarantee that a renter will inform the owner in the event of an incident. If they do, will the owner do a thorough and responsible cleanup? Some may, but others may well decide that poor regulatory oversight negates the need for the expense and effort.

The County of Rockland, NY, imposes fines as high as \$2,000 per day for offenders¹. Ocean County, NJ, enforces New Jersey regulations vigorously.

New York, New Jersey, and Minnesota regulate pools at the State level and keep the priority on public health and safety². Minnesota has undertaken a vigorous attempt to shut down pools for rent on Swimply, including imposing fines of \$10,000 per day.³

¹<http://rocklandgov.com/departments/health/environmental-health/aquatic-health-and-safety/>
<https://www.lohud.com/story/news/local/rockland/2017/08/18/rockland-wants-to-stop-pool-rental-pool-for-u-website/577827001/>

²<https://www.health.state.mn.us/communities/environment/recreation/pools/docs/residentialpoolfaqs.pdf>

Key Point: "To avoid enforcement actions, pool owners must discontinue renting their pool to others until they meet all the construction requirements of a public pool and become licensed. We recommend that those interested in renting out their pool contact MDH to ensure that they follow the pool construction and licensing requirements prior to advertising it."

2. Zoning

Montgomery County has designated its territory for different uses through zoning: Residential, Commercial, Mixed Use, Industrial, and Agricultural. The changes to land use as proposed in Bill 6-23 and ZTA 23-01 pertains to Residential Zoning.

The commercialization of assets, as the change in legislation would allow, would introduce commercial activity in every residential area in the County, blurring the line between Residential and Commercial. In effect, zones now defined as Residential would become much like Mixed Use Zones.

Indeed, there are people who prefer to live in a Mixed Use zone. Having restaurants, shops, and other services within walking distance can be an important incentive to take up residence there. However, there are those among us who prefer to live in a strictly Residential Zone. They prefer the quiet, light traffic, and neighborly character of such communities. The proposed legislation would take that away from them.

One example of blurring, or absence, of zoning is Texas, where many local governments (most famously Houston) pride themselves on their lack of zoning or regulatory impediments to business. And yet in the absence of formal zoning, neighborhoods unhappy with the nuisances figure out their own restrictions: "It's like we've privatized zoning," says Mr. Guajardo. "The city has devolved [that] responsibility to homeowner associations, which might be inequitable in what neighborhoods have access to it."⁴

Some homeowners have built pools for the sole purpose of commercial use. Even a 120 day rental limit can realistically only be enforced after complaints from neighbors. Strife between neighbors is not a welcome scenario.

If the proposed legislation gets adopted, pools, garages, dog parks, gyms, and other monetizable residential assets will be rentable. Then the County might as well rezone all Residential Zones to Mixed Use Zones⁵ and we could continue down the path to the Houston-ization of Montgomery County.

In an email exchange the NJ Department confirmed the State's objection to the renting out of private pools. (A confidentiality clause prohibits us from sharing the actual exchange. On request we can show it but not hand it over).

³<https://www.startribune.com/minnesota-health-officials-may-sink-swimply-app/600091016/>
Key Point: "To avoid enforcement actions, pool owners must discontinue renting their pool to others until they meet all the construction requirements of a public pool and become licensed. We recommend that those interested in renting out their pool contact MDH to ensure that they follow the pool construction and licensing requirements prior to advertising it."

⁴<https://www.csmonitor.com/Business/2022/1117/No-zoning-Is-Houston-an-affordable-housing-model-or-morass>

⁵ https://www.montgomeryplanning.org/development/zoning/one_sheets2.shtm: "This land use classification allows a combination of different use classifications within a single development. This type of development may include a variety of complementary and integrated uses, such as residential, office, manufacturing, retail, public, or entertainment, in a compact urban form."

3. Enforcement

We understand that zoning enforcement with regard to residential asset rentals is not as rigorous as it needs to be in order to effectively clamp down on health and safety violations. Giving in to the Platform Economy by enacting more relaxed regulations will make enforcement more cumbersome and labor intensive. Inspectors then not only have to identify unlicensed violators, but also verify that those who are licensed comply with all the relevant regulations.

Under current law, violators are easily identified by means of the platform Swimply itself, Sniffspot (for dog parks), and Craigs List, or any other platform that facilitates these kinds of transactions. Spot visits can verify any violations. Hefty fines could bring in the revenue needed to enforce the existing law.

4. Housing

It is likely that the prospects and realization of commercial gains from one's residential assets will have an effect on property values. Especially in the early phases after the passing of legislation as proposed one can expect a surge in activations of residential asset utilization. Some owners who do not currently have a pool will be encouraged to build one, now that the expense has become affordable, or even a profitable endeavor. (As the market saturates, as happens with these platforms, these investments may not return what was expected by individual investors.) The realized extra income in mostly wealthier neighborhoods (those with relatively more pools, tennis courts, large back yards, etc.) could exacerbate the inequality in income we already see in our county. As property values rise in asset-rich areas, there is a likelihood that inequality in housing will worsen

In addition, more households are likely to invest in a swimming pool, a tennis court, a spa, or a workshop. That trend in turn could have a negative impact on the County's recently passed legislation allowing for a higher housing density. Currently, in neighborhoods with large enough lots, single dwellings could be replaced/converted to two dwellings or duplexes. Lots with facilities as allowed under 6-23 will have the choice to put in a pool or dog park instead, thus counter-acting density goals.

5. Environment

The proposed allowable commercial activities will produce extra trash, waste products such as motor oil, dog feces, and other disposables. Some of these may well end up in trash cans for County collection or street sewers (e.g., a garage used for an oil change may lead to "midnight dumping" of used oil down our storm sewers). There is no way to enforce its proper disposal.

Dog feces will attract rodents such as rats. Rats carry diseases and form a health hazard for humans in the vicinity of the activity.

The facilities themselves will see an increase in the use of bathrooms, putting a strain on residential plumbing, sewers, and water supply. Pools may need to be “topped off” or recycled more frequently, draining chemicals in sewers and storm drains and straining the water supply.

6. Nuisance

The commercialization of residential assets will bring more traffic and noise to neighborhoods. Although the bill mentions that off-street parking for renters needs to be provided, it is likely that multiple vehicles will not fit in driveways. And, if they do, it will be because the homeowners have most likely moved their vehicles into the street. Either way, street parking near the facility will increase.

A benefit of living in a residential neighborhood is that children can safely play in their front yards and by extension venture into the streets. More cars parked in these streets create more blind obstacles. Combined with an increase in traffic, the dangers to our children will have increased. Surely, this is not what the County Council would advocate.

Bill 6-23 states that the maximum number of renters over the age of 18 is six. There is no mention of the number of minors such as unlimited numbers of 16 – 17 year olds, or even younger children. What if a pool is rented for a child’s birthday party, and 25 children come with two adults? What if some of the children can’t swim? What if one of them drowns? Is the owner of the rental facility going to be charged with negligent homicide or manslaughter? In addition to facing unknowable civil liabilities?

A platform called Sniffspot facilitates the rental of backyards, essentially turning them into dog parks. By their very nature, these parks produce noise. Barking, playing dogs can be a delight for their owners but surely not on a continued basis for nearby neighbors.⁶ Barking, playing dogs can also become barking, FIGHTING dogs in the blink of an eye. Fighting (and even playing dogs) bite people. Athletic dogs that find themselves in an unknown or undesirable situation are capable of jumping or scaling fences in seconds, meaning that dogs may very easily get out of these backyard dog parks, leading to them being at large, with all the attendant risks.

Suddenly multiple dogs start barking across the street, kids and adults yell and scream with joy in the pool next door, cars come and go, people run past your kitchen window. Twelve hours a day for one-hundred-twenty days a year. Is this scenario far-fetched?

Nearby neighbors will have to endure noise, smells, smoke, light pollution, traffic (car or foot), and parking issues. This will inevitably lead to strife between neighbors and quite likely damage the fabric of the community.

⁶ https://www.washingtonpost.com/local/a-controversial-dog-park-that-divided-chevy-chase-will-be-dismantled/2019/09/09/9e3385e6-d321-11e9-9343-40db57cf6abd_story.html

In one neighborhood in a part of Chevy Chase we have already witnessed such a conflict when a resident signed up with Swimply to rent out her pool. Neighbors complained about the aforementioned issues, an inspector came out, and the operation was told to shut down. It did not. All involved, and previously on good terms, no longer speak to each other.

When people decide to live in a residential neighborhood, they do so because it is a place where they can retreat from the hustle and bustle of work and the outside world. Others come back from a night shift and need to sleep during the day. Again others have medical conditions that require rest and tranquility. Small children take naps. Others who are working from home may simply want to open their windows but find they cannot because of the noise or other intrusions.

Where building permits and variance applications will have to be posted on the property, allowing nearby home owners to be informed and providing for a means of objecting, Bill 6-23 has no such mechanism. Typically, an applicant for a variance needs to cite other nearby "rights commonly enjoyed by others...." This will open that Pandora's box, by leaving out any such opportunity.

7. Regulatory

The regulatory aspects of bill 6-23 are poor and incomplete. Surely, platforms such as Swimply will applaud that. However, the Department of Health and Human Services will be tasked with permitting, inspection, and enforcement. The department's employees deserve better.

Under "Bill Specifics":

"less than 12 continuous hours."

No nearby neighbor is going to put up with the nuisances stipulated above (Section 6). Even in the absence of complaints, inspectors will be hard pressed to enforce this.

"a maximum of 120 days in the calendar year;"

Same argument.

"number of adult guests is limited to 6 per rental period;"

Unenforceable, while a class of, say, two dozen high school juniors is allowed?

Under "25C-3. Certification for a License."

36 (e) "rentals will only occur between the hours of 8:00 a.m. and 10:00 p.m."

Difficult to enforce in practice (e.g., as currently the case with "loud parties").

39 (h) "if sanitation facilities are not provided, rentals are limited to 2 hours at a time;"

Unenforceable. And raises the question of what people who have rented for 2 hours or less who need to use the bathroom are going to do.

45 (k) “the applicant or a designated representative is present on the property for the duration of the rentals;”
Unenforceable.

66 (r) “except for persons visiting the primary resident, only registered guests will be allowed on the property;” First of all, in the eyes of the home insurance policies, renters are not “guests”.

This allows for mix and match. Traditionally understood “guests” should not be allowed near the rented facility if only for reasons of liability conflicts between the home insurance and the one provided by the platform. This language is also vague and ambiguous. Does this mean that “registered guests” (by which we presume the language means those that have rented the facility) are “visiting” the primary resident? Or is it meaning that if someone has rented their backyard pool, they may still have more traditional guests over for dinner inside their home? What about someone who runs a business, such as an osteopathic therapy studio, out of their home? This language seems to exclude patients visiting that business during hours that facilities, such as a pool are rented out. How would that be enforced?

Under “25C-6. License Approval and Renewal.”

92 (a) (5) “inspect the property every two years.”

This is a long time indeed. Facilities such as pools can go bad in a day (food, urine, feces, trash, etc.). This is why Public Pools are subject to a minimum of one inspection per 90 days.⁷

Under “25C-7. Challenge to Certifications.”

97 (a) There is no mechanism for the bringing of challenges as is the case with building permits or requests for variances. Those kinds of permit applications have to be posted in clear view from the street and accessible to anyone with an interest. The same requirement ought to apply to permits for activities that potentially have a far greater impact (e.g., noise) on the community. There is not even a requirement to obtain the signature of neighbors under proposed section 25C-3(o).

99 (a) (1) The residents that may be affected are not limited to those living within a 300 foot radius. Increased traffic in the neighborhood should qualify all residents who feel that they may be affected to challenge the application.

Under “25C-9. Appeals.”

There is no mechanism that would inform affected parties to be aware of the application or its approval. There are no standards by which to determine whether an appeal would be successful. If neighbors document repeated violations, is that enough to bring an appeal?

Under “2. Use Standards”

46 g.” One off-street parking space must be provided for each rental period...”

This is unenforceable. Parties with multiple vehicles will park in the street or around the corner.

⁷ <https://dsd.maryland.gov/regulations/Pages/10.17.01.11.aspx>

In general, there is no mechanism in this bill for affected parties to funnel complaints (e.g., noise) to the County for enforcement.

Chapter 51 of COMAR concerns the regulations that govern swimming pools. The proposed County legislation would do an end-run around ALL of the regulations that govern public swimming pools, by redefining “guests” to include “paying patrons.” No lifeguards, no bathhouses, no posting of the depth of the pool.

8. Worsening Discrimination in Montgomery County

Under the stipulations in Bill 6-23, private residential pools will not be regarded as Public Pools as defined and regulated under current law. These pools do NOT have to comply with laws covering discrimination on the basis of race, creed, religious belief, etc. This means, of course, that the owners renting these pools will be able to refuse to rent on these bases. Does the County really want to promote activities that are permitted to discriminate?

Public pools in the County have to be ADA compliant (an exception is made for pools put in operation before the ADA was enacted)⁸. Private pools do NOT. Under current law new public pools, and newly designated public pools do have to be ADA compliant. Bill 6-23 does not require such compliance which fosters discrimination of an already disadvantaged portion of our population. This also means that if a disabled person rents a private residential pool, the lack of proper adaptations will put her or him in even greater danger than the average person.

9. Liability and Litigation

Owners may be exposed in other ways as well. Most, if not all, home owners will have a home insurance which covers liability for the injury of residents and (traditionally defined) guests on their property.

A call with The Hartford confirmed that renters of any of the assets are not covered. This is why the platform Swimply started offering a \$1million liability insurance.

There are still grey areas. We asked The Hartford about a scenario in which a renter needs to use the restroom. The only one available is inside the house. There the renter has a mishap that causes bodily injury which he/she blames on the owner. It is unlikely that the insurance offered by Swimply will cover this since the mishap did not take place in or around the rented facility. The Hartford confirmed that they will not cover this either. This leaves the owner entirely exposed to the damages that eventually may be awarded. It has also been reported that the insurance offered by Swimply has so many caveats

⁸https://archive.ada.gov/qa_existingpools_titleIII.htm

and exclusions that it is basically useless and will not pay out under most circumstances.⁹ We attempted to view Swimply's insurance policy, or at least their description of it, but it is behind a password protected wall on their website.

The activities of renters in an owner's yard will oftenspill over into a neighbor's yard (think trash, bottles, or fire, not to mention of course, noise). Unintended projectiles may hurt a neighbor. We can think of many scenarios where neighbors may receive damage to their assets or get injured. These are not events covered under a home policy. We doubt that Swimply's insurance covers these events. The proliferation of such disputes will add new burdens to our local courts.

Bill 6-23 may expose facility operators, renters, residents and even the county itself to lawsuits.¹⁰

Nearby neighbors can be exposed to lawsuits from operators and renters when they are deemed to in some way obstruct the operation or rental of the facility.

If new rent-out garage owners dump spent vehicle oil down our storm drains, it could lead to lawsuits against the County for allowing such pollution.

10. Why would Montgomery County want to further expand the Platform Economy?

We encourage County Council to think long and hard about the supposed benefit side of the bill, and then think again.

We have to ask ourselves where something like this has been enacted, how it played out, and what can be learned. Scouring the internet we did not find any legalization anywhere else in the country. Hence, we cannot know the answers to these questions.

We are aware of the possibilities to improve the efficiency in the use of real estate assets. But let's take a good long look at the evolution of the Platform Economy and make a clear-eyed decision about whether we want to encourage its unfettered expansion here.

⁹<https://www.cnn.com/2022/08/16/tech/swimply/index.html>

<https://www.forbes.com/sites/michaelgoldstein/2021/09/05/swimply-will-you-share-your-pool-with-strangers-for-money/?sh=6f981918479f>

¹⁰ <https://www.insurancebusinessmag.com/ca/news/property-insurance/ibc-warns-against-rental-practice-that-could-challenge-homeowners-415276.aspx>

<https://poolpromag.com/i-listed-my-pool-on-swimply-heres-what-i-found/>

<https://riseupoceancounty.com/f/7-year-old-newark-girl-dies-in-backyard-pool-rented-on-swimply>

<https://www.legalmatch.com/law-library/article/nuisance-from-a-neighbors-noise-light-or-odor-emissions.html>

Many of us have made use of both Lyft and Air BNB on the "demand side." We admire the Lyft drivers and don't begrudge home-owners who occasionally rent out part or all of their houses.

But things look significantly different today than they appeared ten or so years ago when the "sharing economy" was new and shiny. We suggest ditching the euphemistic "sharing economy" marketing label for the more descriptive "Platform Economy", which reminds us that we need to start paying more attention to WHO controls and benefits from The Platform.

At this point, many of the markets in the Platform Economy have matured and what do we see? The major investors in Uber and Air BNB seem to have done very well for themselves. But what about the "supply side" of those platforms? How are Uber drivers faring? We looked it up recently and saw they are making (in the U.S.) an average of about \$11 per trip, after expenses.¹¹ Not per hour. Per trip. How many trips do they get per hour? Of course, there's a tremendous range and the statistics fluctuate, but we cannot be sure most of them are earning minimum wage in Montgomery County.

Now we hear about people who hoped to earn some money by listing on Air BNB, but have found that demand has not always kept up with the surge in supply.¹² Nevertheless, we've seen plenty of places (most notoriously San Francisco) where it seems to have contributed to the shortage of affordable housing.

So WHO will benefit from this legislation? Who has a swimming pool in their back yard? Who has a 3 or 4 car garage? Realistically, what would be the opportunities in these bills for those in Montgomery County who are already struggling to find affordable housing? Would it be helpful, in net terms, for racial and ethnic minorities in Montgomery County? What about our family, friends, and neighbors with disabilities? Will they be guaranteed equal access?

The Guardian, in a critical piece earlier in the evolution of the Platform Economy noted that while hotels and sports clubs are forbidden to discriminate, "the laissez-faire approach of internet-based rivals which are free to reject anyone, risking nothing worse than damaging their online reputation."¹³

More generally, Mike Walsh in a recent piece in the Harvard Business Review warned of "one particularly dire scenario: a class-based divide between the masses who work for algorithms, a

¹¹Ridester.com, Jan. 13, 2023 <https://www.ridester.com/how-much-do-uber-drivers-make/#:~:text=supplement%20the%20fare.-,1.,the%20greater%20your%20hourly%20wages.>

¹²Time Nov. 22, 2022 <https://time.com/6223185/airbnbs-empty-short-term-rentals/>

¹³ The Guardian, 2014 <https://www.theguardian.com/technology/2014/dec/21/sharing-economy-divisive-uber-airbnb>

privileged professional class who have the skills and capabilities to design and train algorithmic systems, and a small, ultra-wealthy aristocracy, who own the algorithmic platforms that run the world.”¹⁴

Do we really want to throw open the doors to the Platform Economy even more? Yes, they are a new reality and we have to come to grips with them. Let’s do that by thinking strategically, with an eye on our goals for social justice in Montgomery County, and not just take the easy way out of giving in.

The Guardian piece quoted above noted: ”What’s irreversible is the technological element. But maybe some of these platforms would be more socially responsible if they were owned by the users, rather than venture capitalists in Silicon Valley.”Until then, we rely on County Council to figure out how to regulate these businesses so they don’t diminish the quality of life in our communities. And we strongly believe that it is not through Bill 6-23. Rather, it is through tougher enforcement of the existing code and higher fines for violations. High enough to make it not profitable to continue violating the zoning code.

11. Fiscal Issues

The sections above raised community concerns about the two bills to expand the ”Sharing Economy” (a.k.a. Platform Economy) in Montgomery County, primarily increased noise and traffic as externalities affecting neighborhoods (on top of health and safety concerns, which mostly affect the direct parties to the transactions).

Yet another concern relates to the fiscal implications of the bills. County Council may be thinking of the Platform Economy as a new source of revenue – both from licensing fees/fines and tax revenue.

Public policy best practice usually calls for licensing fees to be set such that the revenue generated covers, but does not substantially exceed, the cost of administration, monitoring, and supervision of the licensed activity.¹⁵ Licensing fees are not supposed to be a net revenue stream for the licensing jurisdiction; however, in addition to the expected administrative costs (hiring new staff and associated equipment/infrastructure for administration and inspections) the county should also consider the likelihood of an increase in civil suits between neighbors being brought to the local court system.

Fines should be set to meaningfully deter infractions or non-compliance (i.e., not something easily absorbed as a simple ”cost of doing business”), but there is no expectation they would become a significant enhancement to county revenue.

¹⁴ Harvard Business Review, 2020 <https://hbr.org/2020/10/algorithms-are-making-economic-inequality-worse>

¹⁵ World Bank (2011), ”Avoiding the Fiscal Pitfalls of Subnational Regulation: How to Optimize Local Regulatory Fees to Encourage Growth” <https://openknowledge.worldbank.org/handle/10986/27217>

If the prospect of enhanced revenue for the county government is part of the motivation for the bills, then we should think through the logic very carefully to ensure a full understanding of all the implications. There might be three potential avenues for Montgomery County to derive a hypothetical fiscal benefit from expanded economic activity as a result of the proposed bills. One is through the revenue sharing from the state income tax. Another is from property taxes associated with increased property values associated with new income-earning opportunities. A third would be analogous to the sales tax on AirBNB rentals in the county.

For income tax, while the IRS has been requiring the platforms to issue 1099s to those earning money as “hosts,” it is still up to the hosts to file and report that income (and state income tax administrations generally rely on the IRS for routine enforcement against tax evasion). We know from reading the newspaper that the IRS has been greatly overstretched in terms of audit capacity and enforcement. We also know, in the wake of the “Inflation Reduction Act” (and its earmarked resources for the IRS) the current administration policy instructs the IRS to focus its efforts on households earning over \$400,000. That leaves households in the \$100,000 – \$399,000 range plenty of opportunity to risk the low probability of an audit by ignoring their income from their platform activities. We are therefore skeptical that the County would likely realize any significant increase in revenue from income tax from expanded rental incomes resulting from the proposed bills.

Then there is the property tax. Is the County expecting that the bills will lead (downstream) to higher revenues from property taxes? If so, we’d like to hear more about the County’s assessment. Would it or would it not hinge on the likelihood that new income-generating opportunities associated with real estate assets (e.g., backyard pools, tennis courts, three-car garages, fenced-in “dog parks”) would lead to increased property values? If so, wouldn’t it also exacerbate the already worsening trends in both income and wealth inequality in the county? What, if any, would be the benefit for households in the bottom half of the income/wealth distribution? What can be done to mitigate the likelihood that expansion of the Platform Economy in Montgomery County would further worsen inequality?

In light of the above concerns, might it be feasible to design a sales tax (similar to the one already in place for AirBNB and similar rentals) but more progressive? Such a tax should ideally be collected directly by the platform at the time that a property is booked. Externalities are likely to arise disproportionately from the level of activity. Where someone occasionally rents out their pool, neighbors are unlikely to be bothered. More intensive use is likely to lead to significant traffic and noise, and the tax should reflect this externality. This suggests a progressively graduated tax: e.g., X% on the first \$5000; 1.5X on \$5001-10,000; 2X on 10,001-20,000; 3X on 20,001 – 50,000; 4X on 50,001-100,000 and 5X on \$100,001 and up. (For that matter, why not apply the graduated rate concept to AirBNB rentals as well?).

Failure to address the fiscal implications of the Platform Economy bills would leave noise and traffic externalities unaddressed and risk further worsening of income and wealth inequality in the County over time.

12. First in the Nation Legislation

To our knowledge as of this writing, there are no jurisdictions that have enacted similar legislation. Since these platforms have been active for several years, we may surmise that other jurisdictions will have been approached. Many, if not all, have misgivings about legalizing these activities. This should give the Council pause. Our research shows that there is serious pushback against the Platform Economy. Many jurisdictions have put restrictions on AirBnB rentals and prohibited rentals of private, residential swimming pools and other residential assets that could be monetized. If there is a question of “consistency” between the treatment of AirBNB rentals versus, say, Swimply and Sniffspot, perhaps Montgomery County should consider some more restrictions on the former as well as enforcing the current zoning code, which bans the latter.

13. Conclusion

The erosion of Residential Zoning will bring an enforcement nightmare, lawsuits between neighbors, little in the way of revenue for the County, health issues associated with what will now be commercial pools, and with regard to the backyard dog parks, health issues associated with dog waste and potentially dog bites. And if garages can be rented as car repair shops, what about the used parts, oil from oil changes, and pollution from running motors during the repair process?

And what is next? Clearly we put ourselves on a slippery slope with many possible adverse outcomes. Just because a Platform Economy is growing doesn't mean it should be legalized or encouraged in Maryland. It is the opposite. We have to make sure that Maryland, including our County, welcomes businesses but does NOT turn residential neighborhoods into Mixed Use or Commercial Zones.

At first glance the rental of residential assets may look attractive. We do not fault the Council for exploring its possibilities. We are, however, surprised that Montgomery County Council would pass a bill that so blatantly favors those who already have the monetizable real estate assets, i.e., those in the upper levels of the income and wealth distribution, as well as the shareholders of large “Platforms.”

Maybe the bill is a capitulation? (“PROBLEM: County residents are already renting their private property hourly via platforms like Simply and Bark.”) Do we believe that Montgomery County is incapable of enforcing reasonable regulations protecting our residential communities from the noise and traffic congestion of commercial activities? Perhaps because the County has not done a great job of enforcing its existing regulations that are intended to protect our health and safety? So we give up?

If neighborhoods wanted to prohibit the practices at their level, some would consider incorporation or to form more HOAs as we see in Houston, TX. Does the County Council want to see this balkanization? Twelve years ago the Council rejected an incorporation attempt by the area known as Rollingwood. The main reason was loss of revenue, since incorporated areas receive a percentage of the state income tax paid by its residents, and this is subtracted from the revenues normally given to the County. Relatively

more affluent neighborhoods are incentivized to incorporate, reducing resources available for the County to provide services for less affluent neighborhoods.

We suggest that Councilmember Jawando retract the Bill and subject its pros and cons to further study. Learn what other jurisdictions are doing, as we have done. And learn what those that have gone down the path proposed in Bill 6-23 have experienced and learned. Or why other jurisdictions considered and rejected similar legislation. We do not believe any jurisdiction has adopted legislation such as this. Only then should legislation concerning the Platform Economy be considered. The Council may well conclude that instead of liberalizing the Platform Economy, it would need to be more heavily restricted.

Failing a retraction of Bill 6-23, and knowing the dangers that are hiding in its implementation, the Council ought to reject it forcefully.

Respectfully,

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Links to relevant articles

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