



Committee: Joint

Committee Review: At a future date

Staff: Livhu Ndou, Legislative Attorney

Purpose: To receive testimony – no vote expected

Keywords: #TransientLodgingFacilities #DHHS #DHCA
#ShortTermResidentialRental

AGENDA ITEMS #9 & 10

June 13, 2023

Public Hearing

SUBJECT

Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental
Zoning Text Amendment (ZTA) 23-04, Residential Uses – Short-Term Residential Rental

Lead Sponsor: Council President Glass at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony on bill – no vote expected
- To receive testimony on ZTA – no vote expected

DESCRIPTION/ISSUE

Bill 22-23 and ZTA 23-04 will amend the provisions for Short-Term Residential Rentals. Bill 22-23 will reassign enforcement responsibility to DHCA; increase the maximum penalty; amending the application process; and clarify the processes for challenges, suspensions, revocations, and appeals. ZTA 23-04 will require the dwelling unit to be the property owner's primary residence, limit the number of overnight guests regardless of age, and remove language for owner-authorized agents.

SUMMARY OF KEY DISCUSSION POINTS

- The regulatory framework for short-term residential rentals was established in a bill and ZTA that were adopted by the County Council in 2017.
- The County Executive, with recommendations from the Department of Health and Human Services (DHHS) and Department of Housing and Community Affairs (DHCA), proposes substantial revisions that will address difficulties in enforcement since the passage of the bill and ZTA.
- Bill 22-23 will also clarify certain provisions while ZTA 23-04 amends certain requirements related to the number of rental days and property ownership.
- A joint Committee worksession will be scheduled at a later date.

This report contains:

Bill 22-23

© 1

ZTA 23-04

© 12

Legislative Request Report

© 16

County Executive Memorandum

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Planning Board Recommendation	© 19
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Bill No. 22-23
Concerning: Transient Lodging Facilities
– Short-Term Residential Rental
Revised: 4/13/2023 Draft No. 1
Introduced: April 18, 2023
Expires: December 7, 2026
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Glass at the Request of the County Executive

AN ACT to:

- (1) assign enforcement responsibility to the Department of Health and Human Services for Article II (hotels) and to the Department of Housing and Community Affairs for Article III (bed and breakfasts and short-term residential rentals);
- (2) increase the maximum penalty for a violation of Article III of Chapter 54;
- (3) amend the application process for a bed and breakfast or short-term residential rental license, including license criteria and notice requirements;
- (4) clarify the process for challenging an application for bed and breakfast or short-term residential rental license;
- (5) clarify the process for suspending or revoking a bed and breakfast or short-term residential rental license;
- (6) clarify the process for appealing the Director's decision on a bed and breakfast or short-term residential rental license to the Board of Appeals; and
- (7) make other stylistic changes.

By amending

Montgomery County Code
Chapter 54, Transient Lodging Facilities
Sections 54-1, 54-2, 54-3, 54-13, 54-26, 54-43, 54-44, 54-45, 54-46, 54-47, and 54-48

Boldface	<i>Heading or 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:

Sec. 1. Sections 54-1, 54-2, 54-3, 54-13, 54-26, 54-43, 54-44, 54-45, 54-46, 54-47, and 54-48 are amended, as follows:

Article I. In General.

54-1. Definitions.

* * *

Director means the Director of the Department of Health and Human Services, or the Director's designee, in Article II of this Chapter. *Director* means the Director of the Department of Housing and Community Affairs, or the Director's designee, in Article III of this Chapter.

Department means the Department of Health and Human Services in Article II of this Chapter. *Department* means the Department of Housing and Community Affairs in Article III of this Chapter.

* * *

Primary Resident means a person who regularly resides at the location designated for legal purposes of obtaining a driver's license and filing tax returns or any other proof of occupancy approved by the Director.

* * *

Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days by the same individuals as allowed under Section 59-3.3.3.I of this Code.

* * *

54-2. Authority of Executive to regulate and license.

The Executive may adopt regulations, under method (3), concerning the operation, maintenance, conduct, application, licensing, and license fees for a hotel, short-term residential rental, or bed and breakfast.

Sec. 54-3. [Guest register—Required] Violation of article; penalties.

[Any person who owns or operates a hotel, in the County must maintain on the

premises a permanent register containing:

(a) the name of each visitor;

(b) the residence address of each visitor, including state, city or town, street and street number or rural mail delivery route number;

(c) the number of the room or facility occupied by each visitor; and

(d) the date and time of registration and checkout of each visitor.

The register must include a record of the license plate numbers and state of registration of any automobiles or trailers that guests are using. The owner or operator of the establishment must see that the license plate and automobile or trailer registration information is correct. A person must not occupy any room until the registration required under this section is provided. The permanent register may be in a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages or cards must be numbered consecutively before use and all numbered pages or cards must be kept even though they are not used. The register required by this section must be kept for at least 3 years and must be open to inspection upon the request of the Director or of any law enforcement officer of the county or the state.]

A violation of any provision of Article II or Article III of this Chapter is a class A violation. However, notwithstanding Section 1-19, the maximum penalty for a civil violation of Article III is \$1,000 for an initial or repeat offense. Each day a violation continues is a separate offense.

* * *

Article II. Hotels.

Division 1. Generally.

* * *

54-13. [Violation of article; penalties] Guest register – Required.

[A violation of any provision of Article II or Article III of this Chapter is a class A violation.]

Any person who owns or operates a hotel in the County must maintain on the premises a permanent register containing:

(a) the name of each visitor;

(b) the residence address of each visitor, including state, city or town, street and street number or rural mail delivery route number;

(c) the number of the room or facility occupied by each visitor; and

(d) the date and time of registration and checkout of each visitor.

The register must include a record of the license plate numbers and state of registration of any automobiles or trailers that guests are using. The owner or operator of the establishment must see that the license plate and automobile or trailer registration information is correct. A person must not occupy any room until the registration required under this section is provided. The permanent register may be in a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages or cards must be numbered consecutively before use and all numbered pages or cards must be kept even though they are not used. The register required by this section must be kept for at least 3 years and must be open to inspection upon the request of the Director or of any law enforcement officer of the county or the state.

* * *

Division 2. Licenses.

* * *

54-26. Revocation or suspension generally.

* * *

(b) The Director may revoke or suspend any license issued under this Division if the Director finds that the hotel is disruptive to the general peaceful enjoyment, dangerous to the health and safety, of the community, or is a nuisance because of noise or indecent or immoral activity by any guest, owner, operator or employee. The Director may

also revoke or suspend any license issued under this Chapter if the owner or operator of the hotel has, while operating the hotel, been convicted of violating:

- (1) the provisions of the Criminal Law Article of the Maryland Code as listed in Section 54-20; or

* * *

Article III. [BED AND BREAKFAST AND SHORT-TERM RESIDENTIAL RENTAL] Bed and Breakfast and Short-Term Residential Rental.

* * *

54-43. [Certification] Application for a License.

An application for a license to operate a bed and breakfast [license] or short-term residential rental or a license renewal for either use must be signed by the applicant and include the State Sales Tax and Use Registration number. The applicant must provide supporting documents as the Department may require and certify that:

[(a) the building in which the bed and breakfast license or short-term residential rental is located complies with all applicable zoning standards under Chapter 59 of this Code;]

(a) the applicant is the owner of the dwelling unit where the bed and breakfast or the short-term residential rental is located;

[(b) the total number of overnight guests in the short-term residential rental who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2;]

(b) the dwelling unit where the bed and breakfast or short-term residential rental is located is the primary residence of the applicant;

[(c) only habitable rooms will be used by guests;]

(c) the building in which the bed and breakfast or short-term residential rental is located complies with all applicable zoning standards under Chapter 59

- 109 of this Code;
- 110 [(d) smoke detectors in all units and carbon monoxide detectors in all units
- 111 using natural gas operate as designed;]
- 112 (d) the applicant will maintain a registry of all guests at the bed and breakfast
- 113 or the short-term residential rental, readily available for inspection by the
- 114 Department;
- 115 [(e) sanitation facilities operate as designed;]
- 116 (e) except for persons visiting the primary resident, only registered guests
- 117 under (d) will be allowed in the dwelling unit or on the property;
- 118 [(f) the applicant has not been found guilty of a violation of this Chapter in
- 119 the past 12 months;]
- 120 (f) the number of registered guests in the short-term residential rental who
- 121 are 18 years or older is limited to 2 per bedroom, provided that the total
- 122 number of registered guests in the short-term residential rental must not
- 123 exceed 6;
- 124 [(g) all local taxes and required fees are paid in full;]
- 125 (g) only habitable rooms will be used by guests;
- 126 [(h) the dwelling unit where the bed and breakfast or short-term residential
- 127 rental is located is the primary residence of the applicant;]
- 128 (h) smoke detectors, and carbon monoxide detectors where natural gas is
- 129 used, operate as designed;
- 130 [(i) the applicant is the owner or owner-authorized agent of the facility;]
- 131 (i) sanitation facilities operate as designed;
- 132 [(j) the applicant posted rules and regulations inside the rental, including
- 133 contact information for a representative designated for emergency
- 134 purposes;]
- 135 (j) the applicant has not been found guilty of a violation of this Chapter in

- 136 the past 36 months;
- 137 [(k) the designated representative resides within 15 miles of the unit and be
- 138 accessible for the entirety of any contract where the primary resident is
- 139 not present;]
- 140 (k) all local taxes and required fees are paid in full;
- 141 [(l) a record of all overnight visitors will be maintained and readily available
- 142 for inspection;]
- 143 (l) a representative designated for emergency purposes, identified by name,
- 144 address, and phone number, resides within 15 miles of the unit and will
- 145 be available to the Department for the entirety of any contract whenever
- 146 the owner is not present;
- 147 [(m) where applicable, the following parties were notified:
- 148 (1) in a single-unit or attached unit, abutting and confronting
- 149 neighbors;
- 150 (2) in a multi-unit building, neighbors living across the hall and those
- 151 that share a ceiling, floor, and walls with the applicant's unit;
- 152 (3) the municipality in which the residence is located;
- 153 (4) any applicable homeowner's association, condominium, housing
- 154 cooperative; and
- 155 (5) the owner of the unit or the owner's rental agent, if the applicant is
- 156 not the owner;]
- 157 (m) the applicant posted rules and regulations inside the dwelling unit,
- 158 including the name, address, and phone number for the representative
- 159 designated for emergency purposes;
- 160 [(n) the application is not prohibited by any homeowner's association or
- 161 condominium document, or a rental lease;]
- 162 (n) where applicable, the applicant has notified the following parties of the

application and the procedure for challenging the application before the Director:

(1) in a single-unit or attached unit, abutting and confronting neighbors;

(2) in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit;

(3) the municipality in which the bed and breakfast or short-term residential rental is located; and

(4) any applicable homeowner's association, condominium, housing cooperative.

[(o) the common ownership community fees for the dwelling unit are no more than 30 days past due;]

(o) the use of the dwelling unit as a bed and breakfast or short-term residential rental is not prohibited by any homeowner's association or condominium document, or a rental lease;

[(p) except for persons visiting the primary resident, only registered guests will be allowed on the property; and]

(p) the common ownership community fees for the bed and breakfast or short-term residential rental are no more than 30 days past due;

(q) any on-line rental listing will include the short-term residential rental license number[.]; and

(r) the dwelling unit will not be used as a short-term residential rental for more than 120 days in a calendar year when the property owner is not physically present in the dwelling unit.

54-44. Applications.

The Director must establish an electronic method of submitting, issuing, renewing, denying, suspending, and revoking an application for a license through the

internet.

54-45. License Approval and Renewal.

The Director [must]:

(a) [accept the self-certification of the applicant after verifying compliance by reviewing available records;] must review the application, including supporting documents provided by the applicant, for conformance with this Chapter and all other applicable laws and regulations;

(b) may inspect the property;

~~[(b)]~~(c) must approve or deny a license or a license renewal [within 15] no earlier than 30 and no later than 60 [working] days after receipt of [the] a completed application and all required fees unless the Director receives a challenge to the [certifications] application under Section 54-46; and

~~[(c)]~~(d) must, if the license or license renewal is approved:

(1) issue the license for a term of one year, renewable for additional one-year terms, subject to re-application, payment of the license fee, and compliance with all applicable laws and certifications required for the license~~].~~; and

(2) provide written notice to the parties listed in section 54-43(n) of the issuance of the license and the procedure to file an appeal with the Board of Appeals.

54-46. Challenge to [Certifications] Applications.

(a) Within 30 days after the application is filed, a [A] challenge [to any required certification made by the applicant] may be filed with the Director [within 30 days after the application is filed] by any party entitled to notice under section 54-43(n).]:

(1) a resident or owner of real property located within 300 feet of a licensed or proposed license;

- 217 (2) the municipality in which the residence is located;
- 218 (3) any applicable homeowners association, condominium, housing
- 219 cooperative; or
- 220 (4) the owner of the unit or the owner's rental agent, if the applicant is
- 221 not the owner.]
- 222 (b) The Director must, within 60 days after receipt of the challenge:
- 223 (1) provide notice of the challenge to the applicant;
- 224 (2) provide an opportunity for the applicant to respond to the
- 225 challenge;
- 226 (3) investigate [the] any question of fact raised by the challenge; [and]
- 227 (4) [revoke] approve or deny the license or license renewal after
- 228 reviewing the application, including supporting documents
- 229 provided by the applicant and challenger, for conformance with
- 230 this Chapter and all other applicable laws and regulations; and [if
- 231 the Director finds that one or more facts certified by the applicant
- 232 is false.]
- 233 (5) if the license or license renewal is approved:
- 234 (i) issue the license for a term of one year, renewable for
- 235 additional one-year terms, subject to re-application,
- 236 payment of the license fee, and compliance with all
- 237 applicable laws and certifications required for the license;
- 238 and
- 239 (ii) provide written notice to the parties listed in section 54-
- 240 43(n) of the issuance of the license and the procedure to file
- 241 an appeal with the Board of Appeals.

242 **54-47. Suspension and Revocation.**

- 243 (a) [The license must be suspended for any applicant receiving at least three

complaints that are verified as a violation of the license or of the County Code within any 12-month period.] The Director may suspend or revoke

any license issued under this Article if the Director finds that the licensee:

(1) has violated this Chapter or any other applicable law or regulation;

(2) has operated, or permitted to be operated, the bed and breakfast or short-term residential rental in a manner that is disruptive to the general peaceful enjoyment of the community, dangerous to the health and safety of the community, or is a nuisance because of noise or other activity; or

(3) has been convicted of violating any of the provisions of the Criminal Law Article of the Maryland Code listed in in Section 54-20 while operating the bed and breakfast or short-term residential rental.

(b) [Renewal or reinstatement of licenses must follow procedures established by the Director.] Prior to any suspension or revocation, the Director may require the holder of the license to appear before the Director and show cause why the license should not be suspended or revoked.

54-48. Appeals.

Any person aggrieved by [an approval] the issuance, renewal, denial, revocation or suspension of a bed and breakfast license or short-term rental license may appeal the Director's decision to the Board of Appeals within 30 days of the Director's decision, regardless of whether a challenge to the application was filed under Section 54-46. [The Board of Appeals must hold a hearing on the appeal within 60 days after the notice of appeal has been filed, and must act on the appeal within 30 days after the hearing.]

Ordinance No.: _____
Zoning Text Amendment No.: 23-04
Concerning: Residential Uses – Short-
Term Residential Rental
Revised: 4/13/2023 Draft No.: 1
Introduced: April 18, 2023
Public Hearing: _____
Adopted: _____
Effective: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Council President Glass at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) require that a dwelling unit used as a short-term residential rental be the property owner's primary residence;
- (2) delete provisions allowing a property owner's authorized agent to assume certain responsibilities assigned to the property owner;
- (3) limit the number of overnight guests regardless of age; and
- (4) generally amend the provisions governing a short-term residential rental.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 3.3.	"Residential Uses"
Section 3.3.3.	"Short-Term Residential Rental"

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-3.3 is amended as follows:

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

* * *

I. Short-Term Residential Rental.

1. Defined

Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. Short-Term Residential Rental is not a Bed and Breakfast.

2. Use Standards

Where Short-Term Residential Rental is allowed as a limited use, it must satisfy the following standards:

- a. Short-Term Residential Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.
- b. The dwelling unit used as a Short-Term Rental must be the property owner's [or owner-authorized resident's] primary residence, regardless of dwelling unit type.
- c. If the property owner [or owner-authorized resident] is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 120 days in a calendar year. If the property owner [or owner-authorized resident] is physically present and occupies the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.
- d. The use must be licensed under Chapter 54.

- e. The maximum number of occupants is limited by Chapter 26, Section 5; however, the total number of overnight guests in the Short-Term Residential Rental [who are 18 years or older] is limited to six, and the total number of overnight guests over 18 years of age per bedroom is limited to two.
- f. One off-street parking space must be provided for each rental contract unless the online listing indicates that vehicle parking is prohibited.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of District Council adoption.

LEGISLATIVE REQUEST REPORT

BILL: XX-23, Transient Housing - Short-Term License

DESCRIPTION:	Bill XX-23 assign enforcement responsibility of bed and breakfast and short term residential rental licensing to the Department of Housing and Community Affairs; increase the maximum penalty for violations; amend the application process for bed and breakfast and short-term residential rental licensing, including a requirement that the applicant is the primary resident; specify a limit on guests and require smoke and carbon monoxide detectors; clarify of the process for challenging an application for bed and breakfast and short-term residential rental license; clarify of the process for suspending or revoking a bed and breakfast or short-term residential rental license.
PROBLEM:	All short-term rentals do not operate within the County's regulatory framework, which causes problems for neighboring properties. This highlights shortcomings in County law, particularly in enforcement.
GOALS AND: OBJECTIVES	To ensure County law enforcement on all short-term rentals
COORDINATION:	The Office of the County Executive and Office of the County Attorney
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC: IMPACT	Office of Legislative Oversight
EVALUATION:	To be researched
EXPERIENCE: ELSEWHERE	To be researched
SOURCE OF: INFORMATION	Office of the County Attorney, Edward Lattner, 240-777-6735 Office of the County Executive, Ken Hartman, 240-777-8206
APPLICATION: WITHIN MUNICIPALITIES	To be researched
PENALTIES:	A violation of any provision of Article II or Article III of this Chapter is a class A violation. However, notwithstanding Section 1-19, the Maximum penalty for a civil violation of Article III is \$1,000 for an initial




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

March 17, 2023

TO: Evan Glass, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Proposed Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to the Montgomery County Zoning Ordinance, Chapter 59

I am transmitting the attached proposed Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to the Montgomery County, Zoning Ordinance, Chapter 59 of the Montgomery County Code for the County Council's introduction.

Although most short-term rentals operate within the County's regulatory framework, there are some that do not, causing serious problems for neighboring properties and, in at least one case, potential threats to public safety. These cases have highlighted shortcomings in County Law, particularly in enforcement. At my request, the Office of the County Attorney, the Department of Health and Human Services, and the Department of Housing and Community Affairs reviewed these shortcomings and recommended changes to the law. This Bill sets forth their recommendations, as follows:

1. Assign enforcement responsibility of bed and breakfast and short-term residential rental licensing to the Department of Housing and Community Affairs.
2. Increase the maximum penalty for violations.
3. Amend the application process for bed and breakfast and short-term residential rental licensing, including a requirement that the applicant is the primary resident.
4. Specify a limit on guests and require smoke and carbon monoxide detectors.
5. Clarify of the process for challenging an application for bed and breakfast and short-term residential rental license.
6. Clarify of the process for suspending or revoking a bed and breakfast or short-term residential rental license.

Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to
the Montgomery County Zoning Ordinance, Chapter 59

March 17, 2023

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Please let me know if you need additional information in support of this Bill. Thank you.

Enclosure



June 5, 2023

To: The Honorable Evan Glass
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Bill 22-23 and Zoning Text Amendment No. 23-04

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 1, 2023 and by a vote of 5:0 recommended modifications to Bill 22-23, and to not support Zoning Text Amendment (ZTA) 23-04. This paired Bill and ZTA would amend the county's rules and enforcement mechanisms pertaining to Short-Term Residential Rentals. These changes include shifting the primary enforcement of Short-Term Residential Rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA), modifying the license process, clarifying the rules around challenges, suspensions, revocations, appeals of licenses and enforcement actions, and modifying rules on who can apply both as a host and as a tenant of a Short-Term Residential Rental.

The Planning Board supports many of the technical elements of Bill 22-23, including the reassignment of enforcement to DHCA, amending some of the application requirements, clarifying the challenge process for applications, the suspension or revocation of rental licenses, and the appeals process. The Board however has major concerns over many of the policy aspects of the Bill such as increasing the first time and maximum penalties for violations, removing owner-authorized residents from being applicants, or limiting the total number of guests based on bedrooms without exceptions for children. The request for these changes seemed to be based on unspecified concerns over enforcement described in the County Executive's transmittal. Without further explanation, there is no way to discern if these policy changes will result in meaningful improvement to enforcement or if the result will instead result in reduced flexibility for lessors and travelers. Staff asked for the complaints that were cited as the need for the policy changes and none were provided.

The Board does not support any of the proposed changes in ZTA 23-04 and recommends the ZTA not be approved. The only changes proposed in the ZTA were two of the policy changes that are also not supported in the Bill; removing owner-authorized residents from the process and placing limits on renters to no more than two per bedroom, with a total guests limited at six.

The Honorable Evan Glass

June 5, 2023

Page Two

The Board appreciates the opportunity to pass along its comments for Bill 22-23 and ZTA 23-04. The Board appreciates the added clarity to the entire application and licensing process for Short-Term Residential Rentals but remains concerned the proposed changes to their operations do more harm than good. Planning Staff are available and committed to work with the Council as the Bill and ZTA move forward.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, June 1, 2023.



Jeffrey Zyontz

Chair

Attachments: A - Planning Staff Report
B - Introduction Packet for Bill 22-23 and ZTA 23-04
C - Climate assessment For ZTA 23-04

Economic Impact Statement

Montgomery County, Maryland

Bill 22-23

Transient Lodging Facilities – Short-Term Residential Rental

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 22-23 would have a neutral impact on economic conditions in the County in terms of the Council’s priority indicators. As discussed below the Bill likely would increase operating costs and decrease revenues for certain homeowners who operate short-term residential rentals or a bed and breakfast, and increase rents to certain residents who use these facilities. However, OLO anticipates several factors to mitigate these negative impacts. For one, the Bill would negatively impact only a small percentage of all homeowners in the sector, and its negative impact on resident customers would be small on a per customer basis. Moreover, costs to County businesses and residents would be mitigated by homeowners passing on a portion of the higher costs to non-resident customers. Finally, it is worth noting that enhanced enforcement could prevent certain Homeowner Associations from banning short-term residential rentals, which would decrease the market.

BACKGROUND AND PURPOSE OF BILL 22-23

By County law, a “bed and breakfast” is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests. A “short-term residential rental” is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.¹ Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfast and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:

- Assign enforcement responsibility for bed and breakfast and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.²

¹ Montgomery County Code, [Sec. 54-1](#).

² [Introduction Staff Report for Bill 22-23](#).

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership. Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 22-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.³

To examine the Bill's impacts on the Council's priority indicators, OLO performs a qualitative assessment based on the following sources of information:

- Correspondence with County personnel from DHHS, DPS, and OCA; and
- County webpages on Short-Term Residential Rentals and Bed and Breakfasts.

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 22-23 are the following:

- Total number of license revocations or suspensions;
- Total number of licenses issued;
- Average rents; and
- Percentage of resident customers.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Bill 22-23 would have a small negative impact on certain private organizations in the County in terms of the Council's priority economic indicators.

The primary businesses impacted by the Bill would be homeowners who operate short-term residential rentals or bed and breakfasts. According to personnel from DHHS, there are currently 1,158 advertised short-term residential rentals, 153 of which are licensed with the County. Currently, there are three licensed bed and breakfast facilities.

By strengthening the County's powers to revoke and suspend licenses and increasing penalties for violating laws and regulations regarding short-term residential rentals and bed and breakfasts, certain homeowners would be negatively impacted in terms of operating costs and business income. Higher penalties would increase operating expenses and

³ Montgomery County Code, [Sec. 2-81B](#).

revoked or suspended licenses would reduce business revenue for affected homeowners. Holding all else equal, affected homeowners would experience net losses in business income. However, certain homeowners likely would pass on a portion of these costs to their customers in the form of higher rents, thereby mitigating these negative impacts.

Moreover, OLO expects a small percentage of homeowners to be impacted by these policy changes. Enforcement of applicable laws and regulations is complaint-driven. According to DHHS and DPS personnel, only a minority of short-term residential rentals receive complaints to the County.

The Bill may increase operating costs for certain homeowners in two other ways. By requiring businesses to maintain a permanent register, certain businesses may experience minor operating expenses associated with updating their bookkeeping systems. In addition, DHCA may increase the share of short-term residential rentals or bed and breakfasts that are licensed with the County. Homeowners who otherwise would not attain a license in the absence of the policy change would pay an annual licensing fee of \$150. Again, certain homeowners likely would pass on a portion of increased costs to their customers in the form of higher rents.

Beyond these potential impacts, OLO does not expect the Bill to affect private organizations in terms of the Council's other priority economic indicators.

Residents

OLO anticipates that enacting Bill 22-23 would have a small negative impact on certain residents in the County in terms of the Council's priority economic indicators. For one, all short-term residential rentals and bed and breakfasts must be the primary residence of owners. Therefore, any homeowners negatively affected by the policy changes as described above would be residents. Holding all else equal, increased operating costs or forgone revenue would reduce their household income. Second, certain homeowners likely would pass on increased costs to customers in the form of higher rents, a portion of which likely would be residents. Holding all else equal, these residents would experience a minor decrease in discretionary income.

Beyond these potential impacts, OLO does not expect the Bill to affect residents in terms of the Council's other priority economic indicators.

Net Impact

OLO anticipates that enacting Bill 22-23 would have a neutral impact on overall economic conditions in the County in terms of the Council's priority economic indicators. As described above, the Bill likely would increase operating costs and decrease revenues for certain homeowners who operate short-term residential rentals or bed and breakfast, and increase rents to certain residents who use these facilities. However, OLO anticipates several factors to mitigate these negative impacts. For one, the Bill would negatively impact only a small percentage of all homeowners in the sector, and its negative impact on resident customers would be small on a per customer basis. Moreover, costs to County businesses and residents would be mitigated by homeowners passing on a portion of the higher costs to non-resident customers. Finally, it is worth noting that enhanced enforcement could prevent certain Homeowner Associations from banning short-term residential rentals, which would decrease the market.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Council. [Introduction Staff Report for Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental](#). Introduced on April 18, 2023.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

AUTHOR

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 22-23: TRANSIENT LODGING FACILITIES – SHORT-TERM RESIDENTIAL RENTAL

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice impact (RESJ) of Bill 22-23 is indeterminant, due to insufficient information on stakeholders connected to bed and breakfasts and short-term residential rentals, and whether racial and ethnic disparities could emerge from stronger enforcement of laws governing such short-term rental arrangements.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 22-23

By County law, a ‘bed and breakfast’ is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests, while a ‘short-term residential rental’ is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.³ Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfasts and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:⁴

- Assign enforcement responsibility for bed and breakfasts and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership.⁵ Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

RESJ Impact Statement

Bill 22-23

In March 2023, OLO published a RESJIS for Bill 6-23, Housing – Sharing Economy Rental. OLO builds on Bill 6-23’s analysis for this RESJIS.

THE SHARING ECONOMY AND RACIAL EQUITY

Deeply embedded structural racism in American society inherently drives racial bias within and across societal institutions. Thus, while the Sharing Economy (SE) is a relatively new concept, it has also been characterized by racial inequities and disparities. SE platforms have increased access to an array of useful goods and services. However, research suggests that benefits of the SE are not equitably distributed. Researchers at Boston College note national studies from the JPMorgan Chase & Co. Institute and the Pew Research Center finding that SE platform users tend to be “whiter, younger, better-educated, and have higher income than the general population.”⁶ Additionally:

- A field experiment of Airbnb by researchers found “that applications from guests with distinctively African American names [were] 16 percent less likely to be accepted relative to identical guests with distinctively white names.”⁷ A recent internal study by Airbnb confirmed racial discrimination, finding that guests who were perceived as Black were able to book their desired rental 91.4 percent of the time, compared to 94.1 percent for guests who are perceived as White.⁸
- A study of 335,000 Airbnb listings in the ten largest Airbnb markets in the U.S. found that areas with higher concentrations of non-White residents “[charged] lower nightly prices, [had] lower annual revenues, and [received] lower ratings from guests.”⁹ Further, a study of over 100,000 Airbnb listings across 14 countries, including the U.S., found evidence that “consumers show a preference for White hosts, which allows White hosts to charge higher prices.”¹⁰
- A study of nearly 1,000 Uber and Lyft rides in Boston found that “Uber drivers were twice as likely to cancel an accepted ride when travelers [had an] African American sounding name.”¹¹
- A study of 100 million ride-sharing samples from Chicago found that “[n]eighborhoods with larger non-white populations, higher poverty levels, younger residents, and high education levels [were] significantly associated with higher fare prices.”¹²

Concerns have also been raised around the role of SE platforms in perpetuating broader employment and housing inequities. Advocacy groups have argued that, through misclassifying drivers as independent contractors and denying employee benefits and protections, Uber and Lyft uniquely harm workers of color, who are overrepresented in their driver workforce.¹³ A study of Airbnb listings throughout the U.S. found that Airbnb leads to higher rents and decreases the supply of long-term rental units.¹⁴ This effect would disproportionately harm BIPOC renters as they are cost burdened at higher levels than White renters.¹⁵

ANTICIPATED RESJ IMPACTS

If Bill 22-23 works as intended, there will be stronger enforcement of laws governing bed and breakfasts and short-term residential rentals – short-term rental arrangements that are typically facilitated by platforms such as Airbnb and Vrbo. To consider the anticipated impact of Bill 22-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?

RESJ Impact Statement

Bill 22-23

- What racial and social inequities could passage of this bill weaken or strengthen?

To answer these questions, OLO considered the various stakeholders that would be impacted by stronger enforcement of bed and breakfasts and short-term residential rentals and RESJ concerns for each group:

- **Homeowners who operate bed and breakfasts or short-term residential rentals** could face increased costs from stronger enforcement, including from expenses necessary to comply with the law or fines from violations of the law. They could also face an increased risk of losing their operating license under certain conditions, including from violations of the law. There is no definitive data on short-term rental operators in the County by race and ethnicity. While homeowners in the County are more likely to be White or Asian (Table 1, Appendix), it is unclear whether short-term rentals could be a more attractive income-generating opportunity for BIPOC homeowners, considering they are cost burdened at higher levels than White homeowners (Table 2, Appendix). Further, it is unclear whether certain homeowners could be subject to more enforcement than others, and whether racial and ethnic disparities in enforcement could emerge.
- **Constituents using bed and breakfasts or short-term residential rentals** could benefit from stronger enforcement of health and safety protocols, though they may face higher prices. Based on research from SE platforms noted in the previous section, short-term rental users may be disproportionately White and BIPOC users may experience discrimination. However, there is no definitive data on short-term rental users in the County by race and ethnicity.
- **Constituents living near bed and breakfasts or short-term residential rentals** could benefit from stronger enforcement mitigating inconveniences in their neighborhoods related to short-term rentals. It is unclear whether certain communities could be subject to more enforcement than others, and whether racial and ethnic disparities in enforcement could emerge by community demographics.

Taken together, OLO finds the RESJ impact of Bill 22-23 is indeterminant.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁶ OLO finds the RESJ impact of Bill 22-23 is indeterminant. As such, OLO does not offer recommended amendments. However, should the Council seek to improve the RESJ impact of this Bill, the following policy option can be considered:

- **Collecting RESJ and enforcement data for bed and breakfasts and short-term residential rentals.** Requiring applicants to report their race and ethnicity when applying for a bed and breakfast or short-term residential rental license could provide a better understanding of the demographics of short-term rental operators in the County. Collecting demographic data along with data on enforcement actions, such as the imposition of fines or license revocations, would allow for analysis that could determine whether racial and ethnic disparities emerge from stronger enforcement of the law.

RESJ Impact Statement

Bill 22-23

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

APPENDIX

Table 1: Homeownership Rate by Race and Ethnicity, Montgomery County¹⁷

Race and Ethnicity	Homeownership Rate
Asian	69.1
Black	43.3
White	77.1
Latinx	54.3

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.

Table 2: Cost Burden Rate of Homeowners by Race and Ethnicity, Montgomery County

Race and Ethnicity	Homeowner Cost Burden Rate
Asian	30.1
Black	28.1
White	22.1
Latinx	31.8

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.raciaequitytools.org/glossary>

² Ibid

³ Montgomery County, Maryland, County Code § 54-1

⁴ Introduction Staff Report for Bill 22-23, Montgomery County Council, Introduced April 18, 2023. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230418/20230418_3-4A.pdf

⁵ Ibid

⁶ Mehmet Cansoy and Juliet B. Schor, “Who Gets to Share in the ‘Sharing Economy’? Racial Inequities on Airbnb.” Boston College Sociology Department, 2016. <https://www.bc.edu/content/dam/bc1/schools/mcas/sociology/pdf/Who%20gets%20to%20share%20in%20the%20sharing%20economy.pdf>

RESJ Impact Statement

Bill 22-23

⁷ Benjamin Edelman, et al, “Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment,” American Economic Journal: Applied Economics. April 2017. <https://www.aeaweb.org/articles?id=10.1257/app.20160213>

⁸ Sara Clemence, “Black Travelers Say Home-Share Hosts Discriminate, and a New Airbnb Report Agrees,” The New York Times, December 13, 2022. <https://www.nytimes.com/2022/12/13/travel/vacation-rentals-racism.html>

⁹ Cansoy and Schor

¹⁰ Bastian Jaeger and Willem W. A. Sleegers, “Racial Disparities in the Sharing Economy: Evidence from More than 100,000 Airbnb Hosts across 14 Countries,” Journal of The Association of Consumer Research, January 18, 2023.

<https://www.journals.uchicago.edu/doi/abs/10.1086/722700?journalCode=jacr>

¹¹ Yanbo Ge, et al, “Racial Discrimination in Transportation Network Companies,” Journal of Public Economics, October 2020.

<https://www.sciencedirect.com/science/article/pii/S0047272720300694>

¹² Akshat Pandey and Aylin Caliskan, “Disparate Impact of Artificial Intelligence Bias in Ridehailing Economy’s Price Discrimination Algorithms,” AAAI/ACM Conference on Artificial Intelligence, Ethics, and Society, May 2021. <https://arxiv.org/abs/2006.04599>

¹³ Edward Ongweso Jr, “Civil Rights Groups Say Uber Actively Hurts Black People,” Vice News, September 23, 2020.

<https://www.vice.com/en/article/7kpn9z/civil-rights-groups-say-uber-actively-hurts-black-people>

¹⁴ Kyle Barron, et al, “The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb,” SSRN, March 4, 2020.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006832

¹⁵ RESJ Impact Statement for Expedited Bill 22-22, Office of Legislative Oversight, Montgomery County, Maryland, July 29, 2022.

<https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bille22-22.pdf>

¹⁶ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

¹⁷ Latinx is an ethnicity rather than a race; therefore, Latinx people are included in multiple racial groups throughout this impact statement unless where otherwise noted. Estimates for Native American and Pacific Islander constituents not available for all data points presented in impact statement.

Climate Assessment

Office of Legislative Oversight

Bill 22-23: Transient Lodging Facilities – Short-Term Residential Rental

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 22-23 will have no impact on the County's contribution to addressing climate change as the Bill is proposing changes to laws governing bed and breakfast and short-term residential rentals in order to ensure County law enforcement on these rentals.

BACKGROUND AND PURPOSE OF BILL 22-23

By County law, a 'bed and breakfast' is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests, while a 'short-term residential rental' is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.¹ Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfast and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:²

- Assign enforcement responsibility for bed and breakfast and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership.³ Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

ANTICIPATED IMPACTS

As Bill 22-23 is proposing changes to laws governing bed and breakfast and short-term residential rentals, OLO anticipates it will have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁴ OLO does not offer recommendations or amendments as Bill 22-23 is likely to have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ Montgomery County, Maryland, County Code § 54-1

² [Introduction Staff Report for Bill 22-23, Montgomery County Council, Introduced April 18, 2023.](#)

³ Ibid

⁴ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

RESIDENTIAL USES – SHORT TERM RESIDENTIAL RENTALS

ZTA 23-04 & BILL 22-23

Description

Bill 22-23 and ZTA 23-04 amend provisions around Short-Term Residential Rentals. Bill 22-23 reassigns licensing and enforcement responsibilities to the Department of Housing and Community Affairs, modifies the application process, increases penalties and clarifies the processes for challenges, suspensions, revocations and appeals. ZTA 23-04 limits the total number of overnight guests regardless of age, and removes owner-authorized agents or residents from applying for the use.

ZTA 23-03

Completed: 5-25-2023

MCPB

Item No. 6
6-1-2023

Montgomery County
Planning Board
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ZTA SPONSORS

Lead Sponsor: Council President Glass, at the request of the County Executive

INTRODUCTION DATE

April 18, 2023

REVIEW BASIS

Chapter 54

Chapter 59



Summary:

- Bill 22-23 and ZTA 23-04 will amend the provisions for Short-Term Residential Rentals.
- Bill 22-23 will reassign enforcement responsibility to DHCA; increase the maximum penalty; amend the application process; and clarify the processes for challenges, suspensions, revocations, and appeals.
- ZTA 23-04 will require the dwelling unit to be the property owner's primary residence, limit the number of overnight guests regardless of age, and remove language for owner-authorized agents.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-04, Residential Uses – Short-Term Residential Rental, and Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental were both introduced April 18, 2023 (Attachment A). A tentative Council Public Hearing date is set for both items on June 13, 2023. The ZTA and the bill were both introduced at the request of the County Executive.

These changes to existing county law are requested by the Executive Branch in part because there have been occasions of short-term residential rentals resulting in potential threats to public safety. These instances have highlighted shortcomings in the existing law and in its enforcement mechanisms. Some of the changes proposed by Bill 22-23 have a correlation to ongoing Council discussions on Bill 6-23 Sharing Economy Rental, such as which county agency is responsible for enforcement, the expected types of civil penalties, and general limitations around the prospective uses.

SECTION 2: BILL 22-23 AND ZTA 23-04 AS INTRODUCED

BILL NO. 22-23 AS INTRODUCED

Bill 22-23 amends the provision for Short-Term Residential Rentals. Bill 22-23 reassigns enforcement of short-term rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA). The bill also increases the maximum penalty, amends the application process, and clarifies the processes related to challenges, suspensions, revocations, and appeals.

Definitions

Under Section 54-1, Definitions, director means the Director of Department of Housing and Community Affairs, or the Director's designee in Article III (Bed and Breakfast and Short-Term Residential Rental).

Department means the Department of Health and Human Services in Article II (hotels), and Department means the Department of Housing and Community Affairs in Article III (Bed and Breakfast and Short-Term Residential Rental).

The definition of primary resident is also added, which is defined as a person who regularly resides at the location designated for legal purposes of obtaining a driver's license and filing tax returns or any other proof of occupancy approved by the Director.

The definition of short-term residential rental is amended to add “by the same individuals.” The proposed definition reads “means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days by the same individuals as allowed under Section 59-3.3.3. I of this Code.”

Authority of Executive to Regulate and License

Section 54-2 is amended to allow the Executive to adopt regulations, under method (3)¹, concerning the operation, maintenance, conduct, application, licensing, and license fees for a hotel, short-term residential rental, or bed and breakfast.

These changes allow the Executive to adopt regulations related to applications for hotel, bed and breakfasts, with the new addition of short-term residential rentals.

Violation of Article; Penalties

The penalty for a civil violation under Section 54-4 is a class A violation. The maximum penalty for a civil violation is increased to \$1,000 for an initial or repeat offense (increased from \$500 for an initial offense, and \$750 for a repeat offense). Each day a violation continues is a separate offense.

Application for License

Section 44-53 adds several new additions, modifications or clarifications to the application for license of a bed and breakfast and short-term rental. They include:

1. The applicant must be the owner of the dwelling unit where the bed and breakfast or the short-term residential rental is located (as modified from the owner or owner-authorized agent of the facility).
2. The applicant will maintain a registry of all guests at the bed and breakfast or the short-term residential rental, readily available for inspection by the department.
3. The applicant has not been found guilty of a violation of this Chapter in 36 months (changed from 12 months).
4. The number of registered guests in the short-term residential rental who are 18 years or older is limited to two per bedroom, provided that the total number of registered guests in the short-term residential rental must not exceed six, regardless of age. Currently, the total number of **overnight** guests in the short-term residential rental who are 18 years or older is limited to six, and the total number of overnight guests 18 years of older is limited to two per bedroom.
5. The dwelling unit will not be used as a short-term residential rental for no more than 120 days in a calendar year when the property owner is not physically present.

¹ Method 3 fee regulations are approved by the County Executive.

License Approval and Renewal

The Director of DHCA must review the application, including supporting documents provided by the applicant, for conformance with the chapter and all other applicable laws and regulations. This a change, where the current law requires the Director to accept the self-certification of the applicant after verifying compliance. The Department may also inspect the property.

This section (54-45) also changes the timeline requirements for license or license renewal approval or denial from 15 days to no earlier than 30 and no later than 60 days.

If the license is approved, written notice on the issuance of the license and procedure to file an appeal with the Board of Appeals is required to the parties in section 54-43(n), which includes abutting and confronting neighbors in a single-unit or attached unit, neighborhoods living across the hall and those that share a ceiling, floor, walls, with the applicant's unit in a multi-unit building, the municipality in which the bed and breakfast or short-term residential rental is located, an applicable homeowner's association, condominium, or housing cooperative.

Challenge to Applications

Within 30 days after the application is filed, a challenge may be filed with the Director by any party entitled to notice. Parties entitled to notice include abutting and confronting neighbors in a single-unit or attached unit, neighborhoods living across the hall and those that share a ceiling, floor, walls, with the applicant's unit in a multi-unit building, the municipality in which the bed and breakfast or short-term residential rental is located, an applicable homeowner's association, condominium, or housing cooperative.

Suspension and Revocation

The Director may suspend or revoke any license issued if the Director finds that the licensee:

1. Has violated this Chapter or any other applicable law or regulation.
2. Has operated, or permitted to be operated, the bed and breakfast or short-term residential rental in a manner that is disruptive to the general peaceful enjoyment of the community, dangerous to the health and safety of the community, or is a nuisance because of noise or other activity.
3. Has been convicted of violating any of the provisions of the Criminal Law Article of the Maryland Code listed in in Section 54- 20 while operating the bed and breakfast or short-term residential rental.

This is a change from the current law, where the license may be suspended for any applicant receiving at least three verified complaints as a violation of the license in 12-months.

Prior to suspension or revocation, the Director may require the holder of the license to appear before the Director and show cause as to why the license should not be suspended or revoked.

Appeals

Any person aggrieved by the issuance, renewal, denial, revocation or suspension of a bed and breakfast license or short-term rental license may appeal the Director's decision to the Board of Appeals within 30 days of the Director's decision.

ZTA NO. 23-04 AS INTRODUCED

ZTA 23-04 makes changes to the use standards for Short-Term Residential Rental, under Section 3.3.3. Accessory Residential Use, subsection I. Short-Term Residential Rental. The first three changes, in subsections b. and c. on ZTA lines 17, 19 and 22 remove the phrase 'or owner-authorized resident'. The current standards in subsection b. allow an eligible dwelling unit to be the owner's, or owner-authorized resident's primary dwelling. With this change, an eligible dwelling unit may only be the owner's primary residence. Subsection c. provides differing standards for how many days a dwelling may be rented based on whether the owner or authorized resident is present or not. The ZTA removed the 'authorized resident' language in keeping with the change to the previous section.

The final change in the ZTA modifies subsection e. on line 29 to remove 'who are 18 years or older'. Currently, there is a limit of up to six overnight guests who are 18 years or older, but otherwise no total limit on the number of guests. The effect of the ZTA caps total guests, regardless of age, at six.

SECTION 3: BILL & ZTA ANALYSIS AND RECOMMENDATIONS

BILL 22-23 ANALYSIS AND RECOMMENDATIONS

The proposed changes in Bill 22-23 effectively do several things:

1. Assigns enforcement responsibility to the Department of Health and Human Services for Article II (hotels) and to the Department of Housing and Community Affairs for Article III (bed and breakfasts and short-term residential rentals).

During the Council discussion on the creation of the initial Short-Residential Rental ZTA ([ZTA 17-03](#)) and bill ([Bill 2-16](#)), one of the discussion items was about the appropriate enforcement agency². At the time it was decided DHHS would do the enforcement because the agency is currently responsible for licensing and enforcement related to transient lodging and similar facilities. However, Planning staff has no issue with updating the enforcement agency to DHCA since it already handles enforcement for

² http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=7407&meta_id=142911

long-term rental housing. It seems appropriate to have DHCA handle enforcement for short-term rentals and bed and breakfasts as well.

2. Increases the maximum penalty for a violation of Article III of Chapter 54.

The maximum penalty under the proposed bill is increased to \$1,000 for an initial or repeat offense, even though it is a Class A violation. Currently, a Class A violation for a civil violation maximum penalty is \$500 for an initial offense, and \$750 for a repeat offense. Planning staff does not understand why the maximum penalty would be higher than what is already in the code for a Class A violation ([Sec 1-19. Fines and penalties](#)) or higher than [the penalty for failing to obtain a rental license](#). Staff supports keeping the maximum penalty for the violation consistent with what is already in the code and what is already the penalty for failing to obtain a rental license, which \$500 for an initial civil violation maximum penalty, and \$750 for a repeat offense.

3. Amends the application process for a bed and breakfast or short-term residential rental license.

One of the biggest changes proposed in the bill is the removal of “owner-authorized agent of the facility” from those that can apply for a license. Planning staff does not support this change. As noted below in the ZTA analysis, this does not allow short-term rentals to be offered by renters who are authorized to do so by their landlord. Previously, there was a noticing requirement of the owner of the unit or the owner’s rental agent if the applicant is not the owner. Staff believes this noticing is sufficient and should be added back in to allow renters who have the approval of their landlord to have a short-term rental.

The new changes also clarify that the dwelling unit will not be used as a short-term residential rental for more than 120 days (about 4 months) in a calendar year when the property owner is not present. Planning staff supports this recommendation, as this requirement is consistent with what is already in the Zoning Code.

Also changed is that the number of registered guests in the short-term residential rental who are 18 years or older is limited to two per bedroom, provided that the total number of registered guests in the short-term residential rental must not exceed six, regardless of age. Currently, the total number of **overnight** guests in the short-term residential rental who are 18 years or older is limited to six, and the total number of overnight guests 18 years or older is limited to two per bedroom, with no limits on guests under 18 years of age.

Planning staff does not support the recommended changes, as it views the changes as potentially too restrictive to families traveling to the county. Staff would support amending this section of the bill to continue limiting adults to no more than six and cap the total rental size based on two guests of any age per bedroom. A second option would be to provide some type of exemption for parties larger than six from the same immediate family unit.

4. Clarifies the process for challenging an application for bed and breakfast or short-term residential rental license.

Planning staff supports the recommended changes, which would change the license approval process from self-certification to a review by the Director of DHCA and allow inspection.

5. Clarifies the process for suspending or revoking a bed and breakfast or short-term residential rental license.

Planning staff supports the recommended changes, which provide clear guidance on suspension and revocation of a license.

6. Clarifies the process for appealing the Director's decision on a bed and breakfast or short-term residential rental license to the Board of Appeals.

Planning staff supports the recommended change, which would allow for the appeal of DHCA's decision to the Board of Appeals within 30 days of the Director's decision.

ZTA 23-04 ANALYSIS AND RECOMMENDATIONS

While the changes proposed in ZTA 23-04 are minor, Planning staff has some concerns. The first change discussed was the three instances where 'or owner-authorized resident' is being deleted from the code. This effectively cuts out 35% percent of the households in the county from being able to participate in Short Term Residential Rentals because they are renter rather than owner occupied dwellings. Planning staff also note that rental units in the county are disproportionately non-white, setting up a racial equity issue. While it is likely that most residential leases contain restrictions on further sub-letting, some may not, and may even have express permission from the property owner. As such, Planning staff does not support a blanket prohibition on removing owner-authorized residents, and instead recommends amendments in the accompanying Bill to better define how a renter must receive authorization from the landlord, in addition to setting up clear parameters for enforcement should that become necessary.

The other concern is the change in the number of allowed Short Term Residential Rental tenants. The current code limits rentals to two adults per bedroom with a maximum of six adults and places no limits on the number of children. Planning staff understands there may be issues related to crowding and nuisances when large numbers of adults share a property, but is concerned the proposed change to limit total guests to six may be too restrictive for single, larger family units traveling together. Staff would support amending this section to continue limiting adults to no more than six, and cap the total rental size based on two guests of any age per bedroom. A second option would be to provide some type of exemption for parties larger than six from the same immediate family unit.

SECTION 4: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to transmit a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-04 is attached in Attachment B. The Climate Assessment anticipates no changes to greenhouse gas emissions, carbon sequestration, community resilience or adaptive capacity as a result of the ZTA.

RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

Planning staff has included the RESJ statement from the Office of Legislative Oversight (OLO) as Attachment C to this report. OLO could not discern the net impact of ZTA 23-04 on RESJ in the county because data on the demographics of both existing rental providers and existing renters are unavailable.

SECTION 5: CONCLUSION

Planning staff recommends that the Planning Board support Bill 22-23 and ZTA 23-04 with recommended modifications. These modifications include:

1. Keep the maximum penalty for a violation consistent with County Code for a Class A violation (\$500 for an initial civil violation maximum penalty, and \$750 for a repeat offense).
2. Revert the language back to allow for owner-authorized agents of the facility, to allow authorized renters to have a short-term rental.
3. Continue limiting adult guests to no more than six and cap the total rental size based on two guests of any age per bedroom. An alternative is to provide an exemption for parties larger than six from the same immediate family unit.

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 23-04: RESIDENTIAL USES – SHORT-TERM RESIDENTIAL RENTAL

SUMMARY

The Office of Legislative Oversight cannot discern the net impact of Zoning Text Amendment 23-04: Residential Uses – Short-Term Residential Rental on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 23-04

The purpose of ZTA 23-04, Residential Uses - Short-Term Residential Rental, is to restrict who can offer short-term residential rentals in the County and the number of guests that can utilize such rentals. If adopted, ZTA 23-04 would enact three changes to the Zoning Ordinance:³

- Allow only the property owners of a primary residence to offer their dwelling unit as a short-term rental, removing “or owner-authorized resident” as an option.
- Limit use of dwelling units as a short-term residential rental for a maximum of 120 days only if the property owner is not present in the residence, removing the inclusion of owner-authorized resident as an option.
- Limit the number of overnight guests to six persons of any age.

ZTA 23-04 was introduced on April 18, 2023. Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, seeking to reassign enforcement of short-term rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA) and to increase penalties for not complying with the County’s short-term rental regulations was also introduced on April 18, 2023.

ANTICIPATED RESJ IMPACTS

OLO cannot determine the RESJ impact of ZTA 23-04 because demographic data regarding the providers and the users of short-term residential rentals in the County are not available.

RESJ Impact Statement

Zoning Text Amendment 23-04

CAVEATS

Two caveats to this RESJ impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

² Ibid

³ Ndou, Livhu. Memorandum to Montgomery County Council, Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental Zoning Text Amendment 23-04, Residential Uses – Short-Term Residential Rental, April 18, 2023
https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230418/20230418_3-4A.pdf



CLIMATE ASSESSMENT FOR ZTA 23-04, RESIDENTIAL USES – SHORT-TERM RESIDENTIAL RENTAL

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the climate assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the County's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs at the county level. The scope of the climate assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas (GHG) emissions, and how actions proposed by master plans and ZTAs could improve the County's adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

The regulatory framework for short-term residential rentals was established in a bill and ZTA that were adopted by the County Council in 2017. The County Executive, with recommendations from the Department of Health and Human Services (DHHS) and the Department of Housing and Community Affairs (DHCA), proposes substantial revisions that will address difficulties in enforcement since the passage of the 2017 bill and ZTA. ZTA 23-04 will amend the provisions for short-term residential rentals by requiring the dwelling unit to be the property owner's primary residence, limiting the number of overnight guests regardless of age, and removing language for owner-authorized agents. None of these changes alter the use in ways that would have significant climate-related impacts.

BACKGROUND AND PURPOSE OF ZTA 23-04

ZTA 23-04 was introduced with companion Bill 22-23 at the request of the County Executive to refine and generally strengthen regulation around short-term residential rental properties. There have been occasional short-term residential rentals that got out of hand and become potential threats to public

safety. The changes in the ZTA are intended to further limit both who can host a rental, and who can stay at a rental.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

CLIMATE-RELATED VARIABLES

Greenhouse Gas-related Variables:

None.

Adaptive Capacity-Related Variables:

None.

OTHER VARIABLES

None.

ANTICIPATED IMPACTS

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

ZTA 23-04 will amend the provisions for Short-Term residential Rentals by requiring the dwelling unit to be the property owner's primary residence, limiting the number of overnight guests regardless of age, and removing language for owner-authorized agents. Montgomery Planning anticipates none of these changes to alter the use in ways that would have significant greenhouse gas emission or carbon sequestration/drawdown-related impacts.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

Montgomery Planning anticipates that ZTA 23-04 will result in insignificant to no impact on community resilience and adaptive capacity.

RELATIONSHIP TO GHG REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-04 does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County's Climate Action Plan.

RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-04 because it will result in insignificant to no impact on the County's goals regarding greenhouse gas emissions and sequestration and on community resilience and adaptive capacity.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-04 was prepared using the methodology (tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*](#).