

Racial Equity and Social Justice (RESJ)

BILL 3-21: SPECIAL TAXING AREA LAWS- SILVER SPRING BUSINESS IMPROVEMENT DISTRICT- ESTABLISH

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 3-21 to *possibly* have a negative impact on racial equity and social justice depending on the impact of the proposed Silver Spring Business Improvement District on small businesses owned by entrepreneurs of color and located within the Silver Spring Urban District.

BACKGROUND

On January 12, 2021, the Council introduced Bill 3-21 in response to an application submitted by local property owners in Downtown Silver Spring to establish a privately run, business improvement district (SS BID) to manage their enhanced services.¹ The application from local property owners excludes property owners and business located in Fenton Village. As such, the SS BID would serve 171 of the 212 businesses served by the Silver Spring Urban District.²

Of note, the Silver Spring Urban District (SSUD) is a County-operated entity that provides enhanced public services to the Central Business district in Downtown Silver Spring.³ It seeks to maintain “a clean, safe and attractive environment to promote a vibrant social and business climate to support long-term economic viability and vitality.”⁴ SSUD services include: ambassadorship (“Red shirts”), security, streetscape maintenance, marketing, and special events.⁵ The SSUD also provides social services to assist homeless and other vulnerable populations in Downtown Silver Spring.⁶ The Silver Spring Parking Lot District serves as the primary source of revenue for SSUD followed by special tax revenue and fees from Downtown Silver Spring businesses and County revenue from the General Fund.⁷

Bill 3-21 seeks to form a business improvement district for a subset of the businesses included in the SSUD to deliver services aimed at promoting the economic growth of Downtown Silver Spring.⁸ Several of the functions proposed for the SS BID overlap with the services delivered by the SSUD. As noted by the International Downtown Association, business improvement districts generally have three key features:⁹

- **They create public districts.** Business improvement districts (BID) are publicly-authorized by governments under enabling statutes. As public districts, they rely on public funding that can include mandatory fees levied by the government on businesses and/or patrons on behalf of the BID.
- **They are managed by non-profits.** Government-collected revenues are administered by a nonprofit, which often has substantial authority to decide the level of funding, how funds will be expended, and the level of services provided. A non-profit's authority may be limited by federal, state and local law.
- **They perform three designated functions** - cleaning, security and marketing.

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Of note, the SSUD operates as a public district that delivers cleaning, security and marketing services for Downtown Silver Spring. OLO Report 2015-7, Case Studies of Local Business and Community Districts, also finds that BIDs can offer additional services to promote the economic development of urban cores that can include public space management, social services and business recruitment.¹⁰ The SSUD currently offers public space management services and social services for homeless persons and other vulnerable populations.

Bill 3-21 seeks to create a Silver Spring business improvement district that will deliver three sets of services: cleaning (place management), public space management, and marketing (place branding).¹¹ It remains unclear what consequence the development of a SS BID may have on the SSUD. While the functions of the SS BID directly overlap with the SSUD, the SS BID does not indicate that it will deliver two sets of services currently offered by the SSUD: security and social services. The SS BID proposal also excludes one business area included in the SSUD: Fenton Village.

Altogether, Bill 3-21 would make the following modifications to County Law:¹²

- Establish a business improvement district in Silver Spring;
- Establish guidelines for the District and authorize a district corporation to manage the District;
- Authorize a tax on nonexempt property located in the District to finance the operations of the district corporation; and
- Generally amend the laws governing a business improvement district in Silver Spring.

ANALYSIS OF DEMOGRAPHIC DATA

Understanding the impact of Bill 3-21 on racial equity and social justice requires a review and analysis of available data disaggregated by race and ethnicity on the following:

- Businesses that will participate in the SS BID
- The stakeholders that will govern SS BID operations

If the SS BID will replace the SSUD, then comparing the changes in participating businesses, governance, and staffing from the shift from the SSUD to the SS BID is warranted. It remains unclear, however, whether the creation of a SS BID will necessitate the elimination of the SSUD. It seems plausible that the creation of the SS BID will reduce the scope of the SSUD, particularly since the SS BID would rely on some funding sources currently used to fund the SSUD (e.g. parking lot district revenue). Given the uncertainty of how the SS BID would impact the SSUD, this section offers an analysis of available demographic data to consider two questions:

- What is the potential impact of Bill 3-21 on RESJ in the County if the SS BID replaces the SSUD?
- What is the potential impact of Bill 3-21 on RESJ in the County if the SS BID is offered in addition to the SSUD?

Participating Businesses. If the SS BID replaces the SSUD, this could reduce racial equity and social justice in the County because Fenton Village businesses could lose essential services currently offered by the SSUD. The SS BID, as proposed, carves out a portion of Fenton Village properties from that are currently serviced by the SSUD.¹³ Business owners of color (Black, Latinx, Asian, and Other) account for 80 percent of Fenton Village businesses¹⁴ whereas business owners of color accounted for about half of all businesses (with or without employees) in the County in 2012.¹⁵

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Alternatively, if the SS BID does not replace the SSUD, the impact of Bill 3-21 on business owners of color would depend on the racial and ethnic makeup of the firms served by the SS BID, their size in terms of sales and profits, and the affordability of increased special district taxes on their businesses participating in the SS BID. If businesses of color benefit from the additional services of the SS BID more than White-owned businesses, inequities among businesses by race and ethnicity could be narrowed. However, if White-owned businesses benefit more from the SS BID than businesses of color, inequities among businesses by race and ethnicity would widen, undermining racial equity and social justice in the County.

Public District Governance. If the SS BID replaces the SSUD, this could reduce racial equity and social justice in the County by shifting the governance of the public district for Downtown Silver Spring from a broad group whose representatives include stakeholders representing residents to a narrower group that only includes property and business owners.¹⁶ All eight members of the proposed board of directors for the SS BID would represent commercial property and business owners.¹⁷ Bill 3-21 also grants board members with greater property tax assets more voting power than their peers who have fewer property tax assets (e.g. smaller businesses and property owners).

The exclusion of residents from the SS BID board, and the concentration of voting power for board members with the largest assets, shifts the power of public district decision-making from a stakeholder group representing diverse culture and income backgrounds to a stakeholder group that predominantly represents the interests of medium and large businesses. Granting greater voting power to board members with larger businesses also shifts decision-making power from People of Color-owned businesses to White-owned businesses as the later on average are larger than the former.

For example, available data on local business owners finds that: Black, Latinx, Asian, and Other person-owned firms accounted for half of all Montgomery County businesses in 2012, but only 8 percent of total sales in the County.¹⁸ The racial and ethnic gap in business ownership versus sales is driven in part by the significant difference in the size of firms by race and ethnicity. In 2012, White firms averaged over \$2 million in annual sales compared to \$286,000 for Asian-owned firms, \$110,000 for Black-owned firms, and \$96,000 for Latinx-owned firms.¹⁹

If the SS BID does not replace the SSUD, the consequences of the proposed governance structure of the SS BID on racial equity and social justice in the County is less severe, but still potentially problematic as there will be competing urban business districts with overlapping missions and with different lines of authority and community representation. With two entities offering similar services, it will be difficult for business owners and the public at large to hold either entity accountable for services.

ANTICIPATED RESJ IMPACTS

The analysis of available data suggests that if the SS BID proposed under Bill 3-21 replaces the SSUD, it could reduce:

- Urban district services for Fenton Village businesses where business owned by People of Color account for 80 percent of local businesses; and
- Opportunities for community and small business input on County-funded operations.

As such, OLO anticipates that if Bill 3-21 eliminates the SSUD, it could negatively impact racial equity and social justice in the County. If Bill 3-21 does not eliminate the SSUD or diminish urban district services for Fenton Village businesses, the potentially negative impact of Bill 3-21 on racial equity and social justice may be tempered.

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Nevertheless, OLO still anticipates a net negative consequence of Bill 3-21 on racial equity and social justice in the County as the SS BID is primarily designed to benefit larger businesses in the Silver Spring urban core. Available data suggests that White entrepreneurs primarily own such businesses. If the SS BID works as intended and promotes economic development primarily for larger business and property owners, this intended outcome could widen the gap in business receipts by race and ethnicity in Montgomery County whether the SSUD continues or not.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis rely on several information sources, including Census data, OLO Reports, the Silver Spring BID application, the Montgomery County Government Operating Budget, and County Council packets. OLO also reviewed several sources to understand trends and disparities in business ownership by race and ethnicity locally and nationally. These include:

- Minority-owned businesses – COVID-19 Recovery Outlook, Office of Legislative Oversight²⁰
- Racial Equity Profile, Montgomery County, Office of Legislative Oversight
- Brookings: Coronavirus economic relief cannot neglect Black-owned business²¹
- Bridging the Wealth Gap, Small Business Growth, The United States Conference of Mayors and the Council on Metro Economies and the New American City²²
- A Blueprint for Revamping the Minority Business Development Agency, Center for American Progress²³

OLO also spoke with stakeholders and visited the websites of Montgomery County Economic Development Corporation for information and the websites of several entrepreneurs of color groups that include the Hispanic Chamber of Commerce for Montgomery County and the Maryland Black Chamber of Commerce.²⁴

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequalities are warranted in developing RESJ impact statements.²⁵ Based on requests made by the Urban District Advisory Committee,²⁶ and the RESJ review of Bill 3-21, this statement offers three considerations for recommended amendments to Bill 3-21 as follows:

- Seek the support and inclusion of Fenton Village businesses in the SS BID in case the SSUD is disbanded so that they do not lose access to the urban district services that they currently receive;
- Add community participation requirements to the BID board that replicate the broad-representation of 11 member SSUD Advisory Committee that includes citizens, residents and small and large business owners;
- If the SSUD is disbanded, require the SS BID to offer social services, including funding the crisis intervention team to assist with homeless and other vulnerable individuals. If this is determined to be beyond the scope of the SS BID, the County should reserve revenue from the SSUD to fund the provision of such services via the Department of Health and Human Services directly and through contracts with community-based providers.

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OLO also notes that Bill 3-21 remains silent on the need to increase economic development opportunities for business and property owners of color within Downtown Silver Spring or the County at large. If the Council decides to propose legislation aimed at narrowing inequities among businesses by race and ethnicity, OLO encourages the Council to work in partnership with Black and Latinx business owners, the Montgomery County Economic Development Corporation, and other key stakeholders and to consider enacting best practices for assisting entrepreneurs of color. These may include:²⁷

- Collecting and analyzing data on local business disparities by race and ethnicity, including data collected by financial institutions required under the Dodd-Frank Act.
- Improving access to properly structured credit opportunities for entrepreneurs of color.
- Helping entrepreneurs of color access credit and other services particularly among institutions with a history of supporting minority-owned business, such as Community Development Financial Institutions and credit unions.
- Improving programs aimed at enabling entrepreneurs of color to access and succeed at securing contracting opportunities.
- Expanding funding for targeted business development assistance for growth-oriented minority firms.
- Considering short-term strategies for forgiving or reducing the student debt of entrepreneurs that create new firms.

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 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 Dr. Theo Holt, RESJ Performance management and Data Analyst, drafted this RESJ statement with assistance from Dr. Elaine Bonner-Tompkins, OLO Senior Legislative Analyst.

¹ Montgomery County Council, Bill 3-21, Special Taxing Area Laws- Silver Spring Business Improvement District- Establish, Introduced January 12, 2021, Montgomery County, Maryland.

² Ibid

³ Silver Spring Urban District <https://www.silverspringdowntown.com/go/silver-spring-urban-district>

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Urban Districts, Recommended FY21 Budget, Montgomery County, Maryland; Gene Smith, FY20 Operating Budget: Urban Districts, Memorandum to Montgomery County Council Planning, Housing and Economic Development Committee, May 1, 2019 https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20190503/20190503_PHED1.pdf

⁸ Bill 3-21

⁹ Craig Howard and Stephanie Bryant, Case Studies of Local Business and Community Districts, February 2015, Office of Legislative Oversight, Montgomery County Maryland. https://www.montgomerycountymd.gov/OLO/Resources/Files/2015_Reports/OLO_Report_2015-7.pdf

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¹⁰ Ibid

¹¹ Downtown Silver Spring Business Improvement District Application

¹² Ibid

¹³ Montgomery County, Maryland, BID vs. Urban District Map. [file:///C:/Users/Downloads/BID_vs_UD_boundaries%20\(1\).pdf](file:///C:/Users/Downloads/BID_vs_UD_boundaries%20(1).pdf)

¹⁴ Fenton Village Survey, Fenton Village Inc. Unpublished document and Downtown Silver Spring Business Improvement District Application.

¹⁵ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, July 2019, Office of Legislative Oversight, Montgomery County, Maryland.

¹⁶ Downtown Silver Spring Business Improvement District Application and Silver Spring Regional Service Center, Silver Spring Urban District, Montgomery County, Maryland <https://www.montgomerycountymd.gov/silverspring/boardscommittees/uac/index.html>

¹⁷ Fenton Village Survey

¹⁸ Racial Equity Profile Montgomery County

¹⁹ Ibid.

²⁰ "COVID-19 Recovery Outlook: minority Businesses"

²¹ Andre M. Perry and David Harshbarger, "Coronavirus economic relief cannot neglect Black-owned business," The Brookings Institution, April 2020. <https://www.brookings.edu/blog/the-avenue/2020/04/08/coronavirus-economic-relief-cannot-neglect-black-owned-business/>.

²² "Bridging the Wealth Gap"

²³ "A Blueprint for Revamping the Minority Business Development Agency"

²⁴ MCEDC, "Montgomery County Economic Development Corporation," <https://thinkmoco.com/>. Hispanic Chamber of Commerce, <https://hccmc.org/>. Maryland Black Chamber of Commerce, <https://www.marylandbcc.org/>.

²⁵ Montgomery County Council, Bill No. 27-19 Racial Equity and Social Justice, Montgomery County, MD.

²⁶ SSUD Advisory Committee, Letter for additional funding, Montgomery County, Maryland.

<https://www.montgomerycountymd.gov/silverspring/Resources/Files/pdfs/uac/062320SSUDACLetterFY21Budget.pdf>

²⁷ "Bridging the Divide: How Business Ownership Can Help Close the Racial Wealth Gap"