

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 4-22: HUMAN RIGHTS AND CIVIL LIBERTIES — PUBLIC ACCOMMODATIONS — GENDER INCLUSIVE RESTROOMS

SUMMARY

The Office of Legislative Oversight anticipates that Bill 4-22 requiring County-office buildings and public accommodations to convert single-user restrooms to gender-inclusive restrooms could narrow health inequities by gender identity, race, ethnicity, and disability. As such, OLO anticipates a favorable impact of Bill 4-22 on racial equity and social justice.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of racial equity and social justice (RESJ) impact statements 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, 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 BILL 4-22

“As more people start to identify as transgender and non-conforming, access to public facilities free from harassment and discrimination has become a pressing concern.”³ The purpose of Bill 4-22 is to increase restroom access to persons regardless of gender, gender identity, or expressions as well as to increase restroom access to people with disabilities and children who rely on caregivers, especially from different genders.

Bill 4-22 requires single-user restrooms located in public accommodations or County-owned buildings to provide signage that identifies single-user restrooms as all-gender restrooms.⁴ The Bill would also require new buildings to include single user gender-inclusive restrooms. The Bill, however, would not require existing public accommodations without single-user restrooms to establish gender inclusive restrooms. The Bill also exempts private restrooms in residences, hospitals, hotels, motels, inns and other establishments that provide lodging for transient guests and restrooms that are only accessible from a private room or office.

Bill 4-22 was introduced to the Council on February 15, 2022. Bill 4-22 is consistent with Bill 23-07, Non-Discrimination – Gender Identity, that established gender identity as a protected class under the County’s anti-discrimination law. Under Bill 4-22, the Department of Permitting Services, the Department of Health and Human Services, or any other agency designated by the Chief Administrative Officer would be responsible for enforcing its requirements. Violation of Bill 4-22’s requirements would be considered a Class A violation.

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BATHROOMS, GENDER INCLUSIVITY, AND SOCIAL INCLUSION

The Haas Institute notes “restroom access has played a central role in many significant civil rights movements.”⁵ Analogous to the desegregation of public pools and beaches, they note the resistance to desegregate public restrooms also figures prominently in the struggle for civil rights for African Americans. Overall, they find that bathroom access has played a key role in discrimination faced by many marginalized groups. They also find that “fears around diverse bathroom use speak to larger visions of society as it serves as a site for the regulation of social inclusion.”⁶ The consequences of gendered public restrooms is significant, especially for transgender and gender non-conforming persons. Researchers have found that transgender and gender non-conforming persons trying to access public restroom facilities that correspond with their gender identity regularly experience exclusionary practices, intimidation, harassment and on occasion, overt violence.⁷ Further, additional studies demonstrate that race and ethnicity can contribute to incidents of discrimination and harassment among transgender and non-binary persons.⁸

As a result of increased risk of harassment and violence, transgender and non-binary persons can experience anxieties over public bathroom use that increase their risk for health issues such as urinary tract infections and mental health concerns.⁹ Best practices for mitigating this risk to ensure that all people have access to public bathroom facilities that are free of harassment and intimidation is to create gender-inclusive bathrooms.¹⁰ Gender-inclusive restrooms can also benefit parents, persons with disabilities, the elderly and anyone else who might require assistance from a caretaker and thus benefit from a larger and more private restroom space.¹¹ Collectively, populations that could benefit from Bill 4-22 account for a significant share of County residents since:

- Parents with children under the age of 18 account for 32 percent of County residents;¹²
- People over the age of 65 account for 16 percent of County residents;¹³
- Persons with disabilities account for 8 percent of County residents;¹⁴ and
- Transgender people likely account for 2 percent of Generation Z adults in the County born between 1997 and 2003,¹⁵ and up to one percent of all adults in the County.¹⁶

ANTICIPATED RESJ IMPACTS

OLO anticipates a favorable impact of Bill 4-22 on diminishing health inequities by gender identity and disability status as it will expand the number of gender-inclusive restrooms in the County. Expanding the number of gender-inclusive public restrooms will confer health benefits to users and demonstrate the County’s commitment to decreasing barriers, encouraging full community inclusion, and strengthening dignity and personal safety.¹⁷

In addition to transgender and non-binary persons, OLO anticipates that Bill 4-22 will benefit parents, persons with disabilities, and older residents. The Bill could also narrow racial and social inequities as transgender and non-binary persons of color are often at greatest risk for discrimination, harassment, and violence when accessing gendered public restrooms. As such, OLO anticipates that Bill 4-22 will advance racial equity and social justice in Montgomery County.

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 inequities are warranted in developing RESJ impact statements.¹⁸ OLO finds that Bill 4-22 is likely to advance racial equity and social justice. As such, this RESJ statement does not offer recommendations.

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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

Elaine Bonner-Tompkins, OLO Senior Legislative 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 Eric Peterson, “Creating Bathroom Access and a Gender Inclusive Society” Haas Institute for a Fair and Inclusive Society at U.C. Berkeley, Policy Brief, September 2018

⁴ Montgomery County Council, Bill 4-22, Human Rights and Civil Liberties – Public Accommodations – Gender Inclusive Restrooms – Introduced, February 15, 2022

⁵ Peterson

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² American Community Survey, 2019 1 Year Estimates, Table S0201

¹³ Ibid

¹⁴ Ibid

¹⁵ Estimates from 2020 National Gallup Poll based on 15,000 interviews, cited by Samantha Smith, “1 in 6 Gen Z adults are LGBTQ. And this number could grow.” The Washington Post, February 24, 2021

¹⁶ Calculation based off of 2020 National Gallup Poll finding (cited by Julianne McShane, “A record number of U.S. adults identify as LGBTQ. Gen Z is driving the increase.” The Washington Post, February 17, 2022) that 7.1 percent of adults in 2020 identify as LGBTQ. Since 10 percent of Gen Z LGBTQ adults identify as transgendered, then OLO calculate that 10 percent of all LGBTQ adults also identify as transgender (0.7 percent of adults).

¹⁷ McCartney-Green

¹⁸ Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established