

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.

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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?

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- 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.

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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.

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>

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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.