

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED TENANT DISPLACEMENT – RIGHT OF FIRST REFUSAL TO BUY BILL 38-23: RENTAL HOUSING – AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 38-23 could have a positive impact on racial equity and social justice (RESJ) in the County as it codifies a recognized promising practice for preserving and creating affordable housing into County law.

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 EXPEDITED BILL 38-23

The right of first refusal is defined as a contractual right that allows an interested party, like a local government agency, the first right to purchase a property when it is put up for sale. Government agencies can use the right of first refusal to acquire private property for sale as long as it matches the price of any third-party offer.³ Governments often use this power to preserve affordable housing and prevent the conversion of subsidized rental properties for another use if it is sold to another buyer.⁴

According to County law, a rental housing owner must offer the County, the Housing Opportunities Commission (HOC), and any tenant organization the right to buy the property before selling it to another party, barring certain exceptions.⁵ If enacted, Bill 38-23 would:⁶

- Allow the County Executive to designate a qualified entity that may exercise the right of first refusal.
- Establish basic criteria for the Department of Housing and Community Affairs (DHCA) to qualify entities for a right of first refusal assignment, as well as a requirement for the County Executive to adopt regulations under Method (3) establishing a process for qualifying and selecting entities to receive a right of first refusal assignment.
- Place a 5 percent cap on the deposit an owner can charge if the right of first refusal is exercised, which according to the County Executive, is consistent with industry norms.⁷

The County Executive states that assigning the right to purchase a property to a qualified entity after exercising the right of first refusal would “allow the County to use its funds to preserve or create long-term affordability without the need to reserve tens of millions of dollars solely to purchase and then transfer properties to affordable housing developers.”⁸

Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments, was introduced by the Council on behalf of the County Executive on September 26, 2023.

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In September 2021, OLO published a RESJIS for Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees.⁹ Please refer to this RESJIS for detailed background on racial segregation in housing and the racial wealth divide.

HOUSING INSECURITY, AFFORDABLE HOUSING, AND RACIAL EQUITY

Housing Insecurity. Local data demonstrates that Black and Latinx households in the County are especially housing insecure. For instance:

- In 2022, 59 percent of Black renters and 56 percent of Latinx renters were cost-burdened (expending 30 percent or more of income on rent), compared to 47 percent of White renters and 42 percent of Asian renters.¹⁰
- Among COVID-19 Rent Relief Program recipients, 45 percent were Black and 23 percent were Latinx, while 8 percent were White and 2 percent were Asian or Pacific Islander.¹¹
- Among single adults experiencing homelessness in 2022, 60 percent were Black, 27 percent were White, 8 percent were Native American, and 5 percent were Asian or Pacific Islander.¹²
- Among families experiencing homelessness in 2022, 73 percent were Black, 22 percent were White, 3 percent were Native American and 3 percent were Asian or Pacific Islander.¹³

Racial disparities in housing security are reflective of the legacies of housing segregation and the racial wealth divide, established over centuries by government policies and practices such as:^{14,15}

- A failure to fully implement Reconstruction and provide land to Black people who had been held in bondage;
- Enacting exclusionary zoning policies, such as single-family zoning, designed to segregate communities;
- Creating large federal programs that supported homeownership for working- and middle-class White families while explicitly excluding Black families of similar means;
- Using racial restrictive covenants to prevent Black people from buying homes owned by White people.
- Tolerating violence and hostility from White residents towards Black residents after attempts to integrate neighborhoods; and
- Enabling predatory home financing in Black, Indigenous, and Other People of Color (BIPOC) communities, further stripping BIPOC of wealth and their homes.

Government actions establishing segregation and the racial wealth divide were prevalent nationwide, including in Montgomery County. For instance, a Planning Department study of 409 Home Owner's Loan Corporation (HOLC) loans made in the County for the Mapping Segregation Project found that 97 percent of loans (400 loans) were made to White residents, while less than 2 percent of loans (7 loans) were made to Black residents.¹⁶ The Project has also found widespread use of racial restrictive covenants in the Downcounty Planning Area.^{17,18} Further, the draft Metropolitan Washington Fair Housing Plan observed that "Montgomery County's zoning laws are a significant impediment to fair housing" as they only "allow apartments on less than two percent of county land and more than one-third of the county is restricted to single family homes."¹⁹

Affordable Housing. The nationwide shortage in affordable housing exacerbates housing insecurity for BIPOC. According to the National Low Income Housing Coalition's (NHLHC) 2023 "The Gap" report on the shortage of affordable homes:²⁰

- Extremely low-income renters in the U.S. face a shortage of 7.3 million affordable and available rental homes, resulting in only 33 affordable and available homes for every 100 extremely low-income renter households.²¹

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- Black, Latinx, and Indigenous households are disproportionately extremely low-income renters and are disproportionately impacted by this shortage.

In 2019, the Council unanimously approved a resolution supporting the Metropolitan Washington Council of Governments' (MWCOG) targets to address the regional housing shortage, which called for the County to produce 41,000 housing units by 2030, 75 percent of which should be affordable to low- and middle-income households.^{22,23}

Several policy organizations – including Local Housing Solutions, ChangeLab Solutions, Grounded Solutions Network, and the Poverty & Race Research Action Council – have identified right of first refusal laws as a tool for local governments to preserve and create affordable housing.^{24,25,26,27} Local Housing Solutions notes that communities extending this right to tenant associations could consider creating “complementary programs that help tenant associations manage the purchase and operation of a housing development” as successfully exercising the right of first refusal often requires substantial financial and technical assistance.²⁸

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 38-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the demographics of renters, the constituents who would most benefit from the preservation or creation of affordable rental units. Data summarized in Table 1 suggests that BIPOC constituents could disproportionately benefit from the Bill. Black and Latinx households are overrepresented among renter households. Native American and Pacific Islander households are proportionately represented, while White and Asian households are underrepresented.

Table 1: Percent of All Households and Renter-Occupied Households by Race and Ethnicity, Montgomery County, MD

Race and ethnicity ²⁹	All Households	Renter-Occupied Households
Asian	14.4	12.2
Black	18.0	30.0
Native American	0.3	0.3
Pacific Islander	0.1	0.1
White	55.0	40.5
Latinx	14.3	18.8

Source: Table S2502, 2021 American Community Survey 5-Year Estimates, Census Bureau.

Further, poverty data summarized in Table 2 suggests Black and Latinx constituents are overrepresented among lower-income constituents in the County that could particularly benefit from the preservation or creation of affordable housing.

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Table 2: Percent of Population Below by Poverty Level by Race and Ethnicity, Montgomery County, MD

Race and ethnicity	Percent Below Poverty Level
Overall	7.9
Asian	7.9
Black	14.3
White	4.3
Latinx	11.2

Source: Table S2502, 2022 American Community Survey 5-Year Estimates, Census Bureau.

For the second question, OLO considered how the Bill could address racial inequities and disparities in housing insecurity. As described in the previous section, right of first refusal laws have been highlighted as a promising policy for preserving and creating affordable housing.

Of note, the County's Right of First Refusal (ROFR) program has been used sparingly. From 2015 to 2022, while ROFR notices were received for 343 rental properties, the County exercised the ROFR 12 times.³⁰ In a recent conversation with OLO, the DHCA Director noted that in his nine-month tenure, one limiting factor for exercising the ROFR has been insufficient funds for purchasing rental properties that are up for sale. The Director shared that for FY24, DHCA currently has \$9 million dollars not committed to affordable housing projects and programs that the County could use to exercise ROFR. This budget has made the County unable to consider exercising ROFR, as individual rental properties DHCA could purchase for resale to affordable housing partners are often more costly. The Director argues that allowing the County to assign the ROFR to a qualified affordable housing partner, as proposed in Bill 38-23, would eliminate the funding barrier for DHCA and make the County's use of the ROFR more feasible.³¹

Taken together, OLO anticipates Bill 38-23 could have a positive impact on RESJ in the County as it codifies a promising practice for preserving and creating affordable housing into County law. OLO recognizes the changes proposed by the Bill will not guarantee that affordable housing will be preserved or created as this will ultimately depend on the willingness of housing developers to apply for the ROFR to acquire rental properties that are up for sale. However, judging by the County's sparing use of ROFR in recent years and the County's current barriers to exercising this right, the changes could help to make this policy more viable than it currently is, which would disproportionately benefit BIPOC constituents.

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.³² OLO anticipates Expedited Bill 38-23 will have a positive impact on RESJ. As such, OLO does not offer recommended amendments.

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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

OLO staffer Janmarie Peña, 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 [Public Rights of First Refusal](#), The Yale Law Journal, 2020.

⁴ [Rights of First Refusal](#), Local Housing Solutions.

⁵ [Montgomery County Code § 53A-4](#)

⁶ [Introduction Staff Report for Bill 38-23](#), Montgomery County Council, Introduced September 26, 2023.

⁷ Memorandum from County Executive to Council President, Introduction Staff Report for Bill 38-23, August 31, 2023.

⁸ Ibid.

⁹ [RESJS for Bill 30-21](#), Office of Legislative Oversight, September 9, 2021.

¹⁰ Table S0201, Selected Population Profile in the United States, 2022 American Community Survey 1-Year Estimates, Census Bureau.

¹¹ [DHHS Pulse Report: COVID-19 Impact and Recovery](#), Montgomery County Department of Health and Human Services, May 17, 2023.

¹² [Point in Time Survey](#), Montgomery County Interagency Commission on Homelessness.

¹³ Ibid.

¹⁴ [The Color of Wealth in the Nation's Capital](#), Urban Institute, November 1, 2016.

¹⁵ Richard Rothstein, *The Color of Law* (Liveright, 2017)

¹⁶ [“Briefing on the Mapping Segregation Project,”](#) Montgomery Planning, November 23, 2022.

¹⁷ Ibid.

¹⁸ [Racial Restrictive Covenants and Black Homeownership](#), Mapping Segregation Project, Montgomery Planning.

¹⁹ Diane Glauber, et. al, [“Draft Metropolitan Washington Regional Fair Housing Plan, Montgomery County,”](#) Metropolitan Washington Council of Governments, January 2023.

²⁰ [The Gap: A Shortage of Affordable Rental Homes](#), National Low Income Housing Coalition, March 2023.

²¹ In “The Gap” report, the NLHC defines extremely low-income households as households with incomes at or below either the federal poverty guideline or 30% of the area median income (AMI), whichever is greater.

²² [“Council Unanimously Approves Resolution to Support Metropolitan Washington Council of Governments’ Regional Housing Targets for Montgomery County,”](#) Montgomery County Council, November 6, 2019.

²³ [Local Housing Targets Project](#), Montgomery Planning.

²⁴ Rights of First Refusal, Local Housing Solutions.

²⁵ [Preserving, Protecting, and Expanding Affordable Housing](#), ChangeLab Solutions.

²⁶ [What About Housing? A Policy Toolkit for Inclusive Growth](#), Grounded Solutions Network.

²⁷ [An Anti-Racist Agenda for State and Local Housing Agencies](#), Poverty & Race Research Action Council, July 1, 2020.

²⁸ Rights of First Refusal, Local Housing Solutions.

²⁹ 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.

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³⁰ Memorandum from DHCA Director to Council President, Annual Report on the Montgomery County Right of First Refusal Program, February 17, 2023.

³¹ Comments from DHCA Director Scott Bruton in meeting with OLO staff on October 4, 2023

³² Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council