

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

Office of Legislative Oversight

ZTA 21-08: LANDSCAPE CONTRACTOR —USE STANDARDS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 21-08 could advance racial equity and social justice in the County by promoting a more inclusive permitting process for landscape contractors that potentially narrows inequities in entrepreneurship and business growth by Hispanic origin.

PURPOSE OF RESJ STATEMENT

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 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 21-08

Landscape contractors can experience difficulties in operating and growing their businesses in Montgomery County as they locate their businesses in zones that permit their use. If a landscape contractor attempts to locate their business in a zone that permits their operations only under **Conditional Use**, they must apply for a permit with Montgomery County Planning. The Conditional Use application process can be timely and expensive. However, if a landscape contractor attempts to locate their business in a zone that permits their operations under **Limited Use**, they can utilize a shorter and less expensive application process to acquire a permit with the Department of Permitting Services.

The purpose of ZTA 21-08 is to streamline the permitting process for landscape contractors by changing Conditional Use zones into Limited Use zones for landscape contractor businesses. If enacted, the ZTA would allow Limited Uses for landscape businesses in the Agricultural, Rural Residential, Residential Estate, and R-200 zones when the following conditions are met:

- Businesses are located on lots that are a minimum two acres
- Building and parking setbacks are at least 50 feet
- Heavy commercial vehicles are prohibited
- Screening for storage areas and site operations except growing of plant materials is provided per Section 6.5.3.C.7.
- Maximum number of employees on site is limited to 20
- Maximum number of commercial vehicles on site is limited to six
- No more than 20 motor vehicles may be parked on the site at any time
- A business office is excluded on site

ZTA 21-08 also expands the definition of landscape contractors to include landscape businesses that grow plants for their own use (i.e. have nurseries).

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ENTREPRENEURSHIP, LANDSCAPE CONTRACTORS, AND RACIAL EQUITY

Landscape contracting has provided a pathway to economic opportunity for many Latinx entrepreneurs and employees. Whereas Latinx people, like other people of color, are under-represented among business owners, earn revenue far below their White peers, and are overrepresented in the landscape contracting industry. This section describes inequities in business ownership by race and ethnicity, demographics of the landscaping industry, costs of permitting landscaping businesses in the County, and the community engagement process under Conditional Use applications.

Business Ownership Inequities. Prior research shows that a variety of factors adversely impact people of color as they consider starting and growing businesses, including disparities in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks. For example, a study by the Small Business Administration found that Black- and Latinx-owned businesses are more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear that their applications will be rejected. Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage (e.g. home equity), recent financial challenges, and lower credit scores.

Nationally, Black and Latinx residents represent about 28 percent of the population, but only 8 percent of the nation's business owners with employees.³ Available local data also show evidence of disparities in entrepreneurship by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicates that Black and Latinx firms each accounted for 15 percent of local firms in Montgomery County and Asian firms accounted for 14 percent of County firms, Asian firms accounted for 4 percent of local business revenue, Black firms accounted for 1.7 percent of local business revenue, and Latinx firms accounted for 1.5 percent of local business revenue.⁴

More recent local data on self-employed residents also demonstrate disparities in entrepreneurship by race and ethnicity. 2018 Census data on self-employed residents includes information on residents self-employed in their own incorporated and unincorporated business, professional practice, or farm. As noted in Table 1, White residents were overrepresented among the self-employed compared to their share of the population, while Black, Latinx, and Other residents were underrepresented among the self-employed.⁵

Table 1. Representation of Self-Employed Montgomery County Residents by Race and Hispanic Origin

Demographic Group	Population	Incorporated	Unincorporated
White	52%	67%	59%
Black	19%	11%	13%
Asian	15%	16%	13%
Multiracial	10%	5%	12%
Other	5%	1%	3%
Non Latinx	80%	85%	84%
Latinx	20%	15%	16%

Demographics of Landscape Contractors. While Latinx-owned businesses are underrepresented in the economy as a whole relative to their share of the population, available data suggests that Latinx-owned businesses are overrepresented in the landscaping industry. For example, a 2011 study by the U.S. Hispanic Chamber of Commerce examining the landscaping and lawn care industry's impact upon the Latinx community found that:⁶

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- The landscape industry in the U.S. employs almost 1.6 million workers and generates almost 959,000 jobs in other industries. In total, Latinx people accounted for more than 830,000 of workers in both categories.
- Latinx workers accounted for 35.2 percent of the landscaping lawn care services workforce compared to 13.4 percent of all U.S. workers.
- Latinx households earned 25 percent of earnings attributable to the landscape and lawn care industry compared to 8.3 percent of earnings among all households in the U.S. economy.
- Latinx-owned businesses account for 16 percent of business owners in the landscaping industry compared to 8.2 percent of businesses nationwide.
- Latinx-owned businesses in the landscape and lawn care industry account for 9 percent of total industry receipts compared to 1.2 percent of total receipts across all industries.

Available data suggests that Latinx residents are also overrepresented in the landscaping workforce. For example, 6 percent of all County residents worked in natural resources, construction, and maintenance occupations that include landscaping positions compared to 20 percent of Latinx residents in 2019.⁷ Anecdotal evidence suggests landscape contractor businesses and employment play major roles in providing income and small business ownership opportunities to Latinx residents in Montgomery County. Many of these companies are family-owned and operated by recent immigrant or first- and second-generation members of the Latinx communities.

Local Landscape Contractor Permitting Process and Costs. The landscape contractor permitting process through the approval of a Conditional Use application can take a long time and be cost prohibitive to small businesses. Table 2 summarizes the key differences in review processes for Conditional Use and Limited Use applications. Conditional Use applications are submitted to the Planning Board while Permitting Services processes Limited Use requests.

Table 2. Summary of Conditional Use and Limited Use Review Processes

Review Process	Application	Hearing/Permit	Review Period
Conditional Uses	Planning Board	Planning Board (Recommendation) Hearing Examiner (Final Decision)	120± days
Limited Uses	Department of Permitting Services	Permit (Use, Building, Occupancy)	<30 days

The Conditional Use process can take four or more months to complete while the Limited Use process takes less than a month to complete. The Conditional Use process is also more expensive for applicants, requiring a payment of \$8,200 for the filing fee. This fee alone could be cost prohibitive for many small business owners in the landscape industry, yet this is the start of the application process. The steps to complete the Conditional Use process include:

- Pre-application meeting, verify and package application materials, and Planning Department review to confirm compliance with filing requirements.
- Submit application to the Office of Zoning and Administrative Hearing (OZAH) for official acceptance, assignment of a case number, and scheduling of a public hearing date. The 120-day review period commences.
- Return application to Park and Planning, assignment of Planning Staff for review and recommendation, place application on the Planning Board’s hearing agenda, and publishing of staff report.
- The Planning Board hears the case and adopts staff’s recommendations or makes a recommendation of its own.
- The Planning Board’s recommendation transmitted to OZAH for hearing before the Hearing Examiner for a final decision.
- A Hearing Examiner holds a hearing under a quasi-judicial process. End of 120 days review period.
- The Hearing Examiner publishes her/his decision approving or recommending the application within 45 days of closing the record.

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By the time an application is packaged, filed, and reviewed, the actual cost of the application can climb depending on the complexity of the application and stakeholder feedback as attorney and other fees often accrue. As such, the costs associated with seeking Conditional Use permits could easily exceed the resources available among many smaller landscape contractor businesses.

Community Engagement with Conditional Use Process. The Conditional Use process provides opportunities for community participation, particularly from adjoining properties and residents of the immediate neighborhood. Conditional Use applications require public notice and hearing opportunities that enable neighbors, homeowners' associations, and other interested parties the opportunity to comment on potential impacts on the immediate area. However, the extremely high cost attached to the Conditional Use review process makes it challenging to many of the smaller landscape contractors to the extent that it can drive many of them out of business or out of the County. The proposed ZTA could offer these contractors an alternative, lower-cost process to legally operate their businesses within the County.

ANTICIPATED RESJ IMPACTS

Discerning the potential impact of ZTA 21-08 on racial equity and social justice in Montgomery County requires considering the potential impact of this zoning text amendment on two sets of stakeholders:

- Landscape contractors and employees
- Neighbors of potential landscape contractors in zones impacted by this ZTA

The potential impact of this ZTA on these stakeholders is discussed below. Taken together, OLO finds that ZTA 21-08 will advance racial equity and social justice by reducing the cost of business among landscape contractors that are disproportionately Latinx. Reducing operational costs for Latinx businesses could also yield dividends for the Latinx workforce disproportionately employed by Latinx landscape contractors.

OLO further anticipates that the benefits of ZTA 21-08 for landscape contractors and employees will exceed the potential burden of ZTA 21-08 on neighboring property owners adversely impacted by this ZTA. Moreover, since the ZTA's benefits disproportionately accrue to people of color while the ZTA's costs are disproportionately born among White residents, this ZTA also advances racial equity and social justice.

- **Landscape Contractors and Employees.** Available data suggests that Latinx residents are overrepresented among landscape contractors and employees in the County. As such, OLO anticipates they will accrue a disproportionate share of the benefits that the landscaping industry will receive as consequence of ZTA 21-08 diminishing the cost of business in terms of reduced permitting time and costs. This benefit to Latinx business owners could diminish racial inequities in business ownership and thus advance racial equity and social justice.
- **Neighbors of Landscape Contractors.** Available data suggests the homeowners of neighboring properties that could be adversely impacted by this ZTA are disproportionately White. In 2019, White, Non-Hispanic residents accounted for the largest racial group in the County at 42 percent but resided in 59 percent of owner-occupied housing units in the County. As such, OLO anticipates that if there are any harms to neighbors associated with the change in the application process proposed by the ZTA, they are most likely to be experienced by White residents of the surrounding area in general, and owners of properties adjoining the landscaping businesses.

ADDITIONAL OBSERVATIONS

Beyond the RESJ analysis, OLO offers the following recommended questions for discussion to assist in clarifying the ZTA's scope and implementation if enacted.

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- A. *Is a 50-foot setback sufficient for screening and buffering landscape contractors from adjoining residential properties in R-200 Zones?*** If there are over 2-acre R-200 Zoned properties that are available for landscape contractor use, it may be helpful if the following measures are added to the provision to protect adjacent residential properties in the R-200 Zone:
- Building and parking setbacks, including loading areas and other site operations, and are a minimum of **100 feet** from any lot line.
- B. *Should the maximum number of employees and/or the number of vehicles allowed on site be reduced?*** The presence of 20 employees could be considered excessive in the R-200 zone proposed as a Limited Use. The ZTA could be amended to reduce the number of employees (and vehicles allowed) to between **12-15** to lessen the impact of the Limited Use on the character of existing residential neighborhoods. Similarly, the allowance of six light commercial vehicles and trailers could impact neighbors, especially in smaller zones. To minimize this impact, the ZTA could be amended to include light commercial vehicles within the 20 vehicles maximum.
- C. *Should the ZTA require providing restrooms to landscape business employees?*** The ZTA prohibits the creation of a business office on site but is silent on whether the business needs to ensure a restroom facility for employees. To ensure that landscape businesses permitted under Conditional Use provide restrooms to employees, a ZTA requirement could be considered. Both federal and state occupational safety and health standards specify that employees should have access to running water and toilets.⁸
- D. *Does the proposed ZTA eliminate the use categories for nursery uses?*** Language included in the definition of landscape contractor appears similar to existing use categories for Nursery (Retail) and Nursery (Wholesale). The Nursery uses are also permitted by approval of Conditional Use application in the Agricultural, Rural residential, and Residential Detached Zones (RE-2 -R-200). A clarification could provide a clear distinction between the two uses or how the Limited Use provision intends to treat nurseries.

CAVEATS

Two caveats to this racial equity and social justice 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 staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

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Appendix A. Landscape Contractor Use in Montgomery County

A Landscape Contractor Use is a designated commercial use under Chapter 59, The Montgomery County Zoning Ordinance. It is allowed through approval of Conditional Use (CU) applications. The Use is also allowed as a Limited Use (L) in the Light Industrial Zone (IL) and is permitted by right in the Medium (IM) and Heavy industrial Zones (HI). In Division 59-3 Landscape Contractor is defined as follows:

Section 3.5.5. Landscape Contractor

A. Defined

Landscape Contractor means the business of designing, installing, planting, or maintaining lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage features, or other activities intended to enhance the appearance or usefulness of Light Industrial Zone and outdoor areas. Landscape Contractor also means providing snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. Landscape Contractor includes the growing of plant materials for the contracting business and tree installation, maintenance, or removal. Landscape Contractor does not include Lawn Maintenance Service.⁹

Table 3. Zoning Standards

Landscape Contractor: Zoning Standards Section 59-3.5.5 (Existing)				
Zone Classification	Symbol	Minimum Size/FAR Standard Developments		Use Standard
Agriculture				
1. Agricultural Reserve	AR	25 ac		
Rural Residential				
1. Rural	R	5 ac		Conditional Use (C)
2. Rural Cluster	RC	5 ac		Conditional Use(C)
3. Rural Neighborhood Cluster	RNC	5 ac/25,000 sf		Conditional Use(C)
Residential Detached Zones				
1. Residential Estate – 2	RE-2	2 ac		Conditional Use(C)
2. Residential Estate – 2C	RE-2C	2ac		Conditional Use(C)
3. Residential Estate – 1	RE-1	1 ac		Conditional Use(C)
4. Residential – 200	R-200	20,000 sf		Conditional Use(C)
Industrial Zones				
		Total Far (MAX)	Height (Max)	
1. Light Industrial	IL	0.25 to 1.5	25' to 50'	Limited Use (L)
2. Moderate Industrial	IM	0.25 to 2.5	25' to 120'	Permitted (p)
3. Heavy Industrial	IH	0.5 to 4.0	35' to 200'	Permitted (P)

As noted, currently, a Landscape Contractor's use is allowed in the Agricultural, Rural Residential, Residential Estate, and R-200 zones with approval of a Conditional Use application.

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

² Ibid

³ Joseph Parilla and Darin Redus, "How a New Minority Business Accelerator Grant Program Can Close the Racial Entrepreneurship Gap."

Brookings December 9, 2020 <https://www.brookings.edu/research/how-a-new-minority-business-accelerator-grant-program-can-close-the-racial-entrepreneurship-gap/>

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⁴ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019 https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190611/20190611_3.pdf

⁵ Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020 <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19RecoveryOutlook-MinorityOwnedBusinesses.pdf>

⁶ Inter-University Program for Latino Research: A report to the U.S. Hispanic Chamber of Commerce on “The Economic Impact of the Landscaping and Lawn Care Services Industry on US Latinos”. November 2011.

https://latinostudies.nd.edu/assets/95362/original/ushccnational_report_november_21_2011_final.pdf

⁷ US Bureau of Labor Statistics: Labor Force Statistics From the Current Population Survey, 2020.

<https://www.bls.gov/cps/cpsaat11.htm>

⁸ The United Nations Office of Human Rights Office of the High Commissioner has also recognized water and sanitation as a human right <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26116&LangID=E>

⁹ Chapter 59, The Montgomery County Zoning Ordinance, 2014 and with revised language in proposed ZTA-21-08