

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

Office of Legislative Oversight

ZTA 22-02: DENSITY AND HEIGHT LIMITS, PARKING - BIOHEALTH

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-02 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White business owners and employees. OLO anticipates a small impact of this ZTA on racial and social inequities. To improve racial equity and social justice, this statement offers a few recommended policy options for consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

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, 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 ZTA 22-02

The purpose of ZTA 22-02, Density and Height Limits, Parking – Biohealth, is to diminish current requirements for building height, density, and parking for biohealth facilities that locate in urban areas in the County. The underlying intent of ZTA 22-02 is to reduce building regulations for biohealth businesses that could grow the sector and advance economic development in the County.

Towards this end, ZTA 22-02 amends recent changes to the zoning code establishing Biohealth Priority Campuses to provide more building flexibility for facilities that locate on them and increases building height and density allocations for biohealth facilities that operate under the Life Sciences, Research and Development, and Medical/Scientific Manufacturing and Production uses.³ More specifically, this ZTA allows the transfer of floor area ratios (FARs) for residential uses to commercial uses thus increasing densities for biohealth facilities beyond what is currently allocated on the zoning map for commercial uses in Commercial/Residential (C/R) zones.

If enacted, ZTA 22-02 would allow:

- Biohealth Priority Campuses to consolidate facilities for utilities, open space, parking and reduce parking space requirements.
- Higher building densities and height allocations for biohealth facilities located in C/R zones within a Red Policy Area⁴ (or adjacent to it), within an Opportunity Zone,⁵ or within ½ mile of a planned or existing Bus Rapid Transit route.⁶ Increased building densities and height allocations established with this ZTA could supersede existing Overlay Zone requirements for building densities and height allocations.
- Higher building densities and height allocations for biohealth facilities located in Employment Zones. Increased building densities and height allocations established with this ZTA could also supersede existing Overlay Zone requirements for building densities and height allocations.

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ZTA 22-02 was introduced on March 15, 2022.

LAND USE, ECONOMIC DEVELOPMENT, AND RACIAL EQUITY

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the historical context that shapes land use and economic development in Montgomery County today. To describe this historical context, this section describes the historical drivers of racial inequities in land use and economic development and available data on racial disparities, especially within the biohealth industry.⁷

Inequities in Land Use. The way land is used and regulated either helps or hinders people's access to opportunity. Throughout the 20th century, jurisdictions have used zoning to separate not only uses – like residential, commercial, and industrial – but also people according to wealth, class, and race.⁸ More specifically, land use regulations have been used to exclude people of color and low-income residents from predominantly White and affluent residents in several ways. For example, by allowing single family homes or homes on large lots, both of which exclude more affordable housing.⁹ This has resulted in the concentration of poverty, especially in BIPOC communities.¹⁰ Because social determinants are so tightly connected to where one lives, the implications of zoning on inequality are large as where one lives determines where they go to school, their exposure to crime and policing, and where they can shop.¹¹ For homeowners, where one resides is perhaps the most important determinant of their family's wealth.¹²

Data show that many poor neighborhoods have disproportionately high people of color populations and lack access to jobs, good schools, and other opportunities necessary to help residents rise out of poverty.¹³ The land use injustices and social inequities impacting localities are multi-faceted.¹⁴ They manifest not only in housing segregation but also in disparities in exposure to pollution, health inequities, unequal access to green and blue infrastructure (e.g. parks, trees, well-functioning waterways), transportation infrastructure, and economic investment.¹⁵ These inequities result from zoning and a variety of other government policies and private actions that include environmental laws, housing policies, transportation policies, restrictive covenants, housing-market discrimination, and redlining.¹⁶

Patterns of inequitable land use in Montgomery County manifest as racial and economic segregation by Council district, higher rates of unemployment, poverty, and housing burden among Black and Latinx residents, and as greater reliance on public transit and longer commutes for Black residents. More specifically, the data shows:

- Racial and economic segregation by Council district where 72 percent of District 1 (Bethesda, Poolesville, and Potomac) residents were White, average household income was \$205,600, and the poverty rate was 3 percent compared to 66 percent of District 5 residents (Burtonsville, Silver Spring, and Takoma Park) were BIPOC, average household income was \$102,500, and the poverty rate was 9 percent from 2011 to 2015.¹⁷
- Racial inequities in unemployment where 5 percent of Black residents and 4 percent of Latinx residents were unemployed compared to 3 percent of Asian and White residents in 2019.¹⁸
- Racial inequities in poverty where 13 percent of Latinx residents and 12 percent of Black residents lived in poverty compared to 6 percent of Asian residents and 3 percent of White residents in 2019.¹⁹
- Racial inequities in housing burden where 59 percent of Latinx renters and 54 percent of Black renters expended more than 30 percent of their household income on housing compared to 43 percent of Asian renters and 42 percent of White renters in 2019.²⁰
- Racial inequities in public transit use where 21 percent of Black residents commuted to work via public transit compared to 14 percent of Asian residents, 13 percent of White residents and 11 percent of Latinx residents.²¹

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- Racial inequities in commuting time where Black residents averaged 38 minutes commutes to work compared to 36 minutes commutes for Asian residents and 34 minutes commutes for both White and Latinx residents.²²

Inequities in Economic Development. Historically inequitable policies have fostered racial and ethnic inequities in economic development among business owners and employees. As noted by the Federal Reserve Bank of Boston:²³

“(T)he practices and policies that laid the groundwork for and built the U.S. were explicitly designed to ensure an absolute accumulation of intergenerational wealth and concentrated power for white people, particularly men. A legacy of land theft, slavery, racial segregation, disenfranchisement, and other exclusive policies against Black and Indigenous people and people of color produced a racialized economy that decimated these communities and intentionally barred survivors and descendants from building wealth, socioeconomic well-being, and resilience.”

Current inequities in policies and practices also adversely impact people of color as they consider starting and growing businesses. These include disparities by race and ethnicity in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks.²⁴ They also include disparities by race and ethnicity in access to credit with Black - and Latinx-owned businesses 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 their applications will be rejected.²⁵ Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.

Historic and current inequities in economic opportunity result in sizable disparities in business ownership, employment, and income by race and ethnicity. More specifically:

- Despite Black and Latinx firms each accounting for 15 percent of local firms in 2012 and Asian firms accounting for 14 percent of local firms, Black and Latinx firms each accounted for less than 2 percent of business revenue, and Asian firms accounted for 4 percent of business revenue.²⁶
- Nearly two-thirds (64 and 62 percent) of White and Asian residents in Montgomery County were employed in management, business, science and arts occupations in 2017 compared to less than half of Black residents (45 percent) and only a quarter of Latinx residents were employed in such positions.²⁷
- The median household income for White families in Montgomery County was \$119,000 in 2017 and \$109,000 for Asian families compared to \$73,000 for Black households and \$72,000 for Latinx households.²⁸

Inequities in the Biohealth Industry. Systemic racism has also fostered racial inequities in health care and the biohealth industry. The nation’s history of inequitable health care by race predates its founding with the near genocide of Indigenous people due to their exposure to small pox and other diseases from European colonists and the inhumane treatment of enslaved Africans that made them more susceptible to disease and death.²⁹ Post slavery, health care services remained segregated by race and it was not until the 1960’s with the passage of Medicare and Medicaid that health care services were integrated.³⁰

Racial inequities have also characterized the biohealth industry where historically the medical community has exploited Black people through experimentation.³¹ Additionally, educational and occupational segregation continue to limit the participation of Black and Latinx people as professionals in Science, Technology, Engineering, and Mathematics (STEM) fields that include the biohealth industry. Nationally, between 2017 and 2019:³²

- Black people accounted for 11 percent of all jobs, 9 percent of STEM jobs, and 6 percent of life science jobs.
- Latinx people accounted for 17 percent of all jobs and 8 percent of STEM jobs and 8 percent of life science jobs.

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- Asian people accounted for 6 percent of all jobs, 13 percent of STEM jobs and 19 percent of life science jobs.
- White people accounted for 63 percent of all jobs, 67 percent of STEM jobs and 65 percent of life science jobs.

A study of personnel and executives in the biotech industry also finds an under-representation of Black, Latinx and Indigenous employees and executives. The 2020 survey of 18 biotech firms found that:³³

- Black people accounted for 7 percent of biotech employees and 3 percent of executives;
- Latinx people accounted for 4 percent of biotech employees and 4 percent of executives;
- Asian people accounted for 18 percent of biotech employees and 14 percent of executives;
- Native Americans, Hawaiians and Pacific Islanders accounted for 0.4 percent of biotech employees and 0 percent of executives; and
- White people accounted for 65 percent of biotech employees and 78 percent of executives.

These racial and ethnic disparities in the biohealth workforce are significant because the industry offers high wages. In 2017, bioscience workers earned an average income of nearly \$99,000.³⁴ In Maryland, the average annual pay for biomedical positions was nearly \$70,000 with workers at the 25th percentile earning \$44,000 annually and those at the 90th percentile earning \$107,000 annually.³⁵

The racial and ethnic disparities in the biohealth workforce are also significant because the industry is sizable. More than 800,000 people work in the biopharmaceutical industry in the U.S.; it is estimated that the biohealth industry supports another 4.7 million jobs across the country.³⁶ Of note, the Biohealth Capital Region of Maryland, the District of Columbia, and Virginia employs an estimated 75,000 workers and ranks fourth among U.S. biopharma hubs, behind Boston, San Francisco, and New Jersey/New York.³⁷ The United Therapeutic Corporation headquartered in Silver Spring, Maryland and the Research Training Park in North Carolina employs 950 people.³⁸

ANTICIPATED RESJ IMPACTS

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the stakeholders most likely to be impacted by this zoning text amendment and their demographics. Since this ZTA is aimed at reducing building regulations and requirements for biohealth facilities, biotech firm owners, employees and residents located near biohealth facilities are the stakeholders most likely to be impacted by this ZTA as follows.

- **Biohealth Business Owners.** Available data on local business revenue suggest that White-owned firms predominate the biohealth industry and thus could disproportionately benefit from ZTA 22-02. While White-owned firms accounted for slightly more than half of all Montgomery County businesses in 2012, they accounted for more than 90 percent of local business revenue. If White-owned firms benefit more from ZTA 22-02 than BIPOC-owned firms, this ZTA could widen current racial and ethnic inequities in entrepreneurship.
- **Biohealth Workers.** Available data on occupations and the biohealth workforce from national and local sources suggests that Asian residents are significantly over-represented among local biohealth workers and thus could disproportionately benefit from growth in the local biotech industry fostered by ZTA 22-02. White people account for a majority of the biotech workforce and thus would benefit from biotech industry growth as well. Nationally, Asian people account for 18 percent of biotech positions compared to 6 percent of the overall workforce; White people account for 65 percent of biotech positions compared to 63 percent of the overall workforce. If Asian and White employees benefit more from ZTA 22-02 than Black, Latinx and Indigenous residents, this ZTA could widen current racial and ethnic inequities in biohealth employment

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- **Residents Near Biohealth Facilities.** County residents whose communities abut biohealth facilities are the residents potentially most impacted this ZTA. Currently, the master plans, sector plans, and overlay zone districts impacting the zones subject to ZTA 22-02 have been shaped with community engagement.³⁹ Every master plan, sector plan, functional plan, or plan amendment is submitted to a full public hearing.⁴⁰ Planning staff also initiates community participation in the development of master plan staff drafts that can include the formation of master plan citizens advisory committees to ensure that master plans reflect residents' interests.⁴¹

OLO anticipates a negative impact of ZTA 22-02 on the residential neighbors of biohealth facilities because it potentially overrides master plans, sector plans, and overlay plans shaped by community engagement. This ZTA also does not establish a process for community engagement per biohealth facility request to utilize the height, density, and parking provisions that it authorizes. The demographics of which residents could be most adversely impacted by this ZTA, however, remain unknown as it is unclear where biohealth facilities will locate, relocate, or expand in the County due to this ZTA.

Taken together, OLO finds that ZTA 22-02 could have a net impact of widening racial and ethnic inequities in the County as available data suggests that the two groups to benefit the most from this bill – biohealth business owners and employees – are disproportionately White and Asian. To narrow racial and social inequities, ZTA 22-02 would have to yield greater benefits for BIPOC groups under-represented in the biohealth industry as business owners and employees. Overall, OLO anticipates a small impact of ZTA 22-02 on racial and social inequity.

RECOMMENDED POLICY OPTIONS

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.⁴² For zoning text amendments, OLO offers recommended policy options rather than amendments to offset potentially racially or socially inequitable changes to the Zoning Ordinance.

Overall, OLO finds that ZTA 22-02 could widen racial and ethnic inequities because its provisions could exacerbate racial inequities in business revenue and employment in the biohealth sector. Should the Council seek to advance equitable growth in the biohealth industry that reduces racial and social inequities, the following policy options could be considered to require and/or encourage biohealth firms seeking to create or expand their facilities to:⁴³

- **Report workforce and vendor data by race, ethnicity, and gender.** The rationale for public policies to support economic development is that their benefits exceed their costs to government. Yet, there is rarely any accountability for achieving favorable returns on public investments for economic development or equitable development that narrows gaps in outcomes by race and ethnicity. To track whether changes in the zoning code and/or other public policies enhance equitable economic development, the County Council could encourage and/or require biohealth firms to report data on their workforce and vendor demographics by race (Black, Asian, White, Indigenous, Other), ethnicity (Latinx), and gender (male, female, non-binary).
- **Invest in workforce development opportunities, particularly for BIPOC residents.**⁴⁴ To ensure that growth in the biohealth industry benefits a cross-section of communities and reduces disparities in the biohealth workforce by race and ethnicity, biohealth firms could be encouraged to enter into agreements to provide biohealth workforce development opportunities for underrepresented persons of color. Biohealth firms investing in biohealth workforce development programs could be encouraged to partner with community members, education institutions and non-profit partners to design and deliver programs. Career and technical education programs in secondary and post-secondary institutions, apprenticeships and targeted training could increase the pipeline of Latinx and Black residents into biohealth professions.

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- **Invest in local small businesses, especially underrepresented BIPOC small businesses.**⁴⁵ To ensure that local small businesses inclusive of BIPOC businesses benefit from the expansion of biotech business opportunities, biotech firms could be encouraged to (a) partner with underrepresented BIPOC businesses to increase the success of such firms in the biohealth industry; and (b) provide opportunities to BIPOC businesses that offer spillover benefits for industry expansion. For example, local biohealth firms could be encouraged to support an industry eco-system analogous to the Opportunity Hub Initiative in Atlanta that promotes “inclusive high-tech innovation, entrepreneurship, and investment eco-systems” to foster BIPOC entrepreneurship in technology.⁴⁶

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.

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 Montgomery County Council, Zoning Text Amendment 22-02, Density and Height Limits, Parking – Biohealth, Introduced March 15, 2022

⁴ Red Policy Areas, also known as Metro Station Areas Policy Areas (MSPA), are one of the four areas within the Transportation Policy Area. MSPAs are characterized by high-density development and the availability of premium transit service (Metrail, MARC). Montgomery County Planning Department

⁵ Opportunity Zones are designed to spur economic development by providing tax benefits to investors. They are part of a federal tax code that allow investors to roll capital gains into Opportunity Funds that invest in businesses, equipment, and real property in select census tracts. Montgomery County Planning Department: Montgomery County Economic Indicators Briefing 2019.

⁶ Bus Rapid Transit is a high-quality and high-capacity bus-based transit system that delivers fast, comfortable, reliable and cost-effective transit service. Montgomery County Planning Department, Transportation.

⁷ Information in this section originally referenced in OLO RESJ Impact Statement for ZTA 21-09, Office and Professional – Biohealth Priority Campus, December 2, 2021

⁸ Tyler Quinn-Smith, Zoning for Equity: Raising All Boats. Smart Growth America

⁹ Lance Freeman, Build Race Equity into Zoning Decisions, Brookings Institution

¹⁰ Tyler Quinn-Smith

¹¹ Lance Freeman

¹² Ibid

¹³ Kathleen McCormick, Planning for Social Equity, Land Lines, Winter 2017

¹⁴ Tony Arnold, “Land-Use Regulation: What’s It Worth Anyway?” Urban Institute

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Leah Headey and Lily Posey, Racial Inequities in Montgomery County, 2011-15, Urban Institute, https://www.urban.org/sites/default/files/publication/95386/2017.12.28_montgomery_county_finalized_7.pdf

¹⁸ National Equity Atlas, <https://nationalequityatlas.org/indicators/Unemployment#/?geo=04000000000024031>

¹⁹ Ibid

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²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today’s Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach

²⁴ Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020

²⁵ Alicia Robb, "Minority-Owned Employer Businesses and their Credit Market Experiences in 2017," Office of Advocacy U.S. Small Business Administration, July 22, 2020 cited by Stephen Roblin

²⁶ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019

²⁷ American Community Survey, 1 Year Estimates, 2019, Table S0201

²⁸ Jupiter Independent Research Group

²⁹ W.M. Byrd and L.A. Clayton, Race, medicine, and health care in the United States: a historical survey, 2001, National Medical Association. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/>

³⁰ Ibid

³¹ Harriet Washington, Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present, Doubleday, 2007.

³² Richard Fry, Brian Kennedy, and Cary Funk, STEM Jobs See Uneven Progress in Increasing Gender, Racial, and Ethnic Diversity, Pew Research Center, April 1, 2021

³³ Coqual/Bio: Measuring Diversity in the Biotech Industry: Advancing Equity and Inclusion, Second Annual Report, July 2021

³⁴ TEconomy/Bio: Investment, Innovation, and Job Creation is Growing in U.S. Bioscience Industry, 2018

³⁵ Biomedical Salary in Maryland, ZipRecruiter, November 2021. <https://www.ziprecruiter.com/Salaries/Biomedical-Salary--in-Maryland>

³⁶ SelectUSA, Biopharmaceutical Spotlight: The Biopharmaceutical Industry in the United States

³⁷ Genetic Engineering and Biotechnology News: The 10 U.S. Biopharma Clusters – Pandemic Reshuffles the Bottom of GEN’s Regional Rankings But Not the Top for Now, March 10, 2021

³⁸ Our People. United Therapeutics Corporation, 2020

³⁹ Montgomery Planning, Everything you always wanted to know about planning, zoning, and subdivision in Montgomery County, 1991

http://montgomeryplanning.org/info/resident_guides/subdivison_process/documents/EverythingYouAlwaysWantedtoKnowBoutPlanningZoningandSubdivisioninMC.pdf

⁴⁰ Ibid

⁴¹ Ibid

⁴² Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established

⁴³ Two of the three recommended amendments originally referenced in OLO RESJ Impact Statement for ZTA 21-09, Office and Professional – Biohealth Priority Campus, December 2, 2021

⁴⁴ Sarah Treuhart and Victor Rubin, Economic Inclusion: Advancing an Equity Driven Growth Model, Big Ideas for Jobs, Policy Link, 2012; and Donnie Charleston, “How States Can Support Shared Prosperity by Promoting Quality Jobs,” Shared Prosperity Partnership, Urban Institute, March 2020

⁴⁵ Ibid

⁴⁶ Mark Muro, Alan Berube, and Jacob Whiton, Black and Hispanic underrepresentation: It’s time to change the equation.” Brookings, March 28, 2018.