

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

Office of Legislative Oversight

## ZTA 22-03: OVERLAY ZONE – DOWNTOWN SILVER SPRING (DSS)

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-03 could narrow disparities by race, ethnicity, and income in affordable housing. Overall, OLO anticipates a small impact of ZTA 22-03 on racial equity and social justice in the County if its affordable housing provisions are enacted as currently drafted.

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### 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.<sup>1</sup> 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.<sup>2</sup>

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### PURPOSE OF ZTA 22-03

The purpose of ZTA 22-03, Overlay Zone - Downtown Silver Spring, is to implement the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan currently under review by the County Council. As drafted, ZTA 22-03 establishes a new Downtown Silver Spring (DSS) Overlay Zone, removes the Ripley/South Silver Spring Overlay Zone, and modifies the Fenton Village Overlay Zone.

There are two key components of ZTA 22-03 and the SSDAC Sector Plan that could impact the supply of affordable housing through the Moderately Priced Dwelling Unit (MPDU) Program.<sup>3</sup> If enacted, ZTA 22-03 would:

- Increase the MPDU requirement for the Downtown Silver Spring Overlap Zone from a minimum of 12.5 percent to 15 percent for new projects with 20 or more residential units.
- Create a new *Height Incentive Area* that allows eligible properties to increase their maximum heights to up to 300 feet or 150 percent of the mapped height if such properties/property owners increase their MPDU set aside to at least 15 percent, contribute to the Housing Initiative Fund, or include “activating ground-floor neighborhood serving uses, which could include small commercial spaces, art galleries, meeting space, educational uses, medial uses, historic preservation, or non-ground-floor Design for Life residences.”<sup>4</sup>

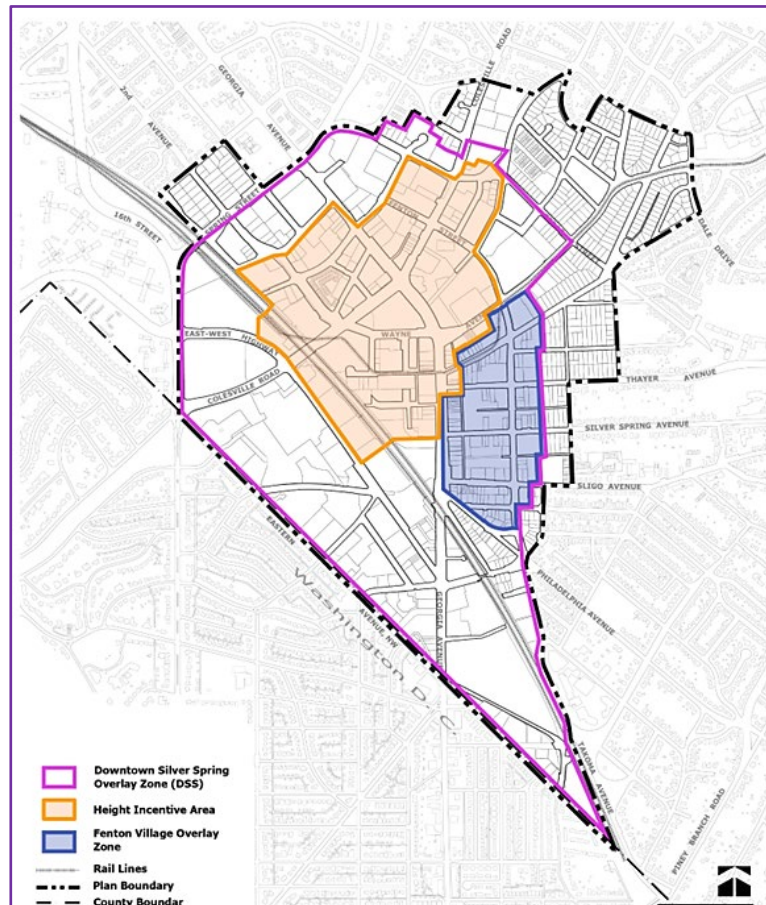
Other key components of ZTA 22-03 include the exclusion of transit proximity and structured parking in the awarding of public benefit points for optional method projects and the requirement that new projects contribute to existing or planned public parks in the SSDAC rather than set aside land for open spaces that are not aligned to the SSDAC.

ZTA 22-03 was introduced on April 19, 2022. Of note, the Council’s Planning, Housing, and Economic Development (PHED) Committee is scheduled to consider ZTA 22-03 after it completes its review and revision of the proposed SSDAC in late spring or early summer.<sup>5</sup> Figure 1 on the following page provides a map of the proposed overlay zone for Downtown Silver Spring, including the Height Incentive Area.

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Figure 1 - Proposed Overlay Zones and Height Incentive Area <sup>6</sup>



## AFFORDABLE HOUSING AND RACIAL EQUITY<sup>7</sup>

Historically, zoning laws and other government policies have restricted the supply of affordable housing and exacerbated the racial wealth gap.<sup>8</sup> Collectively exclusionary zoning, restrictive covenants, redlining, New Deal housing policies, the Federal Housing Administration and the GI bill created two disparate housing systems where:<sup>9</sup>

- Government subsidized White-only enclaves enabled many White families to build home equity and inter-generational wealth; and
- Underinvested communities of color where residents actually paid more for lesser housing and fewer amenities and were in turn denied opportunities to build family wealth.

While the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market “have never been remedied and their effects endure.”<sup>10</sup> The wealth gap by race and ethnicity is staggering in the Metropolitan Washington region where White households had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.<sup>11</sup> Moreover, residents of color still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.<sup>12</sup> As such, racial disparities in housing security by race and ethnicity persist.

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**Housing Security.** Local data on three metrics of housing insecurity - rent-burdened households, rental assistance during the pandemic, and homelessness - demonstrate that Black and Latinx households in Montgomery County are especially housing insecure. More specifically, in Montgomery County:

- Among renter households in 2019, rent-burden (expending 30 percent or more of income on rent) was experienced among 66 percent of Latinx renters and 60 percent of Black renters compared to 40 percent of White renters and 33 percent of Asian renters.<sup>13</sup>
- Among COVID Relief Rental Program clients, 43 percent of clients were Black and 37 percent were Latinx while 9 percent were White and 3 percent were Asian or Pacific Islander.<sup>14</sup>
- Among adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian and Pacific Islanders.<sup>15</sup> Among families experiencing homelessness, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.<sup>16</sup>

Data on homeownership also demonstrates housing inequities by race and ethnicity where 75 percent of White and Asian households in Montgomery County resided in owner-occupied units in 2019 compared to 50 percent of Latinx and Native American households and 42 percent of Black households.<sup>17</sup> Data on homeownership also demonstrates housing inequities by nativity where the rate of homeownership is almost twice as high for White U.S.-born residents (76 percent) as it is for foreign-born Black residents (39 percent).<sup>18</sup> Black, Latinx and other race mortgage holders were also more likely to experience housing cost burden, with 39 to 47 percent expending more than 30 percent of their income on their mortgage compared to 20 percent of White and 29 percent of Asian mortgage holders.<sup>19</sup>

Taken together, local data on racial and ethnic inequities in housing security demonstrates that Black, Latinx, and other race residents have a higher demand for affordable housing than White and Asian residents.

**Affordable Housing.** Among regions across the country, Metropolitan Washington is one of the most severely impacted by a shortage of affordable housing. In the 2017 VoicesDMV survey, nearly 20 percent of households reported being unable to pay for food or housing in the past 12 months.<sup>20</sup> According to the survey, most households in the region with incomes below \$54,300 (500,000+ households) experience housing cost-burden, paying more than 30 percent of their income toward rent or mortgage.<sup>21</sup>

Data from the Montgomery County Preservation Study also demonstrates a shortage of affordable housing in the County, especially for low-income households. It notes that “(t)he private market does not effectively provide rental housing options that are affordable to renters in the lower income bands, as 78 percent of households earning below 65 percent of AMI are housing cost-burdened.”<sup>22</sup> In addition, the Preservation Study notes that “60 percent of households earning below 50 percent” of AMI are “severely housing cost-burdened – paying more than 50 percent of their gross household income on housing costs.”<sup>23</sup>

The Preservation Study also finds that the County is at-risk of losing affordable housing units, particularly near public transit hubs that are essential to connecting residents to employment and other opportunities.<sup>24</sup> They note that 2,085 deed-restricted housing units that are set to expire in the 2020’s and 2030’s are located within one mile of existing and planned transit stations.<sup>25</sup> Many of these units are clustered around the Silver Spring, Bethesda, and Wheaton Metrorail stations. During this time frame, the study estimates that another 7,500 – 11,000 naturally occurring affordable housing (NOAH) units could also be loss and that approximately 2,300 of these NOAH units are at risk of become unaffordable for households earning up to 80 percent of AMI are also within one mile of public transit.<sup>26</sup>

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### ANTICIPATED RESJ IMPACTS

Understanding the racial equity and social justice impact of ZTA 22-03 requires an awareness of the stakeholders most likely to be impacted by this ZTA. Since ZTA 22-03 is intended to implement the recommendations from the Silver Spring Downtown and Adjacent Communities (SSDAC) Sector Plan, understanding the anticipated RESJ impact of this ZTA also requires understanding the final provisions of this plan that are still being determined by the Council, as well as the implementation process for the plan and the specific areas that would be subject to the 15 percent MPDU provisions.

Given the higher need for affordable housing among Latinx and Black households, OLO anticipates that ZTA 22-03 could have a favorable impact on reducing housing inequities if it increases the supply of MPDU's. Further, OLO anticipates that the favorable RESJ impact of ZTA 22-03 could be improved if: MPDU's built under ZTA 23-03 were affordable for both lower-income (earning 30 - 50 percent of AMI) and moderate-income households (65 – 70 percent AMI); and a significant share of MPDU's built under ZTA 23-03 were large enough to serve families with multiple children.

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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.

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<sup>1</sup> 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>

<sup>2</sup> Ibid

<sup>3</sup> Montgomery County Code. Chapter 25A. Housing, Moderately Priced-Regulations.

<sup>4</sup> Montgomery Planning. Staff report. ZTA proposal -changes to Overlay Zones to implement the SSDAC Plan. March 3, 2022.

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> OLO RESJ Impact Statement: Zoning Text Amendment 21-07(Ord. No. 19-26), Density and Height Allocation – Development with Moderately Priced Dwelling Unit

[2021 Zoning Text Amendments- Montgomery County Council \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/2021-Zoning-Text-Amendments-Montgomery-County-Council)

<sup>8</sup> Richard Rothstein, The Color of Law: A Forgotten History of How Government Segregated America, 2017

<sup>9</sup> Melvin Oliver and Thomas Shapiro, “Disrupting the Racial Wealth Gap” Sociology for the Public, May 7, 2019; Kilolo Kijakazi, et. al, The Color of Wealth in the Nation’s Capitol, November 2016.

[https://www.urban.org/sites/default/files/publication/85341/2000986-2-the-color-of-wealth-in-the-nations-capital\\_8.pdf](https://www.urban.org/sites/default/files/publication/85341/2000986-2-the-color-of-wealth-in-the-nations-capital_8.pdf)

<sup>10</sup> Rothstein

<sup>11</sup> Kijakazi

<sup>12</sup> Keeanga-Yamahatta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermine Black Homeownership, 2019; Urban Institute, Exposing Housing Discrimination, <https://www.urban.org/features/exposing-housing-discrimination>.

<sup>13</sup> American Community Survey, Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates, United States Census Bureau. Table ID S0201.

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<sup>14</sup> Linda McMillan memorandum to County Council regarding FY22 Operating Budget: Homeless Services, Rental Assistance, and Housing Initiative, May 11, 2021 (Agenda Item #30, Joint Committee Worksession), see page circle 13.

[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512\\_30.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf)

<sup>15</sup> Ibid, see page circle 8.

<sup>16</sup> Ibid.

<sup>17</sup> Calculations based on American Community Survey, 2019 1-Year Estimates, Table ID S2502.

<sup>18</sup> Office of Racial Equity and Social Justice: Racial Equity Impact Assessment (REIA) for Supplemental Appropriation #22-82 – Transportation Services Improvement Fund Fuel Reimbursement Disbursement, Section III Data Analysis. *Based on Data from Policy Link. National Equity Atlas. Housing burden (owner) by race, ethnicity, and nativity: Montgomery, MD; 2019.*  
[draft 9/20/02 \(montgomerycountymd.gov\).](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf)

<sup>19</sup> American Community Survey, Table ID. S0201.

<sup>20</sup> Tatian, Hendey, and Bogle 2017 cited in Meeting the Washington Region’s future Housing Needs. *Urban Institute 2019.*  
<https://www.urban.org/research/publication/meeting-washington-regions-future-housing-needs>

<sup>21</sup> Ibid

<sup>22</sup> Montgomery County Preservation Study, July 2020.

<https://montgomeryplanning.org/wp-content/uploads/2020/11/200914-Montgomery-County-Preservation-Study.pdf>

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid