

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

Office of Legislative Oversight

## ZTA 23-01: ACCESSORY RESIDENTIAL USES – SHARING ECONOMY RENTAL

### SUMMARY

The Office of Legislative Oversight cannot discern the net impact of Zoning Text Amendment 23-01, Accessory Residential Uses – Sharing Economy Rental on racial equity and social justice (RESJ) in the County.

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### PURPOSE OF RESJ 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, power, and leadership 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 23-01

Homeowners across the County are increasingly renting their private residential spaces (e.g., swimming pools, backyards, and spare rooms) as part of the sharing economy. Unlike short-term residential rentals (e.g., Airbnb), the renting of private spaces within residences, referred to as "Sharing Economy Rentals," is not regulated locally. To bring the rental of private residential spaces into the formal economy and establish local government requirements to regulate their use, two companion proposals were introduced to the County Council on January 31, 2023:

- Bill 6-23: Housing-Shared Economy Rental that establishes the certification, application, and licensing processes for sharing economy rentals under the Department of Health and Human Services.
- Zoning Text Amendment (ZTA) 23-01: Accessory Residential Uses - Sharing Economy Rental that establishes changes to the Zoning Ordinance to permit shared economy rentals.

This OLO RESJ statement evaluates ZTA 23-01.

The purpose of ZTA 23-01 is to create a new use in the Zoning Ordinance under Accessory Residential Uses for "Sharing Economy Rentals." If enacted, ZTA 23-01 would establish zoning code regulations for the rental of private property as shared economy rentals as a limited use if the following conditions are met:<sup>3</sup>

- Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.
- Sharing Economy Rental must be the property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.
- The property owner or owner-authorized resident must be present at the residence during the rental period.
- A Sharing Economy Rental may only operate for a maximum of 120 days in a calendar year.
- Rental hours are limited to 8:00 a.m. to 10:00 p.m.

# RESJ Impact Statement

## Zoning Text Amendment 23-01

- The property owner or owner-authorized resident must obtain a license under Chapter 25C.
- The total number of adult guests in any rental period is limited to six (6) persons.
- One off-street parking space must be provided for each rental period unless the listing indicates that vehicle parking is prohibited.
- A record of all rentals must be maintained and readily available for inspection.

Of note, ZTA 23-01 establishes zoning code regulations for sharing economy rentals that are like short-term residential rentals (e.g., Airbnb). A side-by-side describing the zoning code for short-term residential rentals and proposed for shared economy rentals is included in Appendix A.

### HOUSING INEQUITY, THE SHARED ECONOMY, AND RACIAL EQUITY

To understand the impact of ZTA 23-01 on RESJ in the County requires understanding the potential impact of this ZTA on Black, Indigenous, and Other People of Color (BIPOC) and low-income communities. To describe these potential impacts, this section describes housing inequities, the sharing economy, and racial inequities that could be impacted by this ZTA.

**Housing Inequities.** 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>4</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>5</sup> BIPOC constituents still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.<sup>6</sup>

Specific to Montgomery County, data on homeownership demonstrates housing inequities by race and ethnicity. As noted in Table 1, 77 percent of White households and 69 percent Asian households resided in owner-occupied units in 2021 compared to 54 percent of Latinx households and 43 percent of Black households.<sup>7</sup> Black, Latinx and Asian mortgage holders were also more likely to experience housing cost burden where they expended more than 30 percent of their household income on housing. In 2021, 28 to 32 percent of BIPOC mortgage holders in the County were housing burdened compared to 22 percent of White mortgage holders.<sup>8</sup>

**Table 1: Homeownership and Cost Burden Rate of Homeowners. Montgomery County**

Race and Ethnicity	Homeownership Rate	Homeowner Cost Burden Rate
Asian	69.1	30.1
Black	43.3	28.1
White	77.1	22.1
Latinx <sup>9</sup>	54.3	31.8

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau<sup>10</sup>

**The Sharing Economy and Racial Inequities.** The sharing economy refers to an economic system where private individuals can exchange goods and services, either for free or for a fee, usually through the Internet.<sup>11</sup> Given the racial disparities in wealth and housing, the provision of sharing economy rentals permitted under ZTA 23-01 could enable BIPOC homeowners to earn additional income to reduce housing cost burden. However, one report warns that local jurisdictions should be cautious about the potential impact of the sharing economy on social inequalities in two areas; racial discrimination against shared economy users and income inequality.<sup>12</sup>

Two other studies by JPMorgan Chase and Company Institute and Pew Research Center have also found that users of sharing economy platforms tend to be Whiter, younger, better-educated, and have higher income than the general population.<sup>13</sup> This research suggests that among users, White and affluent constituents are more likely to benefit from shared economy rentals than BIPOC and lower-income constituents.

# RESJ Impact Statement

## Zoning Text Amendment 23-01

Research on short-term residential rentals also suggests that the sharing economy for private property could widen racial disparities. For example, a research study based on a sample of 335,000 listings in the ten largest Airbnb markets found that in communities with high percentages of BIPOC constituents, there were more listings on the platform, and those listings tend to be booked at rates similar to areas with higher proportions of White constituents.<sup>14</sup> Yet, hosts in predominantly BIPOC areas charged lower nightly prices, had lower annual revenues, and received lower ratings from guests.<sup>15</sup> As such, while a greater share of homes in BIPOC communities were available for short-term residential rentals their return on investment was far lower than the return from homes listed in predominantly White communities.

In sum, sharing economy platforms inclusive of sharing economy rentals may provide greater incentives for participation among BIPOC constituents. However, whether those incentives result in better access to the market, or less racialized outcomes, remains unclear.<sup>16</sup>

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-01 on racial equity and social justice in the County, OLO considered the anticipated impact of this ZTA on three sets of stakeholders:

- Suppliers of Shared Economy Rentals (Homeowners and Authorized Renters);
- Users of Shared Economy Rentals; and
- Neighbors of Shared Economy Rentals

**Suppliers of Shared Economy Rentals.** ZTA 23-01 enables homeowners and renters authorized by their landlords to rent accessory residential spaces to do so per proposed amendments to the Zoning Ordinance. However, homeowners are best poised to take advantage of this opportunity. Given the higher homeownership rates of White and Asian constituents in the County, they are best poised to utilize this ZTA. Yet, Black and Latinx constituents, either as homeowners or renters, are perhaps most motivated to rent their accessory residential spaces to offset the housing costs as they experience higher rates of housing burden.<sup>17</sup> Additional data on the actual supply of shared economy rentals by the race and ethnicity of authorized agents would be required to discern the RESJ impact of ZTA 23-01 among suppliers of shared economy rentals in the County.

**Users of Shared Economy Rentals.** ZTA 23-01 will enable constituents to access residential spaces and amenities through the rental market. OLO anticipates that rentals for outdoor accessory rental spaces such as swimming pools, basketball, tennis courts or other backyard activities will be especially popular. There could be greater demand for these rentals among Black and Latinx constituents who may have fewer opportunities to access these amenities given their lower homeownership rates. Yet, given the higher wealth of White and Asian constituents in the County, they are better positioned to access the shared economy rental market. Additional data on the actual demand for shared economy rentals by race and ethnicity would be required to discern the RESJ impact of ZTA 23-01 among renters of shared economy spaces in the County.

**Neighbors of Shared Economy Rentals.** ZTA 23-01 could also increase noise, traffic, and parking demands in neighborhoods of shared economy rentals. The impact of these unintended consequences could especially impact residents in higher density neighborhoods if shared economy rentals are utilized in those neighborhoods. However, additional information is necessary to discern whether ZTA 23-01 would differentially impact BIPOC constituents based on where they live. Residents of high-density neighborhoods may experience more negative effects than residents of low-density neighborhoods, the latter may offer more shared economy rentals than the former, especially for outdoor uses such as swimming pools, basketball and tennis courts, and backyards.

Taken together, OLO cannot discern the net impact of ZTA 23-01 on racial and social inequities in the County.

# RESJ Impact Statement

## Zoning Text Amendment 23-01

### 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.<sup>18</sup> OLO finds the RESJ impact of ZTA 23-01 to be indeterminant. As such, OLO does not offer any recommended amendments for this ZTA.

### CAVEATS

Two caveats to this RESJ 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.

#### Appendix A: Limited Use Standards for Short-Term Residential and Shared Economy (Accessory Use) Rentals

59.3.3.3.H and I	Short-Term Residential Rental (ZTA 17-03)	Shared Economy Rental (ZTA 23-01)
Definition	The residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. A Short-Term Residential Rental is not a Bed and Breakfast.	The rental of any portion of a dwelling or the property on which it sits for a fee where both the property and the dwelling are privately-owned by the same person or entity and where the rental period is less than 12 continuous hours.
Use Standard-Limited	<ul style="list-style-type: none"><li>a. Short-Term Residential Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.</li><li>b. The dwelling unit used as a Short-Term Rental must be the property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.</li><li>c. If the property owner or owner-authorized resident is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 120 days in a calendar year. If the property owner or owner-authorized resident is physically present and occupies the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.</li><li>d. The use must be licensed under Chapter 54.</li><li>e. The maximum number of occupants is limited by Chapter 26, Section 5; however, the total number of overnight guests in the Short-Term Residential Rental who are 18 years or older is limited to six, and the total number of overnight guests over 18 years of age per bedroom is limited to two.</li><li>f. One off-street parking space must be provided for each rental contract unless the online listing indicates that vehicle parking is prohibited.</li></ul>	<ul style="list-style-type: none"><li>a. Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.</li><li>b. The Sharing Economy Rental must be the property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.</li><li>c. The property owner or owner-authorized resident must be present at the residence during the rental period.</li><li>d. A Sharing Economy Rental may only operate for a maximum of 120 days in a calendar year.</li><li>e. Rental hours are limited to 8:00 a.m. to 10:00 p.m.</li><li>f. The property owner or owner-authorized resident must obtain a license under Chapter 25C.</li><li>g. The total number of guests in any rental period who are 18-years or older is limited to 6 persons.</li><li>h. One off-street parking space must be provided for each rental period unless the listing indicates that vehicle parking is prohibited.</li><li>i. A record of all rentals must be maintained and readily available for inspection.</li></ul>

# RESJ Impact Statement

## Zoning Text Amendment 23-01

<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.raciaequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Ndou, Livhu memo to Montgomery County Council, January 26, 2023

[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131\\_4D-6.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131_4D-6.pdf)

<sup>4</sup> Richard Rothstein, The Color of Law: A Forgotten History of How Government Segregated America, 2017, as Cited in Racial Equity and Social Justice (RESJ) Zoning Text Amendment (ZTA) Statement Office of Legislative Oversight (OLO), ZTA 22-03: Overlay Zone – Downtown Silver Spring (DSS). May 20,2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-03.pdf>

<sup>5</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. As cited in OLO RESJ statement for ZTA 22-03.

<sup>6</sup> Keeanga-Yamahtta 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>7</sup> American Community Survey, Table ID. S0201, as Cited in Racial Equity and Social Justice (RESJ) Zoning Text Amendment (ZTA) Statement Office of Legislative Oversight (OLO), ZTA 22-03: Overlay Zone – Downtown Silver Spring (DSS). May 20,2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-03.pdf>

<sup>8</sup> American Community Survey. Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates, United States Census Bureau. Table ID S0201, as Cited in s Cited in OLO RESJ ZTA Statement ZTA 22-03

<sup>9</sup> 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.

<sup>10</sup> 2021 American Community Survey 5-Year Estimates, Census Bureau. As cited in OLO Bill 6-23 Housing-sharing Economy Rental.

<sup>11</sup> Oxford Lerner’s dictionaries

<https://www.oxfordlearnersdictionaries.com/us/definition/english/sharing-economy>

<sup>12</sup> World Economic Forum, December. 2017. White paper Collaboration in Cities: From Sharing to ‘Sharing Economy’. p.18

[https://www3.weforum.org/docs/White\\_Paper\\_Collaboration\\_in\\_Cities\\_report\\_2017.pdf](https://www3.weforum.org/docs/White_Paper_Collaboration_in_Cities_report_2017.pdf)

<sup>13</sup> JPMorgan Chase and Company Institute 2016 “Paychecks , Paydays , and the Online Platform Economy: Big Data on Income Volatility.”; Pew Research Center 2016 “Shared, Collaborative and On Demand: The New Digital Economy.”; as cited by Cansoy and Schor, Who Gets to Share in the “Sharing Economy”? Racial Discrimination in Participation, Pricing and Ratings on Airbnb. N.D.

<sup>14</sup> Cansoy, Mehamet and Schor, Juliet. N.D. Who Gets to Share in the “Sharing Economy”? Racial Discrimination in Participation, Pricing and Ratings on Airbnb. Boston College Department of Sociology

<https://www.bc.edu/content/dam/bc1/schools/mcas/sociology/pdf/Who%20gets%20to%20share%20in%20the%20sharing%20economy .pdf>

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> American Community Survey. Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates, United States Census Bureau. Table ID S0201, as Cited in s Cited in OLO RESJ ZTA Statement ZTA 22-03

<sup>18</sup> Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

<https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/RacialEquity/Bill27-19.pdf>