

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

Office of Legislative Oversight

ZTA 23-11: REGULATORY APPROVALS – CONDITIONAL USE

SUMMARY

The Office of Legislative Oversight (OLO) cannot discern the anticipated impact of ZTA 23-11 Regulatory Approvals –Conditional Use on racial equity and social justice (RESJ) in the County with available data.

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.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 23-11

Local businesses can experience difficulties in operating and growing businesses in Montgomery County as they locate and/or expand their businesses in zones that permit their use.³ If a business attempts to locate 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 business attempts to locate 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 Montgomery County Department of Permitting Services (DPS).

The purpose of ZTA 23-11 is to streamline the permitting process for select businesses by changing some Conditional Use zones into Limited Use zones. ZTA 23-11 would also streamline the Office of Zoning and Administrative Hearing's (OZAH) approval process by making the following changes and revisions to the Zoning Ordinance:⁴

- Allowing Limited Use approval in certain zones for Equestrian Facility, Home Health Practitioner, Home Occupation, Retail/Service Establishment, Rural Country Market, and Automobile Storage Lot uses;
- Increasing Family Day Care from 8 to 12 persons and eliminating the Group Day Care category (9-12 persons);
- Consolidating Home Health Practitioner categories for low impact and major impact;
- Consolidating Retail/Service Establishment categories for 85,001 square feet and 120,001 square feet and over;
- Not requiring additional notice for waiver of a parking requirement;
- Not requiring landscaping plans that provide more than the minimum requirements to go through the alternative method of compliance;
- Allowing the Hearing Examiner to dismiss inactive applications; and
- Allowing the Hearing Examiner to waive or refund Conditional Use fees.

A companion case, Subdivision Regulation Amendment SRA 23-02 that allows concurrent review of a Preliminary Plan and Conditional Use applications, is also proposed along with the ZTA. With this SRA, the Preliminary Plan approval would be a "conditional approval" subject to the approval of the Conditional Use application.⁵

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This RESJ impact statement (RESJIS) builds on prior OLO RESJIS's completed for following legislation:

- Expedited Bill 29-21, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments (published September 13, 2021);⁶
- ZTA 21-08, Landscape Contractor – Use Standards (published November 16, 2021);⁷ and
- Expedited Bill 37-23, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments (published October 18, 2023).⁸

For background on inequities and disparities in entrepreneurship and on the permitting process in Montgomery County, please refer to these RESJIS's. ZTA 23-11 was introduced on December 12, 2023.

ENTREPRENEURSHIP, PERMITTING, AND RACIAL EQUITY

Racial and Ethnic Inequities in Entrepreneurship. Researchers at the Brookings Institution find that disparities in entrepreneurship by race and ethnicity “do not reflect the intrinsic desire or talents of entrepreneurship of color themselves, but rather the structure of the systems they navigate.”⁹ Their review of the research finds that there “are no differences between racial groups in entrepreneurial capabilities or interests, as measured by degree of confidence, capacity to learn, appetite for risk, creativity, and determination.”¹⁰

Instead, research shows that a variety of other factors adversely impact Black, Indigenous, and Other People of Color (BIPOC) 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 report by the U.S. 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 their applications will be rejected.¹¹ Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.¹²

Nationally, Black and Latinx constituents represent 28 percent of the population but eight percent of business owners with employees. Local data also demonstrates disparities in business ownership by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicates that Black- and Latinx-owned firms each accounted for 15 percent of firms in Montgomery County and Asian-owned firms accounted for 14 percent of County firms, Asian-owned firms accounted for only four percent of local business revenue and Black- and Latinx-owned firms each accounted for less than two percent of local business revenue. 2017 data (Table 1) also demonstrates that Black and Latinx constituents are under-represented among business-owners with employees locally.¹³

Table 1: Population and Business Owners with Employees by Race and Ethnicity, Montgomery County

Race and Ethnicity ¹⁴	Percent of Population	Percent of Business Owners with Employees
Asian	14.8	18.0
Black	18.1	5.0
Native American	0.3	0.4
White	54.3	68.1
Latinx	19.0	7.1

Source: 2017 American Community Survey 5-Year Estimates and 2017 American Business Survey, Census Bureau.

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County Permitting Process and Costs.¹⁵ The permitting process for businesses seeking to establish or expand their operations through the approval of a Conditional Use application can take a long time and be cost prohibitive for small businesses, including BIPOC-owned firms. Table 2 summarizes the key differences in review processes for Conditional Use and Limited Use applications.

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

Review Process	Application	Actions	Review Period
Conditional Use	Planning Board	Reg	120+ days
Limited Use	Department of Permitting Services	Permits (Use, Building, Occupancy)	<30 days

The Conditional Use process can take four or more months to complete while the Limited Use process can often take less than a month to complete. The Conditional Use process is often more expensive for applicants depending on types of uses and the cost of filing fees. For example, the current Conditional Use application fee for Group Day Care 9-12 is \$490 while the licensing fee for Family and Group Day Care with Department of Permitting Services (DPS) is \$205.48 per two-year license. This cost of Conditional Use applications could be cost-prohibitive for some small businesses, especially BIPOC-owned ones.

Community Engagement with Conditional Use Process.¹⁶ The Conditional Use process provides opportunities for community participation, particularly from adjoining properties and residents of the immediate neighborhood. Conditional Use application review requires public notices and hearings. Accordingly, it allows neighbors, homeowners' associations, and other interested parties the opportunity to comment on potential impacts on properties and the immediate area. However, neither the Planning Board nor OZAH report on the demographics of community stakeholders that offer public testimony on Conditional Use applications. If homeowners are more likely to offer comment on Conditional Use applications than renters, available data suggests White constituents are more likely to offer comments because they have higher rates of homeownership. Whereas White people accounted for 42 percent of the County's population in 2019, they accounted for 59 percent of owner-occupied housing units in the County.¹⁷

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-11 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this zoning text amendment?
- What racial and social inequities could passage of this ZTA weaken or strengthen?

OLO anticipates that business owners in the industries impacted by ZTA 23-11 (e.g. retail and service establishments, home health, equestrian services, family day care, country markets, and home-based industries) will be the primary beneficiaries of this ZTA as it reduces the cost of business for these industries. Rather than going through the costly Conditional Use process, they will be able to utilize the lower cost Limited Use process for certain permits. OLO, however, cannot access whether this ZTA will impact racial inequities and disparities in entrepreneurship locally without data on the number of businesses and demographics of local business-owners that would likely be impacted by this ZTA.

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OLO also anticipates that community stakeholders neighboring the businesses most likely to benefit from this ZTA could be harmed as they will lose the opportunity to offer public testimony on certain local permitting concerns. OLO, however, cannot access whether this ZTA will impact racial inequities or disparities in community engagement because the demographics of community stakeholders impacted by this ZTA remain unknown.

Taken together, OLO cannot discern the anticipated RESJ impact of ZTA 23-11 with available data.

RECOMMENDED AMENDMENTS

Bill 44-20 amending the County’s Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments.¹⁸ Based on the preceding analysis, OLO anticipates that ZTA 23-11 will have an indeterminate impact on racial and social inequities in the County. As such, OLO does not offer recommended amendments.

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.

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.raciaequitytools.org/glossary>

² Ibid.

³ OLO RESJ Impact Statement for Zoning Text Amendment 21-08. Office of Legislative Oversight, November 16, 2021.

⁴ Ndou, Livhu. Montgomery County Council, Agenda Item #2A&2B, December 27, 2023.

⁵ Ibid.

⁶ OLO RESJ Impact Statement for Expedited Bill 29-21. Office of Legislative Oversight, September 13, 2021

⁷ OLO RESJ Impact Statement for ZTA 21-08.

⁸ OLO RESJ Impact Statement for Expedited Bill 37-23. Office of Legislative Oversight, October 18, 2023.

⁹ Joseph Parilla and Darrin Redus, how A New Minority Business Accelerator Grant Program Can Close the Racial Entrepreneurship Gap, Brookings, December 9, 2020.

¹⁰ Ibid.

¹¹ US. Small Business Administration. Office of Advocacy. Minority-Owned Employer Businesses and Their Credit Market Experiences In 2017. July 23, 2020 (cited by Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020).

<https://advocacy.sba.gov/2020/07/23/minority-owned-employer-businesses-and-their-credit-market-experiences-in-2017/>

¹² Ibid.

¹³ OLO RESJ Impact Statement for Bill 37-23.

¹⁴ Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups.

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¹⁵ OLO RESJ Impact Statement for ZTA 21-08.

¹⁶ Ibid.

¹⁷ American Community Survey, 2020 cited in OLO RESJ Impact Statement for ZTA 21-08.

¹⁸ Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

https://apps.montgomerycountymd.gov/ccllims/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf