

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

## Office of Legislative Oversight

### ZTA 24-01: HOUSEHOLD LIVING – CIVIC AND INSTITUTIONAL USES

#### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 24-01: Household Living–Civic and Institutional Uses could narrow racial and social inequities in the County if it increases the supply of affordable housing units for low- and moderate-income households.

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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 24-01

The purpose of ZTA 24-01, Household Living–Civic and Institutional Uses, is to allow houses of worships and private educational institutions to build multi-unit housing and townhouses on land located within the following residential detached zones as conditional uses:

- Residential Estate-2 (RE-2) – Minimum lot area of 2 acres.
- Residential Estate-2C (RE-2C) – Minimum lot area of 2 acres.<sup>3</sup>
- Residential Estate-1 (RE-1) – Minimum lot area of one acre.<sup>4</sup>
- Residential-200 (R-200) – Minimum lot area of 20,000 square feet.<sup>5</sup>
- Residential-90 (R-90) – Minimum lot area of 9,000 square feet.<sup>6</sup>
- Residential-60 (R-60) – Minimum lot area of 6,000 square feet.<sup>7</sup>
- Residential-40 (R-40) - Minimum lot area of 6,000 <sup>8</sup>square feet.<sup>9</sup>

Currently, multi-family units are not permitted in residential detached zones. Further, townhomes are only permitted under certain circumstances in residential detached zones as either a limited use or conditional use, except within the RE-2 zone.<sup>10</sup> ZTA 24-01 will establish development standards for compatibility and require certain affordability thresholds for multi-family units and townhome developments built by houses of worship and private educational institutions within detached residential zones.<sup>11</sup> More specifically, “Townhouse Living” and “Multi Unit Living” dwelling units allowed under ZTA 24-01 would have to meet at least one of the following affordability thresholds:

- At least half of the units would have to be affordable to households earning up to 60 percent of area median income (AMI) for at least 30 years.
- At least 20 percent of the units would have to be affordable to households eligible for the Moderate Priced Dwelling Unit (MPDU) Program<sup>12</sup> and another 10 percent of units would have to be affordable to households earning up to 30 percent of AMI for at least 30 years.

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- At least 20 percent of units would have to be affordable to households earning up to 50 percent of AMI and another 10 percent of units would have to be affordable to households eligible for the MPDU program for at least 30 years.
- The project receives an award of nine percent Low Income Housing Tax Credits from the Maryland Department of Housing and Community Development.

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

- ZTA 22-07, Residential Multi-Unit Low Density, R-30 Optional Method Development (August 15, 2022);<sup>13</sup> and
- ZTA 23-02, Regulatory Approvals - Mixed-Use Housing Community (May 1, 2023)<sup>14</sup>

For background on racial and social inequities in affordable housing and development in Montgomery County, refer to these RESJIS's.

ZTA 24-01 was introduced to the County Council on January 16, 2024.

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### EXCLUSIONARY ZONING, HOUSING INSECURITY, AND RACIAL EQUITY

Historically, government policies such as restrictive covenants, redlining, New Deal housing policies, and the inequitable implementation of the G.I. Bill have fostered residential segregation and racial disparities in housing.<sup>15</sup> Contemporary discrimination in the housing market has also reinforced residential segregation and racial disparities in housing and housing security. Together, historical and contemporary racial inequities in the housing market have created two distinct housing systems where:

- Government-subsidized historically White-only enclaves enabled many White families to build home equity and intergenerational wealth; and
- Underinvested Black, Indigenous, and Other People of Color (BIPOC) communities where historically BIPOC households paid more for lesser housing and fewer amenities in turn were denied opportunities to build intergenerational wealth.

**Exclusionary Zoning.** Exclusionary zoning has played a key role in fostering racial and social inequities in housing that persist today. Exclusionary zoning refers to policies that prohibit building multi-family dwellings and group housing in residential areas zoned for single family homes. Many communities in Montgomery County are exclusively zoned for detached single family houses, often with minimum lot and house sizes. Exclusionary zoning increases the cost of housing and reduces the affordability of housing. As a result, many communities across the County are relatively expensive and unaffordable to many BIPOC residents.<sup>16</sup> In turn, residential segregation across the County by race and ethnicity also persists.

As part of its Equity Agenda for Planning, Montgomery Planning has identified communities with high concentrations of BIPOC constituents, low-income households, and English language learners as Equity Focus Areas (EFAs).<sup>17</sup> EFAs are primarily found along the I-270 Corridor, the Route 29 Corridor, and the eastern portion of the County.<sup>18</sup> As described in Table 1 on the next page, White constituents accounted for a majority of the County's population residing outside of EFAs in 2018 while less than a quarter of the population within EFAs were White.

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**Table 1: Equity Focus Areas (EFAs) and Areas Outside of EFAs, 2018<sup>19</sup>**

	Equity Focus Areas (EFAs)	Areas Outside of EFAs	County
<b>Population</b>	<b>275,873</b>	<b>764,260</b>	<b>1,040,133</b>
<b><u>Percent by Race and Ethnicity</u></b>			
<b>White</b>	22.0	52.6	44.5
<b>Black</b>	25.7	14.8	17.7
<b>Asian or Pacific Islander</b>	13.6	15.0	14.6
<b>Other Race</b>	3.5	4.1	3.9
<b>Hispanic or Latinx</b>	35.2	13.5	19.3

Source: 2018 American Community Survey, 5-Year Estimates compiled by Montgomery County Planning, March 2021

Further, it is important to recognize the material impact of residential segregation in the County on housing opportunities and burdens. For example:<sup>20</sup>

- A majority of constituents in the EFAs (54 percent) resided in rentals while a majority of constituents outside of EFAs (72 percent) resided in owner-occupied housing;
- The value of homes in EFAs (\$345,000) was nearly half the average value of homes outside of EFAs (\$629,000);
- A third of households earned less than \$50,000 annually in the EFAs compared to less than a fifth of households outside of EFAs (18 percent); and
- Households in EFAs were nearly twice as likely to not have a vehicle as households outside of EFAs (11.3 percent vs. 6.4 percent).

**Housing Insecurity:** Residential segregation fostered by exclusionary zoning contributes to disparities in housing and housing insecurity by race and ethnicity as well. A review of American Community Survey data on homeownership and housing burden demonstrating higher levels of housing insecurity among Black and Latinx households confers a greater need for affordable housing among Black and Latinx households as well. More specifically, in 2021:<sup>21</sup>

- 77 percent and 69 percent of White and Asian households respectively resided in owner-occupied units compared to 54 percent of Latinx households and 43 percent of Black households.
- 28 to 32 percent of Black, Asian, and Latinx mortgage holders in the County were housing cost-burdened (expending more than 30 percent of income on housing) compared to 22 percent of White mortgage holders.
- 57 percent and 46 percent of Black and Latinx households respectively resided in rentals compared to 31 percent of Asian households and 23 percent of White households.
- 63 percent and 57 percent of Latinx and Black renters respectively were housing cost-burdened compared to 45 percent of White renters and 38 percent of Asian renters.

### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 24-01 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?

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**For the first question**, OLO considered the demographics of households needing affordable housing. Since Black and Latinx households experience the highest rates of housing insecurity in the County, OLO anticipates they are the most likely to benefit from ZTA 24-01 if it increases the production of affordable housing in the County.

**In response to the second question**, OLO considered the potential impact of ZTA 24-01 on housing disparities in the County. If ZTA 24-01 increases the number of affordable housing units in the County, it could narrow racial and social inequities in housing security and cost burden. Moreover, if ZTA 24-01 increased the number of affordable housing units in the larger lot residential zones concentrated in the most affluent communities in the County, it could also diminish residential segregation and reduce racial disparities in access to high quality schooling, transportation, health care, employment, and other opportunities.

Taken together, OLO finds that if ZTA 24-01 increases the number of affordable housing units in the County it will favorably impact RESJ in the County.

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## 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 ZTAs.<sup>22</sup> OLO finds the RESJ impact of ZTA 24-01 would be favorable if it increased the number of affordable housing units available in the County. As such, OLO does not offer any recommended amendments for this ZTA.

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## 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.

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## CONTRIBUTIONS

Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement with assistance from Elaine Bonner-Tompkins, Senior Legislative Analyst.

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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> Under optional method development, minimum lot size of 34 acres for MPDUs and 50 acres for cluster development.

<sup>4</sup> Under optional method development, minimal lot size of 17 acres for MPDUs and 50 acres for cluster development.

<sup>5</sup> Under optional method development, minimal lot size of 9 acres for MPDUs and 5 acres for cluster development.

<sup>6</sup> Under optional method development, minimal lot size of 5 acres for MPDUs and 5 acres for cluster development.

<sup>7</sup> Under optional method development, minimal lot size of 3 acres for MPDUs and 5 acres for cluster development.

<sup>8</sup> Under standard method development, minimal lot size 6,000 SF for Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone; 4,000 SF for Duplex-Side, 8,000 SF for Duplex-Over.

<sup>9</sup> Under optional method development, minimal lot size of 3 acres for MPDUs.

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<sup>10</sup> Ndou, Livhu. Montgomery County Council, Agenda Item #1A, Introduction, January 16, 2024.

<sup>11</sup> Ibid.

<sup>12</sup> Moderately Priced Dwelling Units (MPDUs) refer to dwelling units offered for sale or rent to eligible low- or moderate-income households through the Department of Housing and Community Affairs' MPDU program. The MPDU program requires that 12.5 to 15 percent of new housing units in projects with 20 or more units to be affordable to households earning up to 65 or 70 percent of the area median income. The required affordability period for MPDUs is 30 years for units sold and 99 years for units rented.

<sup>13</sup> OLO RESJ Impact Statement for ZTA 22-07. Office of Legislative Oversight, August 15, 2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-07.pdf>

<sup>14</sup> OLO RESJ Impact Statement for ZTA 23-02. Regulatory Approvals - Mixed-Use Housing Community. Office of Legislative Oversight, August 15, 2022. <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2023/ZTA23-02.pdf>

<sup>15</sup> Rothstein, Richard. 2017. The Color of Law: A Forgotten History of How Government Segregated America. (Cited in OLO RESJ Impact Statement for ZTA-23-02)

<sup>16</sup> Bailey, Saki et al., How Racism Shaped the Housing Crisis and What We Can Do About It, Shareable (page 8)

<sup>17</sup> Montgomery Planning. 2020. Equity Agenda for Planning. The Equity Focus Areas Analysis.

<https://montgomeryplanning.org/planning/equity-agenda-for-planning/the-equity-focus-areas-analysis/>

<sup>18</sup> Ibid.

<sup>19</sup> Montgomery County Department of Planning, 2021. Equity Focus Areas & Area Outside of EFAs (2018) demographic Profile.

[https://mcatlas.org/filetransfer/EFAs/Story\\_map/SB\\_Round2\\_StaticBGs/Demo%20profiles%20EFA%20Non-EFA%20MoCo%20ACS%202018.pdf](https://mcatlas.org/filetransfer/EFAs/Story_map/SB_Round2_StaticBGs/Demo%20profiles%20EFA%20Non-EFA%20MoCo%20ACS%202018.pdf)

<sup>20</sup> Ibid.

<sup>21</sup> 2021 American Community Survey 5-Year Estimates, Census Bureau. Estimates for Native American and Pacific Islander constituents were not available for these data points. (Originally cited in OLO RESJ Impact Statement for Bill 6-23 Housing - Sharing Economy Rental).

<sup>22</sup> Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

[https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682\\_1\\_12149\\_Bill\\_44-20\\_Signed\\_20201211.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf)