

M E M O R A N D U M

September 7, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-04, Commercial Uses – Light Vehicle Sales and Rental (Indoor)

PURPOSE: Worksession #1

Expected Attendees

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner Coordinator, Countywide Planning & Policy, Planning Department
- Victor Salazar, Chief, Division of Zoning and Code Compliance, Department of Permitting Services (DPS)
- Elaine Bonner-Tompkins, Senior Legislative Analyst, Office of Legislative Oversight (OLO)
- Elsabett Tesfaye, Performance Management and Data Analyst, Office of Legislative Oversight (OLO)

Introduction

Zoning Text Amendment (ZTA) 22-04, Commercial Uses – Light Vehicle Sales and Rental (Indoor), lead sponsors Councilmembers Navarro, Riemer, and Glass, was introduced on June 14, 2022. ZTA 22-04 will allow Light Vehicle Sales and Rental (Indoor) in the Neighborhood Retail (NR) zone as a limited use.

Public Hearing

A public hearing was held on July 26, 2022. The only speaker was Planning Staff on behalf of the Planning Board, in support of the ZTA. The Council also received a letter in support from Lerch, Early, Brewer, representing Lindsay Ford.

Summary of Impact Statements

RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) Impact Statement on July 21, 2022. OLO found that ZTA 22-04 could sustain or marginally widen racial and social inequities in the County as its benefits would disproportionately accrue to White business owners. OLO, however, anticipated a negligible impact as there are a limited number of properties readily available for the new uses authorized with this ZTA. To advance RESJ in entrepreneurship, OLO proposed additional policies for Council consideration, including:

1. Focusing on increasing County Government contracting opportunities for BIPOC-owned businesses; and
2. Prioritizing narrowing the diversity gap in entrepreneurship overall by enacting legislation to advance best practices in investing and developing strategies for entrepreneur opportunities for BIPOC residents through business accelerators and mentorship opportunities.

Planning Board Recommendation

The Planning Board met and discussed ZTA 22-04 at its hearing on July 14, 2022. The Board supported the ZTA but had several comments.

1. The Board stated that while the plain reading of the definition of indoor sales suggests all operations are indoors, past interpretations have allowed outdoor display and storage of vehicles. According to Planning staff, the distinction between indoor and outdoor sales was based on whether the business had a large display showroom with indoor sales and waiting areas, versus a sales lot with a small structure serving as an office for the sales associates.
2. The Board noted that the NR zone has many local to regional scale shopping centers that are not substantially different from an auto sales use that has indoor sales and storage as well as outdoor display and storage. The Board suggested that if Light Vehicle Sales and Rental (Indoor) were to be amended to include some outdoor display and storage, it would not be different from neighborhood retail shopping centers that might have a regional draw.

Based on these comments, the Board recommended the following amendments:

1. Amend the definition of Light Vehicle Sales and Rental (Indoor) to include outdoor display and storage of vehicles:

“Light Vehicle Sales and Rental (Indoor) includes indoor and outdoor display and storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.”

Planning explains that such an amendment would mean that applicants would only have to apply for a permit for one use, rather than applying for both Light Vehicle Sales and Rental (Indoor) and Light Vehicle Sales and Rental (Outdoor) when constructing a new auto dealership.

2. Amend the use table to reflect “L/C” for Light Vehicle Sales and Rental (Indoor), with limited use standards where the use is over 5 acres in size, and conditional use standards where the use is under 5 acres in size.

Discussion

History of Light Vehicle Sales and Rental

The prior zoning ordinance had 3 automobile sales uses:

- *Automobile sales lot*: A lot arranged, designed or used for the storage and display for sale of any motor vehicle or any type of trailer; provided, that the trailer is unoccupied; and where no repair work is done except minor incidental repair of automobiles or trailers displayed and sold on the premises.
- *Automobile sales, retail showroom*: Automobile sales within an indoor showroom designed to display automobiles for retail sale, but not including automobile storage, service, or parts sales. Vehicles offered for sale are limited to passenger cars, multi-purpose vehicles, and light trucks. Vehicles offered for sale must be less than 10,000 pounds gross vehicle weight (as stated in the manufacturer's specifications).

While the Automobile Sales Lot definition does not use the word “outdoor”, comparing the definitions it appears to describe a car sales lot where the vehicles are all displayed outdoors, similar to a used car sales lot. The Automobile Sales, Retail Showroom definition clearly describes indoor car sales, similar to existing new car dealerships seen throughout the County, such as the high-end dealerships near Bethesda Row.

When the zoning ordinance was re-written in 2014, the automobile sales uses became:

- *Light Vehicle Sales and Rental (Indoor)*: a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes indoor storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.
- *Light Vehicle Sales and Rental (Outdoor)*: means the sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving, outside of a building. Light Vehicle Sales and Rental (Outdoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Outdoor) includes outdoor storage of vehicles for sale, and an accessory car wash for vehicles and equipment for sale, rent, or lease.

Outdoor Storage

A plain reading of the current definition of Light Vehicle Sales and Rental (Indoor) does not include outdoor storage. The use standards for Light Vehicles Sales and Rental (Outdoor) state: “Vehicles must be stored or parked only on a hard surface that is constructed of material resistant to erosion, is adequately treated to prevent dust emission, and is surrounded by a raised curb.” This

provision is not included under Light Vehicle Sales and Rental (Indoor). A reasonable interpretation of this is that a new car dealership that has vehicles displayed in a showroom, as well as vehicles stored and displayed outside for sale, would need to obtain a separate permit for each use.¹ The proposed amendment to allow outdoor storage would alleviate this problem.

Conditional Use

Under Section 4.6.1.C. of the Zoning Ordinance, the Neighborhood Retail (NR) zone is:

intended for commercial areas that have a neighborhood orientation and which supply necessities usually requiring frequent purchasing and convenient automobile access. The NR zone addresses development opportunities within primarily residential areas with few alternative mobility options and without a critical mass of density needed for pedestrian-oriented commercial uses.

While Light Vehicle Sales and Rental is not a “[necessity] usually requiring frequent purchasing”, it does require “convenient automobile access”. In addition, auto sales are appropriately placed away from high-density, pedestrian-oriented areas. According to Planning, “while there are instances of small NR zoned properties for convenience stores or other small-scale retail, much of the NR zone across the County is for mid-sized shopping areas over 10 acres in size that are grocery store anchored and often include additional in-line retail and standalone retail with drive-thrus.” The Planning Board therefore recommends making Light Vehicle Sales and Rental (Indoor) a limited use if over 5 acres, and a conditional use if under 5 acres. The Board believes the NR zone may be appropriate for indoor sales and storage, including outdoor display and storage, on larger sites similar to the larger shopping centers today.

Council Staff recommends approval of ZTA 22-04 with amendment.

Council Staff recommends the Planning Board amendment to include outdoor storage in the definition of Light Vehicle Sales and Rental (Indoor).

Light Vehicle Sales and Rental (Indoor) means a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes indoor and outdoor display and storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.

The NR zone is intended to have neighborhood businesses, not large regional ones. The amendment to change the process based on the size of the site would create a more detailed process for smaller businesses than for larger ones. If the concern is that the use is only appropriate for larger lots, or there is a desire to not push out smaller neighborhood uses that do require frequent

¹ Light Vehicles Sales and Rental is a limited or permitted use in every zone except for the NR zone, where Light Vehicle Sales and Rental (Outdoor) is a conditional use. Where allowed as a limited use, site plan approval is required.

purchases, then Council Staff recommends an amendment to only allow Light Vehicle Sales and Rental (Indoor) if the *zoned area* is 5 acres, not the site itself. This will protect small local shopping centers while allowing auto dealerships where there is more appropriate space. The amendment could read:

c. In the NR zone, a Light Vehicle Sales and Rental (Indoor) use is allowed as a limited use if the area contiguously zoned NR is at least five acres in size.

This packet contains:

ZTA 22-04, as introduced	© 1
Planning Board Recommendation	© 6
Planning Staff Memorandum	© 12
RESJ Impact Statement	© 14
Map of NR Zones	© 18

Ordinance No.:
Zoning Text Amendment No.: 22-04
Concerning: Commercial Uses - Light
Vehicle Sales and Rental
(Indoor)
Draft No. & Date: 2 - 9/1/2022
Introduced: June 14, 2022
Public Hearing: July 26, 2022
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmembers Navarro, Riemer, Glass

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow Light Vehicle Sales and Rental (Indoor) in the Neighborhood Retail (NR) zone; and
- generally amend the provisions for Light Vehicle Sales and Rental (Indoor).

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 3.1. “Use Table”
Section 3.1.6. “Use Table”

Division 3.5. “Commercial Uses”
Division 3.5.12. “Vehicle/Equipment Sales and Rental”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be
6 modified in Overlay zones under Division 4.9.

7

8 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use

9 Not Allowed

12 * * *

13 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

14 * * *

15 **Division 3.5. Commercial Uses**

16 * * *

17 **Section 3.5.12. Vehicle/Equipment Sales and Rental**

18 * * *

19 **B. Light Vehicle Sales and Rental (Indoor)**

20 **1. Defined**

21 Light Vehicle Sales and Rental (Indoor) means a building for the indoor
22 sales, rental, or leasing of light equipment and vehicles, including vehicles
23 for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes
24 the repair of vehicles and equipment for sale, rent, or lease as an incidental
25 use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes
26 indoor and outdoor display and storage of vehicles for sale and an accessory
27 car wash for vehicles and equipment for sale, rent, or lease.

28 * * *

29 **Sec. [2]3. Effective date.** This ordinance becomes effective 20 days after the
30 date of Council adoption.

31

ZTA 22-04 – COMMERCIAL USES – LIGHT VEHICLE SALES AND RENTAL (INDOOR)

Description

ZTA 22-04 would amend the use table to allow Light Vehicles Sales and Rental (Indoor) as a limited use in the Neighborhood Retail (NR) Zone.

ZTA 22-04

COMPLETED: 7-7-2022

MCPB

Item No. 07

7-14-2022

2425 Reddie Drive

Floor 14

Wheaton, MD 20902



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Summary

- Currently, Light Vehicle Sales and Rental (Outdoor) is allowed as a conditional use in the NR zone, however Light Vehicle Sales and Rental (Indoor) is not allowed at all.
- This ZTA would subject the Indoor use to the limited use standards that already exist in section 3.5.12.B.2.a, including a site plan, if the property abuts land in an agricultural, rural residential, or residential zone.
- Staff recommends modifying the definition of indoor sales to clarify that outdoor display and storage of vehicles is also permitted.
- A public hearing before the District Council is scheduled for July 26, 2022.

LEAD SPONSORS

Councilmembers Reimer, Navarro, and Glass

INTRODUCTION DATE:

June 14, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-04

ZTA 22-04 was introduced by Councilmember sponsors Navarro, Reimer, and Vice President Glass on June 14, 2022. The ZTA is currently scheduled for a Council Public Hearing on Tuesday, July 26, 2022. The ZTA would allow Light Vehicle Sales and Rental (Indoor) as a limited use in the Neighborhood Retail (NR) zone. Currently, the NR zone allows Light Vehicle Sales and Rental (Outdoor) as a conditional use but does not allow the Indoor use under any circumstances. According to the introduction packet for this ZTA (Attachment A), allowing the Indoor use as a limited use was chosen over allowing it as a conditional use because Council Staff believes the indoor sales use to be less intensive and disruptive than the outdoor sales use, therefore conditional use was not necessary.

SECTION TWO

ANALYSIS

ZTA 22-04 as introduced

ZTA 22-04 only makes one modification to the code, in the Use Table under Section 3.1.6. The ZTA adds L for limited use to the table, in the column for the NR zone, in the row for Light Vehicle Sales and Rental (Indoor). This would permit the indoor sales use as a limited use in the NR zone, following the limited use standards under Section 3.5.12.B.

ZTA 22-04 Analysis

The limited use standards for Light Vehicle Sales and Rental (Indoor) is in Section 3.5.12.B, as a sub-part of the Vehicle/Equipment Sales and Rental category of uses. The definition for this use is as follows:

Light Vehicle Sales and Rental (Indoor) means a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes indoor storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.

The limited use standards that would apply to a property in the NR zone are as follows:

a. Where Light Vehicle Sales and Rental (Indoor) is allowed as a limited use, and the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, it must satisfy the following standards:

i. Access to the site from a street with a residential classification is prohibited.

ii. Site plan approval is required under Section 7.3.4.

Planning staff is concerned that a plain reading of the definition for Light Vehicle Sales and Rental (Indoor) gives the impression that there are no outdoor operations associated with this type of use, and that the idea of an indoor sales use being less intense than an outdoor sales use may be misguided.

Understanding the history of the Light Vehicle Sales and Rental uses is particularly important given the expansion of the Indoor use into a new commercial zone, intended for smaller locally serving retail. In the 2004 version of the Zoning Code, what is now outdoor sales was called an Automobile Sales Lot, which had a definition that did not imply any indoor operations were allowed. The current limited use standards for these outdoor lots match the limited use standards for the Indoor use with the addition of prohibiting frequent site access points or locating an access point within 20 feet of an intersection, requiring that vehicles on display be parked on non-erodible hard surfaces, and prohibiting obstructions that would adversely affect visibility. These additional limited use standards are generally unnecessary because they are already covered by other portions of the code and are largely holdovers from previous versions of the code trying to limit the impact of this use.

The indoor sales use in today's code came from the previous definition of an Automobile Sales, Retail Showroom, which implied sales of vehicles that occur inside a display showroom. Most of the car dealerships throughout the county – such as in parts of Germantown or the Montgomery Auto Sales Park in Silver Spring – are based on the Indoor sales use/Automobile Sales, Retail Showroom use, which have final sales transactions and limited display of vehicles inside a showroom, but also include outdoor display of vehicles for sale, despite not being explicitly expressed in the use definition. With the indoor sales use historically allowing outdoor display of vehicles similar to that of the outdoor sales lots, Planning staff does not believe the indoor sales use is inherently less intense than the outdoor sales use as is indicated in the Council introduction packet.

When looking at the intent statement for the Neighborhood Retail (NR) zone, the code states:

The NR zone is intended for commercial areas that have a neighborhood orientation and which supply necessities usually requiring frequent purchasing and convenient automobile access. The NR zone addresses development opportunities within primarily residential areas with few alternative mobility options and without a critical mass of density needed for pedestrian-oriented commercial uses.

An auto sales use is not a use typically associated with frequent purchasing, but does generally require convenient automobile access, and is a use best suited for areas away from those targeted for higher density and pedestrian-oriented uses. Further, the impact of displayed vehicles outside of a dealer showroom is not inherently more intense or disruptive than surface parking otherwise associated with suburban retail environments. While there are instances of small NR zoned properties for convenience stores or other small-scale retail, much of the NR zone across the county is for mid-

sized shopping areas over 10 acres in size that are grocery store anchored and often include additional in-line retail and standalone retail with drive-thrus. A non exhaustive list of examples includes the Aspen Hill Shopping Center, Norbeck Crossing, Plaza Del Mercado, Colesville Center, and Goshen Crossing. The other consideration is whether this use, if it is to be allowed, is better regulated as a limited use following site plan or a conditional use approved through the Hearing Examiner. Currently, the Light Vehicle Sales and Rental (Indoor) is only allowed as a permitted or a limited use where it is allowed in the code. The Outdoor sales use only has one instance of being permitted as a conditional use, which is in the NR zone. The conditional use standards for an outdoor use in the NR zone do not establish any special standards but instead require following the limited use standards in addition to the conditional use findings. The conditional use findings touch on many similar findings of site plan, including master plan conformance, adequate public facility review, and compatibility findings. The conditional use process does look deeper into issues such as overconcentration of conditional uses and analyzing non-inherent adverse impacts a use may have because of specific site conditions with the goal of protecting community character. As stated previously, Planning staff doesn't see where the vehicle storage of a vehicle sales use is more or less impactful than surface parking for suburban retail already allowed by the NR zone and therefore does not see where these additional conditional use findings geared toward protecting community character have much added value in reviewing a property for vehicle sales.

Planning staff also recommends the definition of Light Vehicle Sales and Rental (Indoor) be modified to more clearly reflect the typical on-site operations associated with the use. The proposed change would be to Section 3.5.12.B.1, as follows:

1. Defined

Light Vehicle Sales and Rental (Indoor) means a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving. Light Vehicle Sales and Rental (Indoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if conducted indoors. Light Vehicle Sales and Rental (Indoor) includes indoor and outdoor display and storage of vehicles for sale and an accessory car wash for vehicles and equipment for sale, rent, or lease.

This small change makes the Indoor use definition consistent with the history of allowing an auto dealership with a showroom to also have a permanent outdoor display of vehicles for sale. This allows the full impact of the use to be inherent at the time of site plan review. Therefore, Planning staff believes the NR zone could support the indoor vehicle sales use, and that the limited use standards which include a site plan process is an adequate review process for approving this use.

SECTION THREE

CONCLUSION

Planning staff supports ZTA 22-04, which would allow indoor vehicle sales and service in the NR zone, with the modified definition for indoor sales clarifying that outdoor display and storage of vehicles is part of that use. Staff recommends the Planning Board transmit these comments to the District Council. This change provides additional opportunities for locating vehicle sales and service in more

automobile-oriented portions of the county, with the necessary protections for adjacent residential uses.

Attachment A – ZTA 22-04 introduction packet

Attachment B – Amended ZTA 22-04



July 22, 2022

To: The Honorable Gabe Alborno
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-04

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on July 14, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-04, with revisions. The Planning Board supports the intent of the ZTA to allow vehicle sales in the NR zone, but is concerned by the definitions and interpretation of indoor versus outdoor sales, and that not all NR zoned properties may be suitable for vehicle sales without a more thorough review.

The ZTA as introduced makes one minor change adding Light Vehicle Sales and Service (Indoor) as a limited use in the NR zone. The Board, however, is concerned by the presumption made in the introduction packet for the ZTA that the indoor sales use is less intense than the outdoor use. The plain reading of the definition of indoor sales suggests all operations occur indoors, but past interpretation and practice has allowed some outdoor display and storage of vehicles. The distinction between indoor sales and outdoor sales has previously been based on whether the business has a large display showroom and an indoor sales and waiting areas or if the business is only a sales lot with a small structure or trailer used as offices for the sales associates. The Planning Board recommends modifying the definition of Light Vehicle Sales and Service (Indoor) by clarifying that both indoor and outdoor display and storage of vehicles is allowed. This would better align the definitions in the code with the past interpretations and enable current and future applicants to only apply for a permit for one use (Indoor) rather than both Indoor and Outdoor when looking to construct a new auto dealership.

In light of the recommended definition change, the Board also considered whether the NR zone was an appropriate zone for vehicle sales, and whether limited use or conditional use is the more appropriate standard. Per the zoning code, the NR zone is intended for neighborhood-oriented retail that supplies necessities and is convenient to automobile access and is located in residential areas with few alternative mobility options and without a critical mass of density for pedestrian oriented uses. Auto sales does not provide for the sale of necessary goods, however it is well served in auto-dominated areas and does not

typically rely on a dense pedestrian scale level of commercial development. Many of the county's NR zoned properties feature local to regional scale shopping centers, including grocery stores as anchors and many other retail tenants including drive-thrus. The visual and operational impacts of an auto sales use with outdoor display of vehicles are not substantially different from these shopping centers. Weighing these factors, the Board ultimately believes the NR zone may be appropriate for indoor sales and storage, including outdoor display and storage, on larger sites that are similar to the larger shopping centers today. The Board recommends the use table reflect "L/C" for the indoor vehicle sales use in the NR zone, with standards allowing the use as a limited use if over 5 acres in size, and as a conditional use if under 5 acres in size.

The Board appreciates the opportunity to review ZTA 22-04 and hopes the Council considers its recommended revisions to make the definition and intent of the indoor auto sales use align with past interpretation and to set appropriate protections for smaller NR zoned sites. Planning staff is available to assist further as this ZTA is considered by the Planning, Housing and Economic Development committee and by the full Council.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, July 14, 2022.



Casey Anderson
Chair

Attachment A: Revised ZTA 22-04
Attachment B: Planning Staff Report Packet

CA:BB:aj

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

Office of Legislative Oversight

ZTA 22-04: COMMERCIAL USES – LIGHT VEHICLE SALES AND RENTAL (INDOOR)

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that ZTA 22-04 could sustain or marginally widen racial and social inequities in the County as its benefits would disproportionately accrue to White business owners. OLO, however, anticipates a negligible impact of this ZTA on racial equity and social justice (RESJ) as there are a limited number of properties readily available for the new uses authorized with this ZTA. To advance RESJ in entrepreneurship, OLO proposes additional policies for Council 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 22-04

ZTA 22-04 will allow Light Vehicle Sales and Rental (Indoor) in the Neighborhood Retail (NR) Zone as a Limited Use.³ Currently, Light Vehicle Sales and Rental (Indoor) is not permitted in the NR Zone and the proposed ZTA would allow the use subject to the provisions of Section 3.5.12.B.2.a.

The Zoning Code defines Light Vehicle Sales and Rental (Indoor) as “a building for the indoor sales, rental, or leasing of light equipment and vehicles, including vehicles for hauling and moving.” Light Vehicle Sales and Rental (Indoor) includes the repair of vehicles and equipment for sale, rent, or lease as an incidental use if it is conducted indoors. It also includes indoor storage of vehicles for sale, and an accessory car wash for vehicles and equipment for sale, rent, or lease.⁴

ZTA 22-04 was introduced on June 14, 2022.

INEQUITY IN ENTREPRENEURSHIP AND ECONOMIC OPPORTUNITY

According to a 2022 report published by Alliance for Entrepreneurial Equity (AEE),⁵ only two percent of businesses in the U.S., or 134,600, are Black-owned, even though 13 percent of the country's population is Black. If business ownership was proportionate to population, there would be 872,200 Black-owned businesses, according to a report by AEE. Similarly, only six percent of businesses are Latinx-owned, or 346,800. But, if the numbers were proportionate, there would be 1.2 million, Latinx business owners.⁶ Latinx are currently 18 percent of the country's population.⁷

RESJ Impact Statement

Zoning Text Amendment 22-04

Prior research shows that a variety of factors adversely impact people of color 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 study by the Small Business Administration found that Black- and Latinx-owned businesses are more likely to have been denied credit, to receive only a portion of funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected. Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage (e.g. home equity), recent financial challenges, and lower credit scores.⁸

Available local data also show evidence of disparities in entrepreneurship by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicates that Black and Latinx firms each accounted for 15 percent of local firms in Montgomery County and Asian firms accounted for 14 percent of County firms, Asian firms accounted for 4 percent of local business revenue, Black firms accounted for 1.7 percent of local business revenue, and Latinx firms accounted for 1.5 percent of local business revenue.⁹

Data from Montgomery County's Minority, Female, and Disabled-Owned Business Program also demonstrates an under representation of minority-owned businesses. Whereas Black, Indigenous and Other Persons of Color (BIPOC) accounted for 55 percent of County residents, BIPOC-owned firms accounted for 18 percent of procurement contracts for County Government in FY20.¹⁰ More specifically:

- Latinx-owned firms accounted for 7.5 percent of contracts;
- African American-owned firms accounted for 6.5 percent of contracts;
- Asian-owned firms accounted for 3.6 percent of contracts; and
- Native American-owned firms accounted for less than one-tenth of one percent of contracts.¹¹

ANTICIPATED RESJ IMPACTS

Given local disparities in entrepreneurship and business revenue by race and ethnicity, OLO anticipates ZTA 22-04 will primarily benefit White residents. In turn, OLO anticipates ZTA 22-04 could marginally widen racial and social inequities in the County relative to entrepreneurship and business revenue. OLO, however, anticipates a negligible to small impact of this ZTA on RESJ in the County as there are a limited number of properties readily available for the new uses authorized with this ZTA.

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.¹² OLO anticipates that ZTA 22-04 could sustain or marginally widen racial and social inequities as its benefits would disproportionately accrue to White business owners. Should the Council consider enacting parallel legislation with this ZTA aimed at increasing business opportunities for BIPOC residents in the County, two sets of policy proposals could be considered:¹³

1. **Focus on increasing County Government contracting opportunities for BIPOC-owned businesses** by enacting legislation to advance the following set of best practices recommended by OLO in its RESJ statement for Bill 29-21.¹⁴
 - Use “best value contracting” to require prime bidders to propose plans for maximizing utilization of Minority Business Enterprises (MBE),

RESJ Impact Statement

Zoning Text Amendment 22-04

- Streamline MBE certification processes,
- Break up large contracts into smaller subcontracts to encourage more MBE applicants,
- Help MBE subcontractors grow into prime contractors, and
- Remove onerous financial burdens for small businesses that may disproportionately impact MBE's.

2. **Prioritize narrowing the diversity gap in entrepreneurship overall** by enacting legislation to advance best practice in investing and developing strategies for entrepreneur opportunities for BIPOC residents through business accelerators and mentorship opportunities.

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.

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

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 The Montgomery County Zoning Ordinance describes the intent of the Neighborhood Retail (NR) zone, which is one of the Employment Zones, as follows:

- The NR zone is intended for commercial areas that have a neighborhood orientation and which supply necessities usually requiring frequent purchasing and convenient automobile access. The NR zone addresses development opportunities within primarily residential areas with few alternative mobility options and without a critical mass of density needed for pedestrian-oriented commercial uses.
- The NR zone allows flexibility in building, circulation, and parking lot layout.

Of note, the Planning Department staff review and analysis of the proposed ZTA indicates that although there are instances of small NR zoned properties for convenience stores or other small-scale retail, much of the NR zone across the County is assigned for mid-sized shopping areas over 10 acres in size that are grocery store anchored and often include additional in-line retail and standalone retail with drive-throughs.

⁴ Chapter 59. Zoning Code Montgomery County Zoning Ordinance. 2014. *Light Vehicle Sales and Rental (Indoor)*

⁵ Horwitz, Gabe, Curran McSwigan. Don Cravins, Jr. 2022. Alliance for Entrepreneurial Equity (AEE). *Entrepreneurial Inequity in America*. March 10. <https://www.aeequity.org/product/entrepreneurial-inequity-in-america>

⁶ Ibid.

⁷ World Population Review. 2022. *Hispanic population by state 2022*. <https://worldpopulationreview.com/state-rankings/hispanic-population-by-state>

⁸ Office of Legislative Oversight (OLO). 2021. RESJ impact statement ZTA 21-08. 2021. November 16. [Racial Equity and Social Justice Impact Statement \(montgomerycountymd.gov\)](https://www.montgomerycountymd.gov/OLSO/Pages/Racial-Equity-and-Social-Justice-Impact-Statement.aspx)

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⁹ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019. *As cited in OLO's RESJ statement for ZTA 21-08*

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190611/20190611_3.pdf

¹⁰ Minority, Female, and Disabled-Owned Business Program, FY20 Annual Report, Office of Procurement, Montgomery County, Maryland. As cited in OLO. RESJ impact statement Bill 29-21, September 13, 2021. [Bill 29-21 Contracts and Procurement – Minority Owned Businesses – Sunset Date - Amendments RESJ \(montgomerycountymd.gov\)](#)

¹¹ Ibid

¹² Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

¹³ Treuhaft, Sarah and Victor Rubin, Economic Inclusion: Advancing an Equity-Driven Growth Model, PolicyLink, as cited in OLO. RESJ impact statement Bill 29-21, September 13, 2021.

https://www.policylink.org/sites/default/files/4A_TREUHAFT_RUBIN_POLICYLINK_REPORT_SECTORAL_INDUSTRY.PDF

¹⁴ Ibid

