

MEMORANDUM

March 23, 2023

TO: Planning, Housing, and Parks (PHP) / Health and Human Services (HHS) / Economic Development (ECON) Committees

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Bill 6-23, Housing - Sharing Economy Rental
ZTA 23-01, Accessory Residential Uses - Sharing Economy Rental

PURPOSE: Worksession #1

EXPECTED ATTENDEES

- Jeffrey Zyontz, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Kenneth Welch, Environmental Health Manager, Licensure and Regulatory Services, Health and Human Services (DHHS)
- Nathan Bovellet, Department of Housing and Community Affairs (DHCA)
- Tamala Robinson, Department of Housing and Community Affairs (DHCA)
- Ehsan Motazedi, Deputy Director, Department of Permitting Services (DPS)
- Victor Salazar, Division Chief, Division of Zoning and Code Compliance, Department of Permitting Services (DPS)
- Barbara Jay, Executive Director, Board of Appeals (BOA)

INTRODUCTION

Bill 6-23, Housing – Sharing Economy Rental and Zoning Text Amendment (ZTA) 23-01, Accessory Residential Uses – Sharing Economy Rental, lead sponsor Councilmember Jawando, co-sponsors Councilmembers Luedtke, Sayles, and Mink, were introduced on January 31, 2023.

ZTA 23-01 will create a new use in the Zoning Ordinance – “Sharing Economy Rental.” Bill 6-23 will provide the framework for license applications, renewals, suspension, and revocation for this new use.

Due to the scope of this bill and ZTA, an additional worksession is expected.

SUMMARY

ZTA 23-01, Accessory Residential Uses – Sharing Economy Rental, will create the use Sharing Economy Rental. A sharing economy rental would be defined as any portion of a home or the property it is on that is rented for a fee for less than 12 continuous hours. No overnight accommodations would be permitted. Restrictions on the use include: the licensee or an authorized resident must be present during the rental period; the rental may only operate for a maximum for 120 days in a calendar year; the total number of adult guests is limited to 6 per rental period; and one off-street parking space must be provided, or the licensee must inform the guest that parking is prohibited.

Accompanying ZTA 23-01 is Bill 6-23, which would create a new chapter in the County Code. Bill 6-23 would place licensing authority under the Department of Health and Human Services (DHHS). The bill outlines the certifications that an applicant must make to apply for a license, including compliance with other chapters of the County Code and notice to certain nearby properties and entities. Bill 6-23 also provides the processes for license approval and renewal, suspension and revocation, and challenges to applications.

Bill 6-23 is modeled after Chapter 54, Transient Lodging Facilities, specifically the section on Short-Term Residential Rental.¹ ZTA 23-01 is modeled after Section 3.3.3.I. of the Zoning Ordinance, Short-Term Residential Rental. While sharing economy rentals and short-term residential rentals are different uses, the primary difference being that short-term residential rentals are for overnight accommodations, many of the logistics of operating these uses are similar.²

PUBLIC HEARING

Public hearings on the bill and ZTA were held on March 7, 2023. Two speakers testified in support of the bill and one speaker testified in opposition. One speaker in support, from the rental platform Swimply, asked for amendments to remove some restrictions in the bill and ZTA. The second speaker testified that the bill would provide opportunities for residents to take advantage of the services provided, benefit the environment, and put safeguards in place. The speaker in opposition testified that the bill and ZTA would turn residential neighborhoods into commercial zones, without the same health and safety regulations that commercial uses have.

The Council has also received several pieces of written testimony. Letters in support included active participants in this use, who wrote about the benefit of providing a private resource that people would not otherwise be able to enjoy; such as small private children's birthday parties, those seeking quieter spaces, and private recreation for those who are immunocompromised. Letters explained the benefits that this use provided during COVID when public spaces were

¹ Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days as allowed under Section 3.3.3.I of the Zoning Ordinance.

² The County Executive transmitted a proposed bill that would significantly amend those provisions. That bill was not transmitted in time to be introduced before this worksession. However, the County Executive's letter transmitted on March 10, 2023, with comments on Bill 6-23 contains parallel amendments.

closed. They also referenced the environmental benefits of shared resources. Those in support also wrote that renting their pools helped offset the costs of maintenance.

Letters in opposition expressed concern that the bill would benefit wealthy homeowners more than those who are already struggling to find affordable housing, because the former would have the types of amenities that would be rented out. Letters doubted the County's ability to enforce the regulations, given an inability to adequately close those that are operating illegally. Many of the letters in opposition expressed concern over noise, crime, overcrowding, health and safety, property values, and parking. They also noted the number of pools, parks, dog parks, and other amenities already commercially available in the County. Letters suggested the County instead increase the fines for those illegally operating to help pay for enforcement.

Both letters in support and opposition recommended amendments, which are discussed further below.

SUMMARY OF IMPACT STATEMENTS

Racial Equity Impact Statement

Bill 6-23

The Office of Legislative Oversight (OLO) transmitted a Racial Equity and Social Justice (RESJ) Impact Statement for Bill 6-23 on March 1, 2023. OLO found that the impact of Bill 6-23 is indeterminant, because several factors remain unclear. For example, the impact statement noted the potential for price discrimination against BIPOC homeowners and racial discrimination against BIPOC users. The impact statement also noted that while most homeowners in the County are more likely to be white or of Asian descent, sharing economy rentals could be a more attractive income-generating opportunity for BIPOC homeowners because they are cost burdened at higher levels than white homeowners.

ZTA 23-01

OLO also transmitted a RESJ Impact Statement for ZTA 23-01 on March 1, 2023. OLO found that it could not discern the impact of the ZTA for similar reasons given in the impact statement for the bill. OLO noted that given racial disparities in wealth and housing, sharing economy rentals could enable BIPOC homeowners to earn additional income and thus reduce their housing cost burdens. However, OLO cited studies that show users tend to be white and are therefore more likely to benefit from the use of such rentals. Lastly, OLO noted potential racial discrimination with this use, given the evidence of racial discrimination across similar apps.

Climate Assessment

Bill 6-23

OLO transmitted a Climate Assessment for Bill 6-23 on February 15, 2023. OLO found that Bill 6-23 will have little to no impact on the County's contribution to addressing climate change because there is not enough evidence to show that the sharing economy will have significant

impacts on reducing greenhouses gases or increasing community resilience. The climate assessment notes the lack of available data or studies on the effect of this type of use on the environment.

ZTA 23-01

The Planning Department transmitted a Climate Assessment for ZTA 23-01 with its staff report. Planning found that the overall impact is indeterminant. Planning noted that the number of future permits issued and where they are is unknown but concluded the ZTA would likely have an indeterminant small positive or negative impact on greenhouse gas emissions due to an increase in travel to rental sites versus a decrease due to shorter trips compared to previously available alternate facilities. Planning also noted a potential increase in activity in urban heat islands and changes to air quality. However, because of the short-term and intermittent nature of this use, the statement noted that the impacts would likely be minor on a countywide scale.

Economic Impact Statement

OLO transmitted an Economic Impact Statement on March 1, 2023. OLO found that Bill 6-23 would have a net negative impact on economic conditions in the County. This is because establishing a regulatory framework will increase the operating costs and reduce business income for licensees who are already participating in this use. The economic impact statement noted that some portion of these costs would likely be passed on to resident customers, reducing their net discretionary income. OLO recommended Councilmembers consider how the County would induce compliance among licensees who would be negatively impacted in this way.

Fiscal Impact Statement

The Office of Management and Budget (OMB) transmitted a fiscal impact statement for Bill 6-23 on March 16, 2023. OMB estimated a total impact of approximately \$219,800 in FY24 and \$295,800 in subsequent years.

OMB estimated revenues would increase by \$112,500 annually, based on approximately 750 licenses with a fee of \$150 per year.³ OMB estimated total expenditures of \$332,300 in FY24 and \$404,900 in subsequent years. These expenses are based on:

- full-year personnel costs totaling \$232,900 for 2 Environmental Health Specialist III positions and \$88,000 for 1 Office Services Coordinator position;
- one-time operating costs of \$4,600 in FY24 and ongoing operating costs of \$1,600 each year;
- \$3,000 in operating costs for staff outreach and education efforts each year; and
- annual software licensing fees of \$80,000 per year.

³ OMB estimated the fees based on the existing use Short-Term Residential Rentals.

Planning Board Recommendation

The Planning Board met on February 23, 2023, and unanimously recommended approval of ZTA 23-01 and Bill 6-23 with comments. While the Board supported the use generally, it expressed concern with its associated nuisances, such as street parking and noise. The Board considered several variables that contribute to the negative impacts of the bill and ZTA, such as the size of the rental property, the scale of the rental activity (number of participants, length and frequency of the activity, etc.), and whether the location of the rental is indoors or outdoors. The Board questioned whether this use is triggered by the exchange of compensation, or due to advertisement as a rental, such as on a platform. The Board also expressed concern with enforcement, due to the transient nature of the use. Lastly, the Board asked for clarification on what defines an “owner-authorized resident.” Additional proposed amendments are outlined in the “Proposed Amendments” section below.

PROPOSED AMENDMENTS

Many amendments to both Bill 6-23 and ZTA 23-01 have been suggested. These amendments come from Councilmembers, the County Executive, the Planning Board, the Board of Appeals, and received testimony. To guide the discussion, Council Staff has grouped the amendments into categories:

- Governance
- Mitigating Impacts
- Prohibitions & Exclusions
- Inspections, Penalties & Liability
- Notice & Appeals
- Technical Amendments

Council Staff has also noted the source of each amendment, and whether it is an amendment to the bill, ZTA, or both.

Governance

A. Which agency should govern? (CE)

Bill 6-23 currently places licensing, renewals, investigations, and renewals under DHHS. DHHS was chosen because they currently govern short-term residential rentals. The County Executive proposes moving sharing economy rentals to DHCA.

A brief history is beneficial here. Short-term residential rentals were approved in 2017. At that time, the County was primarily focused on rental companies like Airbnb. Because of the lodging component, the use was treated similarly to hotels and bed and breakfasts, which are under DHHS. DHHS has reported that due to the largely residential nature of this use, DHCA would be the more appropriate agency. For example, while DHHS inspects commercial properties, DHCA has expertise in inspecting residential properties. Further, sharing economy rentals do not allow

lodging. However, the inclusion of amenities such as swimming pools and gym equipment might be sufficient reason to keep this use under DHHS.

- **Option 1: Keep sharing economy rentals under DHHS**

This would be consistent with the current provisions for short-term residential rentals, and account for the health and safety concerns associated with swimming pools, gym equipment, and other amenities that may be for rent.

- **Option 2: Move governance of this use to DHCA (CE)**

Because sharing economy rentals do not have a lodging component, the argument to keep them with the same Department that regulates hotels and bed and breakfasts is less persuasive. In addition, DHCA has expertise in residential uses.

Mitigating Impacts

B. Should the number of rentals allowed within a certain time period be further limited? (PB, CE / Bill 6-23 / ZTA 23-01)

Bill 6-23 and ZTA 23-01 limit the total number of days with a rental in a 12-month period to 120 days. A significant amount of public testimony expressed concern with the frequency of rentals. Because most rentals currently are swimming pools, a 120-day period could mean every day for the entire summer. However, spread over a year, either because an amenity other than a swimming pool is being rented or because the licensee has an enclosed swimming pool, the intensity of 120 days would be diminished. In addition, a limit on the frequency of the rental must be balanced with the intent to provide licensees with an additional income stream. Several amendments have been proposed by both the Planning Board and the County Executive to address this issue.

- **Amendment 1: Limit rental activity to once per day, 3 consecutive days per week (CE)**

The effectiveness of limiting the number of rentals a day is debatable, because rentals can be anywhere from 1 to 12 hours. And it is unclear whether 1 12-hour rental is less intrusive than 6 2-hour rentals, depending on the number of users and what amenity is being rented. However, a limit on the number of *consecutive* days could help ameliorate some of the concerns around the intrusiveness of this use. The Committee could, for example, recommend rentals be limited to 5 days a week with no more than 3 consecutive days per week.

- **Amendment 2: Limit the number of rental activities to no more than 10 days per month (CE)**

This amendment would limit the number of days per month to lessen the effect on neighbors of continuous rentals. As noted above, any limit on the number of rentals per month must balance the intent to help homeowners generate income with the

effect on residential neighborhoods. Of note, this amendment is not directly in conflict with Option 1. In other words, the Committee could recommend a limit on the number of rentals a day, the consecutive days a week, *and* the total number of days per month.

- **Amendment 3: Permit fewer rentals for outdoor activities, or limit rentals to a certain number per week or per month (PB)**

The Planning Board did not recommend a specific number but did recommend the number of rentals be different based on whether the activity is outdoors or indoors. According to the staff report, the rationale is that an outdoor use is more intrusive. As discussed, limiting the number of rentals is not as effective as limiting the number of days of rentals, since rentals can be anywhere from 1 to 12 hours. However, if the Committee wishes to set different limits based on whether the rental is indoors or outdoors, it could for example recommend an amendment to limit rentals to 10 days per month for outdoor use, and 15 days per month for indoor use.

C. Should the hours be further limited? (Councilmember Luedtke, CE, Planning, Public testimony / ZTA 23-01 / Bill 6-23)

The current rental hours in ZTA 23-01 and Bill 6-23 are 8:00 a.m. to 10:00 p.m. Councilmember Luedtke proposes an amendment to limit the hours to those in the noise ordinance. Planning and public testimony also requested a further restriction on hours.

- **Option 1: Noise ordinance hours (Councilmember Luedtke)**

Councilmember Luedtke’s amendment would limit the hours of operation for this use to the noise ordinance hours. The noise ordinance hours are 7 a.m. to 9 p.m. Monday through Friday, and 9 a.m. to 9 p.m. on weekends and holidays.

- **Option 2: Limit the hours to 10 a.m. to sunset or “dusk” (CE)**

For enforceability, it may be beneficial to set a time for “dusk” based on the season. For example, 5 p.m. December through February, 7 p.m. March through May, 8 p.m. June through August, and 7 p.m. September through November.

D. Should the number of guests allowed during a rental period be increased or decreased? (Councilmember Jawando, CE, Industry, Planning, Public testimony / ZTA 23-01 / Bill 6-23)

ZTA 23-01 and Bill 6-23 limit the number of guests in a rental period to 6 persons 18 years or older. This limit was established during the Council’s deliberations on short-term residential rentals, where the number of adult overnight guests per bedroom was limited to 2 adults; so, a 3-bedroom house could have 6 overnight adults. The County Executive recommends limiting the number of guests in any rental period to 6 total persons, to include any age. An industry representative asked to remove this restriction since the restriction on short-term residential rentals

only applies to overnight guests, not the number of guests allowed to come over and enjoy amenities. The industry representative argued that the limits on hours and the ability to lose a license are sufficient to address nuisance concerns, and that regulating the number of guests is difficult for hosts.⁴ The Planning Board and Staff recommend an alternative approach based on the intent of the limit and the size of the gathering. Councilmember Jawando proposes an amendment based on the square footage of the space.

- **Option 1: Base the number of guests on the amount of square footage available for rental (Councilmember Jawando)**

This amendment would consider the size of a space before setting a limit on the number of persons. For example, if the standard was 1 person for every 100 square feet of rental space, the rental of a 600 square foot backyard would have a limit of 6 persons while the rental of a 1200 square foot backyard would have a limit of 12 persons.

- **Option 2: Retain the 6 adults per rental period limit.**

As noted in the Planning Staff report, a restriction on the number of adults has the benefit of curbing parking demand.⁵

- **Option 3: Limit the number of guests to 6 total, regardless of age (CE)**

This amendment would address the current issue, which is that as drafted a licensee could have 6 adults and an unlimited number of children as guests.

- **Option 4: Remove the limit on the number of guests (Industry)**

This amendment would rely on other provisions in the bill and ZTA to minimize nuisances such as noise and parking.

- **Option 5: Limit the number of guests for outdoor rentals but not indoor rentals (PB)**

Planning notes that this option is recommended if the intent is to limit noise.

- **Option 6: Limit the number of permitted “large gatherings” (PB)**

Planning recommends limiting the number of large gatherings as an alternative way to mitigate the impacts of noise. For example, a licensee could be limited to only 1 gathering a month with more than 10 persons.

⁴ Of note, apps such as Swingly require users to note how many guests will be in attendance.

⁵ Pun not intended.

E. Should the parking requirement be tied to the rental size and proximity to transit? (PB / ZTA 23-01)

ZTA 23-01 requires 1 off-street parking space for each rental period unless the listing indicates that vehicle parking is prohibited.⁶ The Planning Board expressed concern that a private licensee could monetize public street parking by charging for use of a property but not providing adequate parking onsite or immediately along the site frontage. The Planning Board also noted that not requiring on-street parking, and instead having increased traffic from drop-offs, may be a larger nuisance than the parking itself. The Planning Board recommends tying the parking requirement to the rental size and proximity to transit.

For example, the Committee could recommend 1 off-street parking space per 3 guests, with only 1 off-street parking space required for rentals within ½ mile of a planned or existing Bus Rapid Transit route.

Prohibitions & Exclusions

F. Should accessory dwelling units (ADU) be excluded? (Councilmember Jawando, PB, Industry / ZTA 23-01)

ZTA 23-01 prohibits sharing economy rentals in ADUs. Planning Staff recommended striking this restriction, since the intent of excluding them from short-term residential rentals may not apply to the smaller, less frequent use of sharing economy rentals. The Planning Board disagreed.

An industry representative requested ADU's not be excluded, since sharing economy rentals do not allow any lodging, and the ADU may be a shareable space such as a bathroom facility for a pool rental. Councilmember Jawando proposes this amendment.

Of note, neither the bill nor ZTA specify detached versus attached ADU. Therefore, both types of ADUs would be prohibited from this use.⁷

- **Option 1: Remove the prohibition on ADUs (Councilmember Jawando)**

Since sharing economy rentals do not include lodging, the likelihood of constructing an ADU for the sole purpose of generating income is reduced. In addition, access to an ADU could provide valuable amenities or additional space.

- **Option 2: Keep the prohibition on ADUs (PB)**

⁶ This is the same requirement as short-term residential rentals.

⁷ *Accessory Dwelling Unit or Accessory Apartment* means a second dwelling unit that is subordinate to the principal dwelling. *Attached Accessory Apartment or Accessory Dwelling Unit* means a second dwelling unit that is part of a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. An *Attached Accessory Dwelling Unit* is subordinate to the principal dwelling. *Detached Accessory Apartment or Accessory Dwelling Unit* means a second dwelling unit that is located in a separate accessory structure on the same lot as a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. A *Detached Accessory Dwelling Unit* is subordinate to the principal dwelling.

The prohibition on ADUs addresses resident concerns raised during the short-term residential rental discussions in 2017, that ADUs would be built for the sole purpose of generating income and not to provide permanent housing.

G. Should the use be limited to owner-occupied properties? (CE, Planning / Bill 6-23 / ZTA 23-01)

The Planning Board questioned who qualified as an “owner-authorized resident”. Bill 6-23 limits applicants to the “owner or owner-authorized agent of the property” and ZTA 23-01 limits applicants to the “licensee or owner-authorized resident.” Council Staff first notes that these terms should be made consistent and recommends “owner or owner-authorized resident.” To answer the Planning Board’s question, the intent was to allow the applicant to be either the property owner or a resident who has obtained permission from the property owner. This could include a leaseholder, or a resident family member who is not titled to the residence. The County Executive recommends limiting this use to property owners only.

- **Option 1: Continue to allow owner-authorized residents to be applicants**

This requirement would address equity concerns regarding property owners versus tenants. This is consistent with County policies on ameliorating the costs of both renting and owning. However, Council Staff would suggest an additional requirement that an owner-authorized resident must submit an affidavit as proof of permission from the property owner or have the property owner sign the application as well.

- **Option 2: Limit the use to owner-occupied properties, and limit applicants to owners of the property. (CE)**

This amendment may assist with enforcement and liability issues. However, this provision should not be included in the ZTA. Zoning does not get involved in the ownership of property, such as whether the primary resident is an owner or tenant.

H. Should there be additional restrictions based on the amenity being used? (CE / ZTA 23-01)

A frequent concern in the received testimony is that this use will turn residential areas into commercial areas. A specific example is that by renting out a garage or kitchen, a licensee would be allowing an auto repair shop or catering company in a residential area without any of the regulations that would normally be associated with those uses. The County Executive recommends two specific amendments to address this issue. Council Staff has added a third option that eliminates the need to think of additional problematic uses.

- **Option 1 / Amendment 1: Prohibit motor vehicle rental activities with environmental and traffic impacts (CE)**

Specifically, the CE proposes Council “prohibit any rental activity associated with auto/truck/boat repair that inherently involves solid waste, environmental impacts from noise and chemicals, and the commercialization of public streets by tow trucks and other heavy commercial vehicles parking and dropping off vehicles for repair.”

- **Option 1 / Amendment 2: Prohibit any rental activity that deals with the preparation of food to be consumed by the public (CE)**

This amendment addresses food safety issues that are usually resolved under the laws and regulations governing commercial enterprises.

- **Option 2: Prohibit rentals for the guests’ commercial purposes**

This amendment would not allow use of an amenity for the guests’ commercial purposes. For example, it could be drafted in a way that would not allow rentals of a garage for repair of any vehicles other than the guest’s own, the rental of kitchens for the sale of food, or the rental of pools for promoted events.

I. Should access to indoor sanitation facilities be required? (CE, Public testimony / Bill 6-23)

ZTA 23-01 and Bill 6-23 require sanitation facilities operate as designed, and if sanitation facilities are not provided, rentals are limited to 2 hours at a time. Written testimony expressed concern with not requiring sanitation facilities, noting the health concerns this raises with swimming pools. The County Executive recommends requiring sanitation facilities and not allowing portable toilets.

- **Option 1: Retain the requirement for sanitation facilities if renting for more than 2 hours at a time**

Currently, platforms such as Swimply do not require sanitation facilities for rentals of less than 2 hours. It is unclear what the purpose of this rule is. Council Staff’s best guess is it allows rental of an outdoor space while retaining the privacy of a licensee’s indoor space.

- **Option 2: Require access to indoor sanitation facilities and no portable toilets**

This requirement would provide a better user experience and be beneficial for health and safety. However, there is an argument that portable toilets are a useful alternative for licensees renting outdoor amenities with limited indoor sanitation facilities.

Inspections, Penalties & Liability

J. Should inspections be required; and if so, how often? (CE, Industry, Public testimony / Bill 6-23)

Bill 6-23 requires property inspections every 2 years. The County Executive and written testimony in opposition to the bill request more frequent inspections. An industry representative and written testimony in support asked for an amendment removing the requirement for inspections.

Councilmember Jawando proposes an amendment that would retain the current inspection period but add clarifying language. Specifically, additional language that clarifies only the portions of the property available for rent will be inspected and states what the inspection standards will be.

- **Option 1: Retain the requirement to do an inspection every 2 years but add inspection standards (Councilmember Jawando)**

The intent of the 2-year requirement was to require inspections without placing an undue burden on applicants or DHHS. Councilmember Jawando proposes an amendment that would keep the 2-year inspection period but would provide standards for what the inspection would cover. For example, the amendment would state that only the space being rented is available for inspection and the inspection is to ensure the space conforms with all applicable health and safety provisions in the County Code.

- **Option 2: Require annual inspections (CE)**

Since applicants must renew annually, an annual inspection would be consistent with the renewal process.

- **Option 3: Remove the inspection requirement (Industry)**

The argument for not requiring inspections is that they are not currently required for short-term residential rentals, even though those rentals may include amenities such as swimming pools, gym equipment, etc. In addition, public testimony noted that the licensee must be home during the rental, so there is less of a need for an inspection.

K. What should the penalties for violation be? (CE / Bill 6-23)

Bill 6-23 allows the Director to suspend a license for a violation of the County Code, and to revoke a license after 3 complaints in any 12-month period that are verified as violations of the license or of the County Code. Councilmember Luedtke proposes an amendment clarifying what the penalty for not getting registered is. The County Executive recommends amendments to the suspension and revocation process.

- **Penalties: Clearly state what the violation is for operating without a license (Councilmember Luedtke)**

Currently, those who are illegally operating receive a zoning violation from DPS with a fine of \$500.00 for an initial violation and \$750.00 for a subsequent

violation. Councilmember Luedtke proposes an amendment that clearly states that violation of Chapter 25C is a Class A violation.

- **Suspension: Require licenses be suspended for 30 days for the first violation of the license or of County Code.**

This amendment would remove the Director’s discretion to suspend a license, and instead require suspension for the first violation, and for a set time (30 days).

- **Revocation: Require revocation of a license for the second violation of the license or of County Code.**

This amendment changes the requirement to revoke a license after 3 verified complaints to a revocation after a second violation of the license or County Code. Of note, Bill 6-23 allows renewal or reinstatement of licenses following “procedures established by the Director.”

L. Should there be liability requirements? (Councilmember Luedtke / Bill 6-23)

Several questions have been raised about liability. It is unlikely that the County would be held liable in the event of an incident. Liability would be between the property owner/licensee, guest, and any applicable platform. However, the hosting platform is not always considered a party to the agreement between host and renter. Swimply, for example, is not a party to the agreement but offers limited insurance policies and will in some instances cover damage to a host’s property done by guests.⁸ A property owner’s homeowners’ insurance would likely only be helpful if the terms of the policy include use of the home for such business or commercial purposes. Another option for property owners/licensees is an umbrella policy.

Councilmember Luedtke proposes an amendment to require proof of insurance coverage:

applicable insurance coverage has been obtained, including the coverage needed to insure commercial use of a residential property, with proof of insurance submitted to DHHS within 30 days of conditional approval of the license;

The additional 30 days will cover a scenario where the insurance company will not provide coverage until proof of a license issued by the County. In addition, approval is conditional until proof of insurance is submitted.

Notice & Appeals

M. Should the timing for appeals be changed? (BOA / Bill 6-23)

⁸ According to its website, the Swimply Insurance Policy protects all bookings done via Swimply for up to \$1 million for general liability claims and \$10,000 of property protection per occurrence.

Bill 6-23 currently requires the Board of Appeals to hold a hearing on the appeal within 30 days of the notice of appeal being filed and requires the Board to act on the appeal within 30 days after the hearing. The Board of Appeals submitted a request to amend these timelines. According to the Board's letter, the current timelines in the bill would be difficult to achieve and could unintentionally limit participation in the appeals process. The Board recommends treating these appeals like other administrative appeals, such as for building permits; or, at a minimum, remaining consistent with the appeals period for short-term residential rentals.

- **Option 1: Consistent with other administrative appeals**

Other administrative appeals allow time for summary disposition (at least 30 days before date of the hearing), prehearing conferences (3-4 weeks before the hearing), and a longer timeframe to issue decisions (45 days). The below amendment would more closely mirror that timeline:

The Board of Appeals must hold a hearing on the appeal within 75 days after the notice of appeal has been filed and must act on the appeal within 45 days after the hearing.

- **Option 2: Consistency with short-term residential rentals**

The current expedited appeals timeline for short-term residential rentals is 60 days to hold a hearing and 30 days to issue a decision. The below amendment would keep sharing economy rentals consistent:

The Board of Appeals must hold a hearing on the appeal within 60 days after the notice of appeal has been filed and must act on the appeal within 30 days after the hearing.

Of note, Council Staff has not found any language that clearly stays an application during the appeals process. So, an applicant could keep operating in a situation where they were granted a license and their neighbor appeals the issuance of that license. The proposed extended timelines therefore primarily effect the reverse situation, where the applicant is appealing denial of a license. In the case of a swimming pool rental, the amount of time to appeal could mean the swimming season would end before the appeal was resolved and a decision reversed.

N. Should licensees provide public records of rentals? (CE / Bill 6-23)

Bill 6-23 and ZTA 23-01 both require the licensee to keep a record of all rentals, available for inspection by DHHS and DPS, respectively. Because the required record is available for inspection by both DHHS and DPS, if a neighbor were to complain that the frequency of rentals violated the County Code than the agency could easily verify that complaint via the record log. The County Executive proposes an amendment to require the licensee to provide a publicly accessible online calendar so that executive agencies and the public can track the frequency of rentals. Further information is needed for this amendment. It is unclear to Council Staff where this calendar would

be housed – would it be available on DHHS’ website for the licensee to update? How frequently would it need to be updated?

O. Should additional notice be provided? (Public / Bill 6-23)

Under Bill 6-23, the applicant must notify: in a single-unit or attached unit, abutting and confronting neighbors; in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant’s unit; the municipality in which the residence is located; any applicable homeowner association, condominium, housing cooperative; and the owner of the unit or the owner’s agent, if the applicant is not the owner. Written testimony requested that notice also be provided in the form of posted signs.

Technical Amendments

P. Should the standards in Chapter 59 versus Chapter 25C be arranged differently? (PB / ZTA 23-01 / Bill 6-23)

The Planning Board recommended removing any standards from the ZTA that do not involve a zoning issue and only locating standards that speak to ownership or owner responsibility in Chapter 25C. Currently, what is included in Chapter 59 versus Chapter 25C is consistent with how the standards for short-term residential rentals were drafted, except for the limit on hours and the requirement to keep a record of all inspections.

Upon review, Council Staff finds that the provisions in ZTA 23-01 are consistent with other zoning provisions on prohibited uses, hours, total guests, parking, and available records for DPS inspection. However, Bill 6-23 could be amended to remove those provisions that are already in the Zoning Ordinance, and instead leave the requirement that “the building in which the Sharing Economy Rental is located complies with all applicable zoning standards under Chapter 59 of this Code” – currently under 25C-3(a).

Q. Should the use be renamed? (PB, Public testimony / ZTA 23-01 / Bill 6-23)

Both the Planning Board and written testimony express concern with the name of this use. Planning Board asks the Committee to consider a name that is clearer to a potential resident or applicant. Written testimony and impact statements highlight the broad application of the term “sharing economy.”

- **Option 1: Retain the name “sharing economy rental”**

This name could allow an expansion of the use and highlights the economic development intent of the ZTA and bill.

- **Option 2: Change the name to “hourly residential rental” (PB)**

The intent of this amendment is for the name to explain the use more clearly for future applicants.

ADDITIONAL ISSUES RAISED

A. What triggers the use? (PB)

The Planning Board questioned whether this use is triggered by the exchange of compensation, or due to advertisement as a rental, such as on a platform. Based on the definition, the use is triggered by the exchange of compensation, as noted by the phrase “for a fee”:

Sharing Economy Rental means 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, as allowed under Section 59-3.3.3.I of this Code.

B. Will this use be taxed?

Bill 6-23 currently requires “all local taxes and required fees are paid in full, including the admissions and amusement tax under Section 52-16A.” That tax rate is set by resolution of the Council and approved by the County Executive:

(a) As authorized by Section 4-102(a)(1) of the Tax-General Article of the Maryland Code, a tax is imposed at a rate set by resolution adopted by the Council and approved by the Executive on the gross receipts derived from any admissions and amusement charge as defined in Section 4-101(b) of the Tax-General Article except to the extent this rate is limited by Section 4-105(b) of the Tax-General Article. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.

Section 4-101(b) of the Tax-General Article defines the admissions and amusement tax as:

(b)(1) “Admissions and amusement charge”, unless expressly provided otherwise, means a charge for:

- (i) admission to a place, including any additional separate charge for admission within an enclosure;
- (ii) use of a game of entertainment;
- (iii) use of a recreational or sports facility;
- (iv) use or rental of recreational or sports equipment; and
- (v) merchandise, refreshments, or a service sold or served in connection with entertainment at a nightclub or room in a hotel, restaurant, hall, or other place where dancing privileges, music, or other entertainment is provided.

Sharing economy rental would fall under “admission to a place, including any additional separate charge for admission within an enclosure.” Based on conversations with DHHS, Finance, and OMB, it would be difficult to estimate the potential tax revenue. Rentals range in price from \$25-\$100/hour. And it is difficult to assess how many licenses will be issued, and how much income a licensee will generate and therefore be taxed. Further, the revenue received from short-term

residential rentals would be an inaccurate analogy because of the difference in scale, how established the use is, and the nature of the tax.

C. Has this use been permitted in other jurisdictions?

No U.S. jurisdictions with similar legislation have been found. Several states have outright banned this use, including New Jersey and several local municipalities in California.

This packet contains:

Bill 6-23	© 1
ZTA 23-01	© 9
Legislative Request Report	© 16
Planning Board recommendation	© 17
Planning Staff report	© 20
Racial Equity Impact Statement for Bill 6-23	© 31
Racial Equity Impact Statement for ZTA 23-01	© 36
Climate Assessment for Bill 6-23	© 41
Climate Assessment for ZTA 23-01	© 44
Economic Impact Statement	© 48
Fiscal Impact Statement	© 52
Board of Appeals Comments	© 55
County Executive Proposed Amendments	© 57
Letter from Lead Sponsor, Councilmember Jawando	© 60

Bill No. 6-23
Concerning: Housing – Sharing Economy Rental
Revised: 1/20/23 Draft No. 1
Introduced: January 31, 2023
Expiration: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando
Co-Sponsors: Councilmembers Luedtke, Sayles, and Mink

AN ACT to:

- (1) define Sharing Economy Rental;
- (2) establish a licensing system and certification requirements for Sharing Economy Rentals;
- (3) revise the definition of private swimming pools; and
- (4) generally amend the provisions for residential rentals.

By amending

Montgomery County Code
Chapter 51, Swimming Pools
Sections 51-1

Chapter 54, Transient Lodging Facilities
Sections 54-1

By adding:

Montgomery County Code
Chapter 25C, Housing, Sharing Economy Rental
Sections 25C-1, 25C-2, 25C-3, 25C-4, 25C-5, 25C-6, 25C-7, 25C-8, 25C-9, 25C-10, 25C-11, 25C-12, and 25C-13

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 25C-1, 25C-2, 25C-3, 25C-4, 25C-5, 25C-6, 25C-7, 25C-8,**
 2 **25C-9, 25C-10, 25C-11, 25C-12, and 25C-13 are added as follows:**

3 **Chapter 25C. Housing, Sharing Economy Rental.**

4 **25C-1. Definitions.**

5 For the purposes of this Chapter, the following words and phrases have the
 6 following meanings:

7 Director means the Director of the Department of Health and Human
 8 Services, or the Director's designee.

9 Department means the Department of Health and Human Services.

10 Dwelling means any building which is wholly or partly used or intended to be
 11 used for residing, lodging, or sleeping by human occupants.

12 Dwelling unit means any room or group of rooms located in a dwelling which
 13 form a single habitable unit with facilities which are used or intended to be
 14 used for living, sleeping, cooking, and eating.

15 Sharing Economy Rental means the rental of any portion of a dwelling or the
 16 property on which it sits for a fee where both the property and the dwelling
 17 are privately-owned by the same person or entity and where the rental period
 18 is less than 12 continuous hours, as allowed under Section 59-3.3.3.I of this
 19 Code.

20 Property means one or more tracts of land that are under common control,
 21 operation, or ownership or are under one application.

22 **25C-2. License required.**

23 A person must not operate a Sharing Economy Rental in the County without
 24 a license issued by the Director. After the initial issuance of a license, the
 25 license must be renewed once a year.

26 **25C-3. Certification for a License.**

27 An application or license renewal for a Sharing Economy Rental must be
28 signed by the applicant and the applicant must certify that:

29 (a) the building in which the Sharing Economy Rental is located complies
30 with all applicable zoning standards under Chapter 59 of this Code;

31 (b) the swimming pool, if provided, complies with Chapter 51 of this Code;

32 (c) the total number of guests in any rental period who are 18 years or older
33 is limited to 6;

34 (d) the total number of days with rentals in a 12-month period is limited to
35 120 days;

36 (e) rentals will only occur between the hours of 8:00 a.m. and 10:00 p.m.;

37 (f) no sleeping quarters will be offered;

38 (g) sanitation facilities operate as designed;

39 (h) if sanitation facilities are not provided, rentals are limited to 2 hours at
40 a time;

41 (i) the applicant has not been found guilty of a violation of this Chapter in
42 the past 12 months;

43 (j) all local taxes and required fees are paid in full, including the
44 admissions and amusement tax under Section 52-16A;

45 (k) the applicant is the owner or owner-authorized agent of the property;

46 (l) the applicant will post rules and regulations at the property, including
47 parking restrictions and instructions regarding the disposal of trash;

48 (m) the applicant or a designated representative is present on the property for
49 the duration of all rentals;

50 (n) a record of all rentals will be maintained and readily available for
51 inspection;

52 (o) where applicable, the following parties were notified:

- 53 (1) in a single-unit or attached unit, abutting and confronting
- 54 neighbors;
- 55 (2) in a multi-unit building, neighbors living across the hall and those
- 56 that share a ceiling, floor, and walls with the applicant's unit;
- 57 (3) the municipality in which the residence is located;
- 58 (4) any applicable homeowner association, condominium, housing
- 59 cooperative; and
- 60 (5) the owner of the unit or the owner's agent, if the applicant is not
- 61 the owner;
- 62 (p) the application is not prohibited by any homeowners' association,
- 63 condominium document, or rental lease;
- 64 (q) the common ownership community fees for the dwelling unit are no more
- 65 than 30 days past due;
- 66 (r) except for persons visiting the primary resident, only registered guests
- 67 will be allowed on the property; and
- 68 (s) any online listing will include the Sharing Economy Rental license
- 69 number.

70 **25C-4. Applications.**

71 The Director must establish an electronic method of submitting, issuing,

72 renewing, denying, and revoking an application for a license through the

73 internet.

74 **25C-5. Fees.**

75 The Executive must establish annual fees for licenses under this Article by

76 regulation adopted under method (3) of Section 2A-15 of this Code. Fees

77 must not exceed an amount necessary to defray the costs of administering this

78 Chapter.

79 **25C-6. License Approval and Renewal.**

- 80 (a) The Director must:
- 81 (1) accept the self-certification of the applicant after verifying
- 82 compliance by reviewing available records;
- 83 (2) complete an inspection of the property before issuing the initial
- 84 license;
- 85 (3) approve or deny an initial license within 30 working days after
- 86 receipt of the application and all required fees unless the Director
- 87 receives a challenge to the certifications under Section 25C-7;
- 88 (4) issue the license for a term of one year, renewable for additional
- 89 one-year terms, subject to payment of the license fee and
- 90 compliance with all applicable laws and certifications required
- 91 for the license; and
- 92 (5) inspect the property every 2 years.
- 93 (b) All reports of inspections must be in writing. If the property fails
- 94 inspection, a license must not be issued or renewed until the violation
- 95 has been corrected.

96 **25C-7. Challenge to Certifications.**

- 97 (a) A challenge to any required certification made by the applicant may be
- 98 filed with the Director within 30 days after the application is filed by:
- 99 (1) a resident or owner of real property located within 300 feet of a
- 100 licensed or proposed license;
- 101 (2) the municipality in which the residence is located;
- 102 (3) any applicable homeowners association, condominium, housing
- 103 cooperative; or
- 104 (4) the owner of the unit or the owner's agent, if the applicant is not
- 105 the owner.
- 106 (b) The Director must, within 60 days after receipt of the challenge:

- 107 (1) provide notice of the challenge to the applicant;
- 108 (2) provide an opportunity for the applicant to respond to the
- 109 challenge;
- 110 (3) investigate the questions of fact raised by the challenge; and
- 111 (4) revoke or deny the license if the Director finds that one or more
- 112 facts certified by the applicant is false.

113 **25C-8. Suspension and Revocation.**

- 114 (a) The Director may suspend any license issued under this Chapter if the
- 115 Director finds that the licensee has violated this Chapter or any other
- 116 applicable law or regulation.
- 117 (b) The license must be revoked for any applicant receiving at least three
- 118 complaints that are verified as a violation of the license or of the County
- 119 Code within any 12-month period.
- 120 (c) Renewal or reinstatement of licenses must follow procedures
- 121 established by the Director.

122 **25C-9. Appeals.**

123 Any person aggrieved by an approval, denial, or suspension of a Sharing

124 Economy Rental license may appeal the decision to the Board of Appeals.

125 The Board of Appeals must hold a hearing on the appeal within 30 days after

126 the notice of appeal has been filed and must act on the appeal within 30 days

127 after the hearing.

128 **25C-10. Effect of a revocation.**

129 For a period of 3 years after a license is revoked, the Director must not issue a

130 Sharing Economy Rental license to:

- 131 (a) the former licensee or a member of the former licensee’s
- 132 household; or

133 (b) any applicant for a license to use the same dwelling unit where the
134 license was revoked.

135 **25C-11. Complaints.**

136 (a) The Director must investigate any complaint that a licensee is in
137 violation of this Article within 30 days of receiving the complaint.

138 (b) If a violation is found, the Director must issue written notice of the
139 violation to the property owner requiring that the violation be corrected
140 immediately.

141 (c) If the violation is not corrected immediately, the Director may revoke
142 or suspend the license under Section 25C-8.

143 **25C-12. Maintenance of premises.**

144 The property owner of a Sharing Economy Rental is responsible for
145 maintaining all parts of the property available for rental in a clean and sanitary
146 condition.

147 **25C-13. Report of violations of article.**

148 The Department is responsible for making all necessary inspections regulated
149 under this Article, including because of a filed complaint, and must report to
150 the Director any violations of this Division.

151 * * *

152 **Sec. 2. Section 51-1 is amended as follows:**

153 **51-1. Definitions.**

154 In this Chapter, the following words have the following meanings:

155 * * *

156 *Private swimming pool* means any swimming pool that is:

157 (a) built on the grounds of a single-family private residence; and

158 (b) used solely by the owner, immediate family, tenants, and guests. Guests
159 includes persons paying a fee for the use of a swimming pool under
160 Chapter 25C.

161 * * *

162 **Sec. 3. Sections 54-1 is amended as follows:**

163 **54-1. Definitions.**

164 * * *

165 *Short-term residential rental* means the residential occupancy of a dwelling unit
166 for a fee for less than 30 consecutive days as allowed under Section [59-3.3.3.I]
167 59-3.3.3.J of this Code.

Ordinance No.: _____
Zoning Text Amendment No.: 23-xx
Concerning: Accessory Residential
Uses – Sharing Economy
Rental
Revised: 1/20/2023 Draft No.: 1
Introduced: January 31, 2023
Public Hearing: March 7, 2023
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: Councilmember Jawando
Co-Sponsors: Councilmembers Mink, Luedtke, and Sayles

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) define Sharing Economy Rental; and
- (2) generally amend accessory residential uses.

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

Division 1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 59.3.3.	“Residential Uses
Section 59.3.3.3.	“Accessory Residential Uses”
Division 8.2.	“Residential Floating Zones”
Section 8.2.3.	“Use Table for the RT and R-H Zones”

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:

Sec. 1. DIVISION 59-1.4 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning. The following words and phrases have the meanings indicated.

* * *

Sharing Economy Rental: See Section 3.3.3.I

* * *

Short-Term Residential Rental: See [Section 3.3.3.I] Section 3.3.3.J

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

* * *

Section 3.1.6. Use Table

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

USE OR USE GROUP	Definitions and Standards	Ag	Residential														Commercial/Residential			Employment					
			Rural Residential		Residential Detached						Residential Townhouse			Residential Multi-Unit											
			AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC
* * *																									
RESIDENTIAL																									
* * *																									
ACCESSORY RESIDENTIAL USES	3.3.3.																								
* * *																									
Home Occupation (Major Impact)	3.3.3.H	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
<u>Sharing Economy Rental</u>	3.3.3.I	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Short-Term Residential Rental	[3.3.3.I] 3.3.3.J	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
* * *																									

17

* * *

18 **Sec. 3. DIVISION 59-3.3 is amended as follows:**

19 **Division 3.3. Residential Uses**

20 * * *

21 **Section 3.3.3. Accessory Residential Uses**

22 * * *

23 **I. Sharing Economy Rental**

24 **1. Defined**

25 Sharing Economy Rental means the rental of any portion of a dwelling or the
26 property on which it sits for a fee where both the property and the dwelling
27 are privately-owned by the same person or entity and where the rental period
28 is less than 12 continuous hours.

29 **2. Use Standards**

30 Where Sharing Economy Rental is allowed as a limited use, it must satisfy
31 the following standards:

- 32 a. Sharing Economy Rental is prohibited in a Farm Tenant
33 Dwelling or on a site that includes an Accessory Dwelling Unit.
- 34 b. The Sharing Economy Rental must be the property owner's or
35 owner-authorized resident's primary residence, regardless of
36 dwelling unit type.
- 37 c. The property owner or owner-authorized resident must be
38 present at the residence during the rental period.
- 39 d. A Sharing Economy Rental may only operate for a maximum
40 of 120 days in a calendar year.
- 41 e. Rental hours are limited to 8:00 a.m. to 10:00 p.m.
- 42 ef. The property owner or owner-authorized resident must obtain a
43 license under Chapter 25C.
- 44 fg. The total number of guests in any rental period who are 18
45 years or older is limited to 6 persons.
- 46 gh. One off-street parking space must be provided for each rental
47 period unless the listing indicates that vehicle parking is
48 prohibited.
- 49 hi. A record of all rentals must be maintained and readily available
50 for inspection.

51 **[I]J. Short-Term Residential Rental**

52

* * *

53

Sec. 4. DIVISION 59-8.2 is amended as follows:

54

Division 8.2. Residential Floating Zones

55

* * *

56

Section 8.2.3. Use Table for the RT and R-H Zones

USE OR USE GROUP	Definitions and Standards	RT-6.0	RT-8.0	RT-10.0	RT-12.5	RT-15.0	R-H
RESIDENTIAL							
* * *							
ACCESSORY RESIDENTIAL USES	3.3.3.						
* * *							
Home Occupation (Major Impact)	3.3.3.H	C	C	C	C	C	C
<u>Sharing Economy Rental</u>	<u>3.3.3.I</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
Short-Term Residential Rental	[<u>3.3.3.I</u>] <u>3.3.3.J</u>	L	L	L	L	L	L
* * *							

57

A. Section 3.1.1 through Section 3.1.4 apply to the Use Table in Section 8.2.3.

58

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

59

60

* * *

61

Sec. 5. DIVISION 59-8.3 is amended as follows:

62

Division 8.3. Planned Unit Development Zones

63

* * *

64 **Section 8.3.2. PD Zone**

65 * * *

66 **B. Uses**

67 **1. Residential Uses**

68 * * *

69 c. Short-Term Residential Rental is allowed as a limited use under
70 Section [3.3.3.I.] 3.3.3.J.

71 * * *

72 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
73 date of District Council adoption.

LEGISLATIVE REQUEST REPORT

Bill 6-23

Housing – Sharing Economy Rental

DESCRIPTION:	Bill 6-23 will provide the framework for license applications, renewals, suspension, and revocation for Sharing Economy Rentals.
PROBLEM:	County residents are already renting their private property hourly via platforms like Swimply and Sniffspot.
GOALS AND OBJECTIVES:	Authorize the hourly rental of private property.
COORDINATION:	Department of Health and Human Services, Department of Permitting Services, Finance
FISCAL IMPACT:	To be requested from Office of Management and Budget.
ECONOMIC IMPACT:	To be requested from Office of Legislative Oversight (OLO).
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT	Office of Legislative Oversight
CLIMATE ASSESSMENT	Office of Legislative Oversight
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	Unable to find other U.S. jurisdictions that have enacted similar legislation.
SOURCE OF INFORMATION:	Livhu Ndou, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	To be determined.



February 28, 2023

To: The Honorable Evan Glass
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. 23-01 and Bill 6-23

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on February 23, 2023 and by a vote of 4:0 (Vice Chair Presley absent) recommended support for Zoning Text Amendment (ZTA) 23-01 and Bill 6-23 with comments. This paired ZTA and bill would establish a legal framework for residents to rent out all or a portion of their dwelling or property on a short-term basis for compensation. The ZTA specifically establishes a new defined use for Sharing Economy Rental, establishes limited use standards for review, and allows the use as a limited use in every zone other than the Industrial zones. The bill creates the licensing framework for Sharing Economy Rentals, including the violation and enforcement aspects.

While the Planning Board is supportive of this use generally, it has a number of concerns with the implementation of the ZTA and bill as drafted. The Board encourages opportunities for people to gather and recognizes that associated nuisances may include straining street parking or noise disturbances, depending on the type of rental and the scale of the related activity. In this regard, the Board also notes a difference between occasional private activities and potentially frequent repeated occurrences for which the host is receiving compensation. Because of the wide range of activities that could qualify under the Sharing Economy Rental use, it is difficult to look at a single list of use standards and say whether they are adequate protections for adjacent residential properties.

Variables that may contribute to the negative impacts of a Sharing Economy Rental use include the size of the rental property, the scale of the rental activity (number of participants, length and frequency of the activity, etc.), and whether the location of the rental is indoors or outdoors. The attached Planning staff report highlights these concerns as they relate to the different proposed use standards.

The Board has some general concerns that are at a higher level than specific use standards. The foremost concern is ensuring the County Code provides clear guidance for what constitutes a Sharing Economy Rental and how that differs from a private gathering among family and friends. Is the exchange of compensation what constitutes a rental, or is it the advertisement of the rental (for instance, on a web

platform) the threshold? The Board urges this question be considered as the Council deliberates this ZTA and bill at its work sessions and include clarifying language in the use definition.

This gray area of what constitutes a Sharing Economy Rental leads into the Planning Board's second primary concern, enforcement. By its nature, this use is transient, which makes enforcement of potential violations difficult. While overtly large or bothersome situations may warrant more immediate police action, in most instances the violating act will have ceased and moved on before any enforcement staff are able to be on the scene. Requiring rental logs and an owner to be present during events are good recommendations but are also fraught with enforcement issues. The Board recommends the Council consider carefully how complaints for Sharing Economy Rentals will be handled and whether additional resources or processes are necessary for it to be effective. The Board also believes some clarity could be given to the phrasing *owner's or owner-authorized resident's primary residence*. It was not immediately clear if an owner-authorized resident meant a lease holder, or if an authorized resident may simply be another family member of the actual owner who's name is not titled to the residence, such as an adult child.

Specific to the ZTA's use standards for Sharing Rental Economy, the Board generally agrees with Planning staff recommendations from their report with the following additional clarifications and comments.

- The Board does not share Planning staff's recommendation for standard a. and agrees properties with an Accessory Dwelling Unit should be prohibited from a Sharing Economy Rental.
- Regarding standard d. on the maximum 120 days of rentals in a calendar year, the Board recommends looking at other metrics such as a maximum number of rentals total (since more than one rental may occur on any given day) in addition to other protections to ensure there is not an excessive number of consecutive days that rentals occur.
- Regarding the parking standard g. the Board is very concerned that a private property owner could indirectly monetize public street parking by charging for use of a property and not providing adequate parking on-site, or immediately along the site frontage for the use. The Board also acknowledges having an event where drop-offs are the only option may be a larger nuisance than ensuring adequate parking. The availability of parking should be tied in some way to the rental size and clear proximity to high quality transit.
- The Board also agreed that standards in Chapter 59 should not involve anything not directly a zoning issue and recommends only locating standards that speak to ownership or owner responsibility in Chapter 25C.
- A final point is to consider renaming Sharing Economy Rental to something more obvious to an average citizen, such as an hourly residential rental or hourly recreational rental.

Planning staff, on behalf of the Planning Board, also completed a Climate Impact Assessment for ZTA 23-01, as required by Bill 3-22, passed by the County Council on July 12, 2022. The assessment anticipates indeterminate impacts on greenhouse gas emissions, and adaptive capacity, and a small positive impact on community resilience. The full assessment can be found as Attachment B in the attached Planning Staff Report packet.

The Board wants to assure the Council that while it has many concerns with the introduced ZTA both broadly and specifically, it does agree defining this use and creating a legal framework to operate under is worthwhile and is committed, along with Planning staff, to working with the Council to find solutions to the identified issues above.

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, February 23, 2023.



Jeffrey Zyontz

Chair

Attachments: A - Planning Staff Report
A-2 - Introduction Packet for ZTA 23-01 and Bill 6-23
B - Climate assessment For ZTA 23-01

Montgomery Planning
ZTA 23-01 & BILL 6-23
SHARING ECONOMY RENTAL



Description

ZTA 23-01 and Bill 6-23 define, authorize, and regulate the business of hourly rentals of private residential property. ZTA 23-01 establishes a new use for Sharing Economy Rental under the Accessory Residential Uses section and establishes limited use standards for the use. Bill 6-23 establishes a licensing authority under the Department of Health and Human Services, including application criteria and processes for approval, renewal, suspension, and revocation.

ZTA 23-01 & Bill 6-23
Completed: 02-16-2023

MCPB
Item No. 12
02-23-2023

Montgomery County
Planning Board
2425 Reedie Drive, Floor 14
Wheaton, MD 20902

Planning Staff

BB

Benjamin Berbert, Planner III, Countywide Planning and Policy
Benjamin.Berbert@montgomeryplanning.org, 301-495-4644

JS

Jason Sartori, Chief, Countywide Planning and Policy
Jason.Sartori@montgomeryplanning.org, 301-495-2172

INTRODUCED BY

Councilmember Jawando

INTRODUCTION DATE

01/31/2023

REVIEW BASIS

Chapter 59 – Zoning

Chapter 25C – Housing, Sharing Economy
Rental



Summary:

- Staff recommends the Planning Board transmit comments to the District Council in support of ZTA 23-01 and Bill 6-23 with amendments.
- The sharing economy continues to expand into new ventures, including new apps such as Swimply, which connects pool owners with the larger community, allowing for the private rental of backyard pools or other private amenities on an hourly basis.
- ZTA 23-01 and Bill 6-23 would define, authorize and regulate a new Accessory Residential Use, called Sharing Economy Rental, establishing a process for homeowners to legally rent all or a portion of their residential property on an hourly basis for private gatherings and events.

TABLE OF CONTENTS

SECTION 1: BACKGROUND	3
RATIONALE FOR INTRODUCTION.....	3
SECTION 2: ZTA AND BILL ANALYSIS	3
ZTA No. 23-01 AS INTRODUCED	3
BILL No. 06-23 AS INTRODUCED	4
ZTA No. 22-11 ANALYSIS AND RECOMMENDATIONS	6
SECTION 3: LEGISLATED ANALYSIS.....	10
CLIMATE ASSESSMENT.....	10
RACIAL EQUITY & SOCIAL JUSTICE	10
SECTION 4: CONCLUSION	10

SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-01 and Bill 6-23 were introduced on January 31, 2023 by Councilmember Jawando as the lead sponsor (Attachment A). The ZTA and Bill were introduced to address the continued growth of the sharing economy that has expanded beyond overnight accommodations (such as Airbnb) to include short-term or hourly rentals of private property for private use.

The Sharing Rental Economy is intended to provide opportunities for homeowners to rent, on a short term (less than 12-hour) basis, portions of their home or property to earn extra income. This sort of rental became popularized during the earlier days of the COVID-19 pandemic as people were looking for opportunities to gather, recreate, or work-out when many public places were closed. Typical rentals that would fall under this category may include outdoor amenities such as a backyard pool and patio for a private pool party, outdoor recreation facilities like a private basketball or tennis court, or interior spaces like a finished basement and bar for a party or exercise rooms and equipment. These rentals are already ongoing within the county but are currently considered illegal as a private rental business on residentially zoned properties. The ZTA and Bill create the necessary framework to define the new use, provide standards around its operation, and create a new set of licensing for the county to administer.

SECTION 2: ZTA AND BILL ANALYSIS

ZTA NO. 23-01 AS INTRODUCED

ZTA 23-01 establishes a new Sharing Economy Rental Use in Chapter 59. The term Sharing Economy Rental is added to Section 1.4 Defined Terms, providing a reference to the use standards section 3.3.3.I for a specific definition. Most of the changes with the ZTA are in Division 3, starting with technical changes to the use table under Section 3.1.6. Sharing Economy Rental is added to the table as an Accessory Residential Use and is established as a limited (L) use in every zone. To keep the use table and the use standards sections alphabetized, the existing Short-Term Residential Rental use, which was under section 3.3.1.I, is shifted to 3.3.1.J.

Under Section 3.3.3. Accessory Residential Uses, an entire new subsection I. is added for Sharing Economy Rental. The proposed definition for Sharing Economy Rental is *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.

There are nine limited use standards proposed by the ZTA for the Sharing Economy Rental. These are discussed in greater detail in the analysis section of this report, but include ownership requirements, limitations on the number of rentals and times of day rentals may occur, and how many people may attend a rental, among other standards.

As stated before, the Short-Term Residential Rental section of code is shifting from Section 3.3.1.I to 3.3.1.J. The final set of amendments with ZTA 22-03 are in Division 8.2 Floating Zone use table, and Division 8.3 Planned Unit Development, allowed residential uses.

BILL NO. 6-23 AS INTRODUCED

Bill 6-23 establishes a new chapter in the County Code, Chapter 25C – Housing, Sharing Economy Rental, to establish a license requirement for the Sharing Economy Rental use in Chapter 59. There is a long list of requirements to certify a license under 25C-3. Many of these license requirements are similar to the use standards proposed for the Zoning Code, but others include requiring the property to comply with other relevant parts of the County Code, requirements for sanitation facilities or limiting operations to two-hour increments, rules around trash disposal, taxation, the notification of neighbors, and interactions with homeowners associations or community associations. The new code also has additional sections covering license approvals, renewals, certifications, suspensions and revocations, appeals, complains, maintenance, and report of violations. For reference, below is a comparison of the use standards that are in ZTA 23-01 and the certification requirements in Bill 6-23.

Table 1 – Comparison of standards between Chapters

Certification or Standard	Zoning Standard¹	License Certification
Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.	X	
The building in which the Sharing Economy Rental is located complies with all applicable zoning standards under Chapter 59 of this Code.		X
The swimming pool, if provided, complies with Chapter 51 of this Code.		X
The total number of guests in any rental period who are 18 years or older is limited to 6.	X*	X
The total number of days with rentals in a 12-month period is limited to 120 days.	X*	X
Rentals will only occur between the hours of 8:00 a.m. and 10:00 p.m.	X*	X

¹ Standards noted with an * are standards where the intent is the same between the ZTA and the Bill, however the exact text of the standard is written slightly differently.

Certification or Standard	Zoning Standard ¹	License Certification
No sleeping quarters will be offered.		X
Sanitation facilities operate as designed.		X
If sanitation facilities are not provided, rentals are limited to 2 hours at a time.		X
The applicant has not been found guilty of a violation of this Chapter in the past 12 months.		X
All local taxes and required fees are paid in full, including the admissions and amusement tax under Section 52-16A.		X
The applicant is the owner or owner-authorized agent of the property.	X*	X
The applicant will post rules and regulations at the property, including parking restrictions and instructions regarding the disposal of trash.		X
One off-street parking space must be provided for each rental period unless the listing indicates that vehicle parking is prohibited.	X	
The applicant or a designated representative is present on the property for the duration of all rentals.	X*	X
The property owner or owner-authorized resident must obtain a license under Chapter 25C.	X	
A record of all rentals will be maintained and readily available for inspection.	X	X
Where applicable, the following parties were notified: (1) in a single-unit or attached unit, abutting and confronting neighbors; (2) in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit; (3) the municipality in which the residence is located (4) any applicable homeowner association, condominium, housing cooperative; and (5) the owner of the unit or the owner's agent, if the applicant is not the owner.		X
The application is not prohibited by any homeowners' association, condominium document, or rental lease.		X
The common ownership community fees for the dwelling unit are no more than 30 days past due.		X
Except for persons visiting the primary resident, only registered guests will be allowed on the property.		X
Any online listing will include the Sharing Economy Rental license number.		X

ZTA NO. 23-01 AND BILL 6-23 ANALYSIS AND RECOMMENDATIONS

Planning staff recommends the Planning Board transmit comments to the District Council supporting ZTA 23-01 and Bill 6-23 with amendments. The focus of this analysis will be on the ZTA, but staff notes some of the standards recommended for change in the ZTA would need to be similarly adjusted in the Bill.

LIMITED USE STANDARDS

The focus of staff's analysis on the ZTA is with the Use Standards section 3.3.3.1.2, starting on page 5 of the ZTA or page (13) of Attachment A. These use standards were drafted based on the use standards that exist for the Short-Term Residential Rental use (Airbnb and similar rental companies). The analysis of these standards, and the concerns raised by them are under the assumption that standards on the Sharing Rental Economies are intended to minimize externalities on surrounding residences. The impacts of many of these standards are difficult to fully assess given the uniqueness of each property and the type of facilities that are being rented. Generally, there are a few overarching concerns Planning staff has with the standards proposed in the ZTA, largely stemming from the wide range of activities that could potentially fall under the use of Sharing Economy Rental, and the different standards that would be most appropriate to those different activities. Some differences that staff see as potentially having a significant impact on appropriate standards include:

- Whether a use is indoor or outdoor, as outdoor uses are likely to create more externalities that would impact adjacent residences.
- How long the use is likely to last, as shorter rentals would generally have less of an impact than longer ones.
- The ability for a use to occur multiple times in one day, considering some rentals may be shorter (an hour or two) and in theory multiple parties could have rental agreements for the same day increasing daily visitors to the site.
- Seasonality of a use, that may be frequent in specific weather or times of year, which could impact how frequently rentals occur on a given property.
- How many people would be allowed at the use, with impacts generally being magnified with larger gatherings.
- Size of the property, with smaller properties likely magnifying any impacts or externalities caused by a rental.

With the list of differences in mind, below is the full list of standards from the ZTA and Planning staff's comments and recommendations.

- a. Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.*

The intent of prohibiting a Farm Tenant Dwelling is reasonable since these dwellings are not the primary owner of the residential property, which by definition would make them ineligible

to secure a license or execute a contract. The prohibition of the use on properties with an Accessory Dwelling Unit is less obvious and a direct carry-over from the Short-Term Residential standards. The intent seems to act as a limit to the number of accessory residential uses any single-family residential property can have. Uses that are smaller, and less frequent may not create much additional impact and could be considered in these circumstances. Staff recommends a size threshold for the Sharing Economy Rental be considered that may allow some smaller rentals to still occur on properties with Accessory Dwelling Units.

- b. *The Sharing Economy Rental must be the property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.*

This standard is reasonable, given the contracts are intended to be between the property owner and the private party. This would also help ensure a property's sole purpose did not become a facility rental venue but rather remained as a residential dwelling.

- c. *The property owner or owner-authorized resident must be present at the residence during the rental period.*

This standard is reasonable to ensure rentals do not escalate beyond the contracted limitations and may help keep externalities, such as noise, to a minimum.

- d. *A Sharing Economy Rental may only operate for a maximum of 120 days in a calendar year.*

Planning staff have some concerns with this standard as a one-size fits all standard. This standard is based on a Short-Term Residential Rental standard that limits rentals to 120 days per calendar year if the property owner is not present, but allows unlimited rental days when the property owner is present. It is difficult to assign an appropriate number of days that a Sharing Economy Rental should be allowed to operate, in part because the negative externalities vary greatly between different types of rentals. Of high concern are the rentals that are for outdoor backyards, patios and pool areas. A limit of 120 days in a calendar year may only be an average of 10 days a month, but could become a daily occurrence for four months straight when renting space for outdoor activities that favor warmer weather. Conversely rentals for indoor space such as a gym studio or workshop could happen year-round and be better spread out. Staff recommends considering different standards for the maximum number of rentals allowed, either to permit fewer rentals for outdoor activities, or to limit rentals to a certain number per week or per month.

- e. *Rental hours are limited to 8:00 a.m. to 10:00 p.m.*

Similar to the concerns raised with standard d. above, assessing adequate hours of operation is difficult without knowing the specific type of rental occurring on any given property. The size of the rental is one consideration, and the location indoors vs. outdoors is another. Planning staff notes the daytime noise level limits in the County on weekdays run from 7:00

a.m. until 9:00 p.m. and on weekends and holidays run from 9:00 a.m. until 9:00 p.m. Given this, staff recommends creating different standards that set outdoor rentals to match the daytime noise limit hours, or more simply limit all rental hours to 9:00 a.m. to 9:00 p.m.

- e. *The property owner or owner-authorized resident must obtain a license under Chapter 25C.*

The purpose of the companion Bill 6-23 is to establish the license process for Sharing Economy Rentals which this standard references. This standard is reasonable as written, with the exception of it being identified as limited use standard e., which is duplicative of the prior standard. This should become limited use standard f., with each standard below also shifting down the list one letter.

- f. *The total number of guests in any rental period who are 18 years or older is limited to 6 persons*

While the intent of limiting the size of a Shared Economy Rental makes sense, the standard limits adults (but not children) is another direct reference to the Short-Term Residential Rental and may not be the most appropriate standard for a Sharing Economy Rental. The limit on the number of adults could curb parking demand but would seem to be of little other benefit if the total number of attendees is not limited. Some of the Sharing Economy Rental activities would likely not reach this threshold, but certain outdoor rentals (particularly cookouts or pool parties) could easily exceed these limits. If the limitation on the number of adults is about parking, a potential solution would be to change the parking provisions to make additional parking a condition of larger events. If the standards were intended to limit noise, Planning staff would suggest having a total guest limit would be more appropriate, or to limit the size of outdoor rentals but not indoor rentals. Staff could also see the benefit in setting a limit (one a month, or twelve a year) for larger gatherings as an alternative way to mitigate such impacts.

- g. *One off-street parking space must be provided for each rental period unless the listing indicates that vehicle parking is prohibited.*

Parking is one of the externalities Planning staff expects will be a major concern with neighbors, especially in communities with narrower streets, or where residents rely heavily on street parking. It is not desirable to turn residential properties into parking lots, but some assessment on the availability of on-street parking including the property's street frontage width may be worth considering when determining if zero, one, or more than one space should be made available off-street for Sharing Economy Rentals. Parking is also likely activity dependent, with some rentals, such as outdoor parties, generating a far greater parking demand than others. As discussed in the standard above, a combination approach to parking and rental size should be considered.

- h. *A record of all rentals must be maintained and readily available for inspection.*

This standard is reasonable to help inspectors with the licensing and potential violation proceedings that may occur, in addition to personal liabilities that a property owner may face with Sharing Economy Rentals.

OTHER CONCERNS

In assessing the proposed use standards in the ZTA and the license requirements in the corresponding Bill, Planning staff has identified a few other areas that may want to be considered:

- *How many rentals are allowed in a given day*

The limited use standards proposed cover the number of days in a year and hours in a day rentals may occur, but do not speak to the number of rentals that may occur within one day. With each additional rental, the impacts multiply, so if the intent of these standards is to provide a minimum level of compatibility between the rental site and the surrounding community it seems reasonable to add a limit on how many rentals can occur in a day. Staff can envision a scenario where multiple outdoor parties occur in the same day creating an extended period of outdoor noise and increased traffic and parking impacts. Like with most of the standards, the size and type of events do matter, with small indoor-only events being less impactful than larger outdoor ones.

- *Standards in Chapter 59 vs. in Chapter 25C*

An additional concern Planning staff has is the inconsistency in how standards are worded between Chapters 59 and 25C, and more broadly whether the standards should be in both places or only located in one chapter. There are a few standards that are uniquely appropriate to only one or the other chapter, such as Chapter 59 requiring a license under Chapter 25C, and Chapter 25C requiring full standing compliance with other provisions in Chapter 59. Beyond these obvious examples, the distribution of standards across the two chapters seems more arbitrary. It makes sense for Chapter 59 to contain standards directly relating to land use or zoning provisions, but to that effect, standards in Bill 6-23 such as (f) *no sleeping quarters will be offered* seem to be missing. Conversely, provisions currently in ZTA 23-01 such as (c) *the applicant or a designated representative is present on the property for the duration of all rentals* and (h) *a record of all rentals must be maintained and readily available for inspection* are good standards but may be redundant for zoning. Planning staff suggests limiting the standards listed in Chapter 59 to the minimum necessary to ensure compliance with zoning as discussed above and that the other standards are all appropriate for inclusion or retention in chapter 25C stipulating the requirements for a license.

SECTION 3: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022 requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate assessment prepared by Planning staff for ZTA 23-01 can be found in Attachment B. Planning staff wants to highlight that this is the first climate assessment conducted under this climate impact legislation.

The climate assessment for ZTA 23-01 anticipates an indeterminate impact on greenhouse gas emissions and adaptive capacity, and a small positive impact on community resilience. The changes in uses and travel patterns will vary at the local scale with some Sharing Economy Rentals possibly having a small negative impact and others a small positive impact, making it difficult to determine any total direction of change for carbon emissions. The anticipated slight improvement in community resilience is a result of more opportunities for the distribution of economic resources and possible enhancement of social networks resulting from these rentals.

RACIAL EQUITY & SOCIAL JUSTICE

As of the posting of this staff report, the Office of Legislative Oversight has not completed a Racial Equity and Social Justice analysis for ZTA 23-01.

SECTION 4: CONCLUSION

Planning staff recommends the Planning Board transmit comments to the District Council supporting ZTA 23-01 with the comments recommended by staff. This ZTA does provide a good opportunity to legalize a growing sharing economy segment, however the standards and provisions for this new use may be too broad to cover all of the possible uses that would fall under Sharing Rental Economy and sub-uses or sub-lists of standards may be appropriate. Planning staff look forward to working with the Council as needed to make any desired refinements to the proposed code changes going forward.

ATTACHMENTS

Attachment A – ZTA 23-01 and Bill 06-23 Introduction Packet

Attachment B – Climate Impact Assessment

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 6-23: HOUSING – SHARING ECONOMY RENTAL

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice (RESJ) impact of Bill 6-23 is indeterminant.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation 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 BILL 6-23

The Sharing Economy (SE) has many definitions and remains contested. Nevertheless, SE is commonly understood as an economic model based on the exchange of underused goods or services, for a fee or for free, between individuals and entities, typically by means of the Internet.³ Well-known SE platforms include Airbnb and Uber.

Bill 6-23 is intended to address SE activity in the County, specifically, constituents renting their private property on an hourly basis through online platforms. Under current law, this commercial activity is not allowed in the County. The goal of the Bill is to authorize and regulate the hourly rental of private property by establishing a regulatory framework for license applications, renewals, suspension, and revocation for these rentals. Bill 6-23 proposes the following changes to County law:

- Defining the scope of law to Sharing Economy Rental—that is, “the rental of any portion of a dwelling or the property on which it sits for a fee where both property and the dwelling are privately-owned by the same person or entity and where the rental period is less than 12 continuous hours;”
- Requiring persons to attain a license issued by the Department of Health and Human Services (DHHS) to operate a Sharing Economy Rental;
- Establishing the certifications required for license applications and renewals by applicants;
- Establishing the fee, inspection, and other conditions the County must meet to approve and renew licenses; and
- Outlining the conditions and processes for (a) a challenge to any required certification, (b) any license suspension, revocation, or appeal, and (c) investigating complaints.⁴

Bill 6-23, Housing – Sharing Economy Rental, was introduced by the Council on January 31, 2023 with companion Zoning Text Amendment (ZTA) 23-01, Accessory Residential Uses – Sharing Economy Rental.

RESJ Impact Statement

Bill 6-23

THE SHARING ECONOMY AND RACIAL EQUITY

Deeply embedded structural racism in American society inherently drives racial bias within and across societal institutions. Thus, while the SE is a relatively new concept, it has also been characterized by racial inequities and disparities. SE platforms have increased access to an array of useful goods and services. However, research suggests that benefits of the SE are not equitably distributed. Researchers at Boston College note national studies from the JPMorgan Chase & Co. Institute and the Pew Research Center finding that SE platform users tend to be “whiter, younger, better-educated, and have higher income than the general population.”⁵ Additionally:

- A field experiment of Airbnb by researchers found “that applications from guests with distinctively African American names [were] 16 percent less likely to be accepted relative to identical guests with distinctively white names.”⁶ A recent internal study by Airbnb confirmed racial discrimination, finding that guests who were perceived as Black were able to book their desired rental 91.4 percent of the time, compared to 94.1 percent for guests who are perceived as White.⁷
- A study of 335,000 Airbnb listings in the ten largest Airbnb markets in the U.S. found that areas with higher concentrations of non-White residents “[charged] lower nightly prices, [had] lower annual revenues, and [received] lower ratings from guests.”⁸ Further, a study of over 100,000 Airbnb listings across 14 countries, including the U.S., found evidence that “consumers show a preference for White hosts, which allows White hosts to charge higher prices.”⁹
- A study of nearly 1,000 Uber and Lyft rides in Boston found that “Uber drivers were twice as likely to cancel an accepted ride when travelers [had an] African American sounding name.”¹⁰
- A study of 100 million ride-sharing samples from Chicago found that “[n]eighborhoods with larger non-white populations, higher poverty levels, younger residents, and high education levels [were] significantly associated with higher fare prices.”¹¹

Concerns have also been raised around the role of SE platforms in perpetuating broader employment and housing inequities. Advocacy groups have argued that, through misclassifying drivers as independent contractors and denying employee benefits and protections, Uber and Lyft uniquely harm workers of color, who are overrepresented in their driver workforce.¹² A study of Airbnb listings throughout the U.S. found that Airbnb leads to higher rents and decreases the supply of long-term rental units.¹³ This effect would disproportionately harm BIPOC renters as they are cost burdened at higher levels than White renters.¹⁴

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 6-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO identified several stakeholders that would be impacted by this Bill:

RESJ Impact Statement

Bill 6-23

- **Homeowners** would benefit from having the option to establish a new income stream through Sharing Economy Rentals, though they would bear some costs from licensing requirements and fees. Homeowners in the County are more likely to be White or Asian (refer to Table 1 in Appendix), and research from Airbnb suggests BIPOC homeowners who participate could have lower revenues than White homeowners.¹⁵ At the same time, it is unclear whether Sharing Economy Rentals could be a more attractive income-generating opportunity for BIPOC homeowners, considering they are cost burdened at higher levels than White homeowners (refer to Table 2 in Appendix).
- **Constituents using Sharing Economy Rentals** would benefit from having access to more amenities in the community, such as private swimming pools, though they may face higher prices with the regulation. Based on research from other SE platforms noted in the previous section, Sharing Economy Rental users may be disproportionately White and BIPOC users may experience discrimination. At the same time, it is unclear whether Black and Latinx users could particularly benefit from increased access to private amenities, given they are overrepresented among renter households in the County (refer to Table 3 in Appendix).
- **Constituents living near Sharing Economy Rentals** could experience inconveniences from increased activity in their neighborhoods related to Sharing Economy Rentals. These issues could be mitigated by the Bill's regulation requirements, but it is unclear to what extent.
- **County constituents at large** would benefit from increased revenues for the County generated by the admissions and amusement tax on Sharing Economy Rentals.

For the second question, OLO considered how this Bill could address racial inequities that could emerge from Sharing Economy Rentals, such as price discrimination against BIPOC homeowners and racial discrimination against BIPOC users. While this Bill does not address potential racial inequities, OLO could find no precedent of local jurisdictions establishing and enforcing antidiscrimination laws on SE platforms. A 2016 article from the Guardian considers the legal ambiguity around enforcing federal antidiscrimination laws on Airbnb.¹⁶

Taken together, many factors remain unclear with the establishment of Sharing Economy Rentals, including potential racial discrimination that could emerge on platforms and whether there could be a particular benefit to BIPOC homeowners from this new income-generating opportunity or to BIPOC users from increased access to private amenities. Thus, OLO finds the RESJ impact of Bill 6-23 is indeterminant.

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.¹⁷ OLO finds the RESJ impact of Bill 6-23 is indeterminant. 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 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.

RESJ Impact Statement

Bill 6-23

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

APPENDIX

Table 1: Homeownership Rate by Race and Ethnicity, Montgomery County¹⁸

Race and Ethnicity	Homeownership Rate
Asian	69.1
Black	43.3
White	77.1
Latinx	54.3

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.

Table 2: Cost Burden Rate of Homeowners by Race and Ethnicity, Montgomery County

Race and Ethnicity	Homeowner Cost Burden Rate
Asian	30.1
Black	28.1
White	22.1
Latinx	31.8

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.

Table 3: Percent of All Households and Renter Households by Race and Ethnicity, Montgomery County

Race and Ethnicity	Percent of County Households	Percent of Renter Households
Asian	14.3	11.8
Black	17.7	30.3
Native American	0.3	0.2
White	57.3	43.0
Latinx	13.9	18.6

Source: Table S2502, 2021 American Community Survey 5-Year Estimates, Census Bureau.

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 Ahmed Abdul Hadi Haqqani, et al, “Sharing Economy: A Systematic Review of Definitions, Drivers, Applications, Industry Status and Business Models,” IFAC, June 2022.

https://www.sciencedirect.com/science/article/pii/S2405896322017311?ref=cra_js_challenge&fr=RR-1

⁴ Introduction Staff Report for Bill 6-23, Housing – Sharing Economy Rental, Montgomery County Council, Introduced January 31, 2023. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131_4D-6.pdf

RESJ Impact Statement

Bill 6-23

-
- ⁵ Mehmet Cansoy and Juliet B. Schor, “Who Gets to Share in the ‘Sharing Economy’? Racial Inequities on Airbnb.” Boston College Sociology Department, 2016.
<https://www.bc.edu/content/dam/bc1/schools/mcas/sociology/pdf/Who%20gets%20to%20share%20in%20the%20sharing%20economy.pdf>
- ⁶ Benjamin Edelman, et al, “Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment,” American Economic Journal: Applied Economics. April 2017. <https://www.aeaweb.org/articles?id=10.1257/app.20160213>
- ⁷ Sara Clemence, “Black Travelers Say Home-Share Hosts Discriminate, and a New Airbnb Report Agrees,” The New York Times, December 13, 2022. <https://www.nytimes.com/2022/12/13/travel/vacation-rentals-racism.html>
- ⁸ Cansoy and Schor
- ⁹ Bastian Jaeger and Willem W. A. Sleegers, “Racial Disparities in the Sharing Economy: Evidence from More than 100,000 Airbnb Hosts across 14 Countries,” Journal of The Association of Consumer Research, January 18, 2023.
<https://www.journals.uchicago.edu/doi/abs/10.1086/722700?journalCode=jacr>
- ¹⁰ Yanbo Ge, et al, “Racial Discrimination in Transportation Network Companies,” Journal of Public Economics, October 2020.
<https://www.sciencedirect.com/science/article/pii/S0047272720300694>
- ¹¹ Akshat Pandey and Aylin Caliskan, “Disparate Impact of Artificial Intelligence Bias in Ridehailing Economy’s Price Discrimination Algorithms,” AAAI/ACM Conference on Artificial Intelligence, Ethics, and Society, May 2021. <https://arxiv.org/abs/2006.04599>
- ¹² Edward Ongweso Jr, “Civil Rights Groups Say Uber Actively Hurts Black People,” Vice News, September 23, 2020.
<https://www.vice.com/en/article/7kpn9z/civil-rights-groups-say-uber-actively-hurts-black-people>
- ¹³ Kyle Barron, et al, “The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb,” SSRN, March 4, 2020.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006832
- ¹⁴ RESJ Impact Statement for Expedited Bill 22-22, Office of Legislative Oversight, Montgomery County, Maryland, July 29, 2022.
<https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/BillE22-22.pdf>
- ¹⁵ Cansoy and Schor
- ¹⁶ Julia Carrie Wong, “Airbnb: How U.S Civil Rights Laws All Racial Discrimination on the Site,” The Guardian, May 6, 2016.
<https://www.theguardian.com/technology/2016/may/06/airbnb-racism-civil-rights-laws-sharing-economy>
- ¹⁷ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council
- ¹⁸ 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.

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.

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 23-01

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:³

- 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.”⁴ 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 2014.⁵ BIPOC constituents still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.⁶

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.⁷ 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.⁸

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 ⁹	54.3	31.8

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau¹⁰

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.¹¹ 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.¹²

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.¹³ 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.¹⁴ Yet, hosts in predominantly BIPOC areas charged lower nightly prices, had lower annual revenues, and received lower ratings from guests.¹⁵ 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.¹⁶

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.¹⁷ 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 later 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.¹⁸ 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.

CONTRIBUTIONS

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

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	<ol style="list-style-type: none">Short-Term Residential Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.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.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.The use must be licensed under Chapter 54.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.One off-street parking space must be provided for each rental contract unless the online listing indicates that vehicle parking is prohibited.	<ol style="list-style-type: none">Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.The 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.The property owner or owner-authorized resident must obtain a license under Chapter 25C.The total number of guests in any rental period who are 18-years or older is limited to 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.

RESJ Impact Statement

Zoning Text Amendment 23-01

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 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

⁴ 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>

⁵ 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.

⁶ 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>.

⁷ 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>

⁸ 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

⁹ 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.

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

¹¹ Oxford Lerner’s dictionaries

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

¹² 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

¹³ 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.

¹⁴ 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>

¹⁵ Ibid

¹⁶ Ibid

¹⁷ 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

¹⁸ 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>

Climate Assessment

Office of Legislative Oversight

Bill 6-23: Housing – Sharing Economy Rental

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 6-23 will have little to no impact on the County's contribution to addressing climate change as there is not enough evidence to suggest that the sector of the sharing economy targeted by legislation has significant impacts on reducing greenhouse gases or increasing community resilience.

BACKGROUND AND PURPOSE OF BILL 6-23

The Sharing Economy (SE) has many definitions and remains contested. Nevertheless, the SE is commonly understood as an economic model based on the exchange of underused goods or services, for a fee or for free, between individuals and entities, typically by means of the internet.¹ Well-known SE platforms include Airbnb and Uber.

Introduced in conjunction with Zoning Text Amendment 23-01, Bill 6-23 is intended to address SE activity in the County, specifically, constituents renting their private property on an hourly basis through online platforms. Under current law, this commercial activity is not allowed in the County. The goal of the Bill is to authorize and regulate the hourly rental of private property by establishing a regulatory framework for license applications, renewals, suspension, and revocation for these rentals.

Bill 6-23 proposes the following changes to County law:

- Defining the scope of law to Sharing Economy Rental—that is, “the rental of any portion of a dwelling or the property on which it sits for a fee where both property and the dwelling are privately-owned by the same person or entity and where the rental period is less than 12 continuous hours”;
- Requiring persons to attain a license issued by the Department of Health and Human Services (DHHS) to operate a Sharing Economy Rental;
- Establishing the certifications required for license applications and renewals by applicants;
- Establishing the fee, inspection, and other conditions the County must meet to approve and renew licenses; and
- Outlining the conditions and processes for: (a) a challenge to any required certification; (b) any license suspension, revocation, or appeal; and (c) investigating complaints.

Bill 6-23, Housing – Sharing Economy Rental, was introduced by the Council on January 31, 2023.

ANTICIPATED IMPACTS

There are few systematic studies on the environmental impact of the Sharing Economy (SE) and associated digital platforms. Further, most of these studies focus on ridesharing, nightly accommodations, and renting out small goods such as tools.² As the digital platforms that rent out portions of private property by the hour are relatively new, there is little research on the environmental and climate impacts that specifically focus on this sector of the SE. The websites of the digital platforms mentioned in Bill 6-23 were also reviewed and there was no mention of environmental impacts or sustainability on their websites.³

After reviewing literature on the SE, OLO notes there is mixed evidence to suggest the SE, both in general and the sector targeted by Bill 6-23, has a positive or negative impact on climate change, such as the reduction of greenhouse gases or increasing community resilience.⁴ There is also a lack of available data to measure impacts, as digital platforms in the SE have been restrictive in granting researchers access to data, citing privacy and competition concerns.⁵

OLO anticipates Bill 6-23 will have little to no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptive capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁶ OLO does not offer recommendations or amendments as Bill 6-23 is likely to have little to no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptive capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not 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.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptive capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ ["Sharing Economy: A Systematic Review of Definitions, Drivers, Applications, Industry status and Business Models", Haggani, A. A. H., Elomri, A., and Kerbache, L., 10/26/22](#)

² ["Political Economies and Environmental Futures for the Sharing Economy", Frenken, Koen, 5/1/2017.](#), ["A Decade of the Sharing Economy: Concepts, Users, Business, and Governance Perspectives", Mont, O., Palgan, Y. V., Bradley, K., and Zvolska, L., 10/1/2020](#)

³ [Sniffspot Homepage, Accessed 2/8/23](#), [Swimply Homepage, Accessed 2/8/23](#)

⁴ ["Environmental Impacts and Potential of the Sharing Economy", Skjelvik, J., Erlandsen A. M., and Haavardsholm, O., 10/19/17.](#), ["Putting the Sharing Economy into Perspective", Frenken, K. and Schor, J., 1/22/17.](#), ["The Sharing Economy Promotes Sustainable Societies", Mi, Z. and Coffman, D., 3/14/2019.](#)

["A Decade of the Sharing Economy: Concepts, Users, Business, and Governance Perspectives", Mont, O., Palgan, Y. V., Bradley, K., and Zvolska, L., 10/1/2020](#)

⁵ ["Putting the Sharing Economy into Perspective", Frenken, K. and Schor, J., 1/22/17](#)

⁶ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Montgomery Planning

CLIMATE ASSESSMENT FOR ZTA 23-01, SHORT-TERM RECREATIONAL RENTALS

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the climate assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the County's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs at the county level. The scope of the climate assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas (GHG) emissions, and how actions proposed by master plans and ZTAs could improve the County's adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

Montgomery Planning anticipates that ZTA 23-01 will result in an overall indeterminate impact resulting from an aggregate of minor local negative and positive climate-related impacts toward the County's goals of addressing greenhouse gas emissions and ensuring resilience, and a small positive impact on the adaptive capacity of our communities. The number of future permits issued and where the permitted sites, patron residences and alternate facility options are located relative to each other are all unknown, therefore the ZTA would likely have indeterminate small positive or negative local impacts on some greenhouse gas emissions-related variables in the transportation and energy sectors, and small positive impacts on several community adaptive capacity-related variables.

Given the indeterminate number and locations of any future sites that acquire this use, the potential impacts are also indeterminate. Regardless, in view of the small scale, short-term intermittent nature of these uses, which take advantage of existing structures, these potential impacts would likely be minor on a countywide scale.

BACKGROUND AND PURPOSE OF ZTA 23-01

ZTA 23-01 was introduced on January 31, 2023 by Councilmember Jawando to address the continued growth of the sharing economy which has expanded beyond overnight accommodations (such as

Airbnb) to include a whole industry of short-term hourly rentals of private property for private use. The intent of the ZTA is to provide legal opportunities for homeowners to rent out portions of their homes or properties on a short-term basis for extra income. Examples of short-term rentals include renting out a backyard with a pool for a private party, or an indoor gym as an alternative to joining a large commercial gym. This ZTA creates a new Sharing Economy Rental use and establishes the limited use standards by which the use is governed. ZTA 23-01 has a companion bill (Bill 6-23), which establishes a new chapter of County Code (25C), creating a license framework for the Sharing Economy Rental use.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

CLIMATE-RELATED VARIABLES

Greenhouse Gas-related Variables:

Transportation-related: Vehicle Miles Traveled (VMT); Number of Trips; Non-vehicle Modes of Transportation; and Public Transportation Use

Energy-related: Electricity Usage; and Stationary Fuel Usage

Resilience-related Variables:

Exposure-Related Factors: Activity in Urban Heat Islands

Sensitivity-Related Factors: Change to Air Quality

Adaptive Capacity-Related Variables:

Change in Availability or Distribution of Economic and Financial Resources; Change to Community Connectivity; and Change in Distribution of Resources and Support

OTHER VARIABLES

Other variables include the number of future permits issued pursuant to the ZTA, the number and frequency of events at each permitted site, and where the sites, patron residences, transportation options, and alternate facility options are located relative to each other.

ANTICIPATED IMPACTS

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

The ZTA is anticipated to result in an overall indeterminate impact resulting from an aggregate of minor local negative and positive climate-related impacts toward the County's goals of addressing greenhouse gas emissions. For example, in some cases, short-term intermittent greenhouse gas

emissions could be increased due to increased vehicle miles traveled (VMT) to rental sites, whereas in other cases VMT could be decreased due to shorter trips to a rental site compared to trips previously needed to access more distant alternate facilities. Similarly, the number of future permits issued, the number and frequency of events at each site, and where the permitted sites, patron residences, transportation options, and alternate facility options are located relative to each other (all of which are unknown), can result in indeterminate positive or negative impacts for each of the other greenhouse variables listed above. These include number of trips, non-vehicle modes of transportation, public transportation use, electricity usage, and stationary fuel usage. Regardless, in view of the small scale, short-term and intermittent nature of these uses, which take advantage of existing structures, these potential impacts would likely be minor on a countywide scale.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

The ZTA is anticipated to result in an overall indeterminate impact resulting from an aggregate of minor local negative and positive climate-related impacts toward the County's goals of addressing community resilience. As with the greenhouse gas emission discussion above, the number of future permits issued and where the rental sites, patron residences and alternate facility options are located relative to each other (all of which are unknown), can result in indeterminate positive or negative impacts for certain resilience-related variables. These include activity in urban heat islands and change to air quality. Regardless, in view of the small scale, short-term and intermittent nature of these uses, which take advantage of existing structures, these potential impacts would likely be minor on a countywide scale.

The ZTA is anticipated to have a positive impact on several adaptive capacity-related variables including change in availability or distribution of economic and financial resources, change to community connectivity, and change in distribution of resources and support. This is due to potential enhancements in household incomes, social support networks, number of available local gathering places, neighborhood sense of community, as well as increasing the potential of helping others in times of need. Nevertheless, in view of the small scale, short-term and intermittent nature of these uses, which take advantage of existing structures, these potential impacts would likely be minor on a countywide scale.

RELATIONSHIP TO GHG REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-01 does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County's Climate Action Plan.

RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-01 because the ZTA would likely result in an overall indeterminate aggregate of small positive and negative local

impacts on greenhouse gas emissions and resilience. Moreover, other than the anticipated small positive impacts on community adaptive capacity resulting from increasing the availability of local rentable places for social gatherings, the ZTA does not offer obvious additional opportunities for significantly enhancing positive climate change impacts beyond the potential benefits associated with the proposed use as discussed in this assessment.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-01 was prepared using the methodology (tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022.*](#)

Economic Impact Statement

Montgomery County, Maryland

Bill 6-23

Housing – Sharing Economy Rental

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 6-23 would have a net negative impact on economic conditions in the County in terms of the Council’s priority indicators. By establishing a regulatory framework for Sharing Economy (SE) markets in the County that are currently active, the change in law likely would increase operating costs and reduce business income for certain property owners who participate in these markets and comply with the regulations. Moreover, certain property owners likely would pass on some portion of these costs onto resident customers, thereby reducing their net discretionary income.

BACKGROUND AND PURPOSE OF BILL 6-23

SE has many definitions and remains contested. Nevertheless, SE is commonly understood as an economic model based on the exchange of underused goods or services, for a fee or for free, between individuals and entities, typically by means of the Internet.¹ Well-known SE platforms include Airbnb and Uber.

Bill 6-23 is intended to address SE activity in the County, specifically constituents renting their private property on an hourly basis through online platforms. Under current law, this commercial activity is not allowed in the County. The goal of the Bill is to authorize and regulate the hourly rental of private property by establishing a regulatory framework for license applications, renewals, suspension, and revocation for these rentals. Bill 6-23 proposes the following changes to County law:

- Defining the scope of law to Sharing Economy Rental—that is, “the rental of any portion of a dwelling or the property on which it sits for a fee where both property and the dwelling are privately-owned by the same person or entity and where the rental period is less than 12 continuous hours;”
- Requiring persons to attain a license issued by the Department of Health and Human Services (DHHS) to operate a Sharing Economy Rental;
- Establishing the certifications required for license applications and renewals by applicants;
- Establishing the fee, inspection, and other conditions the County must meet to approve and renew licenses; and
- Outlining the conditions and processes for (a) a challenge to any required certification, (b) any license suspension, revocation, or appeal, and (c) investigating complaints.²

Bill 6-23, Housing – Sharing Economy Rental, was introduced by the Council on January 31, 2023 with companion Zoning Text Amendment (ZTA) 23-01, Accessory Residential Uses – Sharing Economy Rental.

¹ Haqqani, et al, “[Sharing Economy: A Systematic Review](#).”

² [Introduction Staff Report](#) for Bill 6-23.

March 1, 2023

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 6-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.³

In this analysis, OLO assesses the Bill's economic impacts on two stakeholder groups:

- owners of private property who rent out their properties on an hourly basis through online platforms; and
- residents who rent these properties.

OLO performs a qualitative assessment of the Bill to determine the economic impact of its specific provisions on these two stakeholder groups.

Importantly, although not authorized under County law, certain local SE markets that Bill 6-23 would attempt to regulate are currently active markets.^{4,5} For this reason, this analysis assesses the economic impacts of establishing a regulatory framework for certain SE markets vis-à-vis an unregulated market that is currently active, as opposed to the absence of a market.

VARIABLES

The primary variables that would affect the economic impacts of Bill 6-23 are the following:

- percentage of property owners who comply with regulations;
- magnitude of the negative operating cost and business income effects on affected property owners; and
- rate at which property owners pass these costs onto resident customers.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that Bill 6-23 would have an overall negative impact on certain private organizations in the County in terms of the Council's priority economic indicators.

Several provisions of the Bill likely would increase operating costs for certain owners of private property who rent out their properties and comply with County regulations. Property owners would be required to attain a license issued by the County and renew it every year. They would be charged an annual licensing fee, the amount of which would be established

³ Montgomery County Code, [Sec. 2-81B](#).

⁴ For instance, certain County property owners rent their swimming pools through the online platform, Swimply.

⁵ Correspondence with Council attorney, Livhu Ndou.

by Executive regulation under method (3) of Section 2A-15. Holding all else equal, annual licensing fees would increase operating costs for property owners who would comply the licensing requirement. In addition, certain certification requirements for licenses may increase operating costs. These include posting rules and regulations at the property, maintaining a record of all rentals, maintaining sanitation facilities, and notifying various third parties (e.g., neighbors, homeowner association, municipality).

The Bill also may reduce business income for certain property owners who comply with the regulations. Property owners whose licenses would be denied, suspended, or revoked would forgo business income from renting out their properties. In addition, to attain or renew a license, property owners must certify that (i) the total number of guests in any rental period who are 18+ years old is no more than six, (ii) the total number of days with rentals per year is no more than 120; and (iii) rentals will only occur between 8am and 10pm. The restrictions on the number of guests and operational days/hours could prevent certain property owners from meeting demand in the market and/or reducing demand for the properties among individuals.

While County regulations likely would negatively impact operating costs and business income for some property owners, there may be certain property owners who benefit economically from the regulations. For instance, there may be cases in which property owners who would be prevented from renting their properties due to third party obstruction in the absence of having a license.

Beyond these potential impacts, OLO does not expect the Bill to affect private organizations in terms of the Council's other priority indicators.

Residents

OLO anticipates that the Bill would have a negative impact on certain residents in the County in terms of the Council's priority economic indicators. Property owners who would comply with the regulations and experience increased operating costs and/or lower business income likely would pass on some portion of the costs/forgone income to customers in the form of higher rental rates. Holding all else equal, residents who pay higher rates than they otherwise would in the absence of the Bill would experience a net decrease in discretionary income.

Beyond this potential impact, OLO does not expect the Bill to affect residents in terms of the Council's other priority indicators.

Net Impact

OLO anticipates that Bill 6-23 would have a net negative impact on economic conditions in the County in terms of the Council's priority economic indicators. This conclusion is based on various ways the Bill may increase operating costs and reduce business income for property owners who comply with County regulations. However, OLO is unable to estimate the magnitude of this impact. The factors that likely would affect the magnitude include: the percentage of property owners who comply with regulations; the magnitude of the negative operating cost and business income effects on affected property owners; and the rate at which property owners pass these costs onto resident customers.

DISCUSSION ITEMS

Given the Bill would attempt to regulate certain currently active SE markets, Councilmembers may want to consider how the County would induce compliance among property owners who would be negatively impacted by the regulations.

WORKS CITED

Haqqani, Ahmed Abdul Hadi, Adel Elomri, and Laoucine Kerbache. "[Sharing Economy: A Systematic Review of Definitions, Drivers, Applications, Industry Status and Business Models.](#)" IFAC. June 2022.

[Introduction Staff Report](#) for Bill 6-23, Housing – Sharing Economy Rental, Introduced January 31, 2023.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not 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.

AUTHORS

Stephen Roblin (OLO) prepared this report.



Fiscal Impact Statement

Office of Management and Budget

Bill 6-23

Housing - Sharing Economy Rental

Bill Summary

Bill 6-23 allows private residential property owners to rent out their swimming pools, backyards, and other parts of their property at an hourly rate. The bill outlines the certifications an applicant must make for licensing and provides a process for licensing approval, renewal, suspension, and revocation. Licensing authority would fall under the Department of Health and Human Services (DHHS). The bill requires electronic licensing through the internet. The bill requires an inspection of the property before the issuance of a license and every two years thereafter.

Fiscal Impact Summary

Expenditures increase to support personnel costs for 2.0 FTE Environmental Health Specialist III (Grade 24) and a 1.0 FTE Office Services Coordinator (Grade 16), Operating expenditures also increase for an annual software licensing fee, miscellaneous staff expenditures, and outreach materials. Revenues increase by \$112,500 each year to recognize greater collections from license fees. This revenue estimate anticipates approximately 750 licenses will be issued at a \$150 annual fee.

Fiscal Year	24	25	26	27	28	29	Total
Personnel Costs	\$231,100	\$320,900	\$320,900	\$320,900	\$320,900	\$320,900	\$1,835,600
Operating Expenses	\$101,200	\$87,400	\$87,400	\$87,400	\$87,400	\$87,400	\$538,200
Total Expenditures	\$332,300	\$408,300	\$408,300	\$408,300	\$408,300	\$408,300	\$2,373,800
Revenues	\$112,500	\$112,500	\$112,500	\$112,500	\$112,500	\$112,500	\$675,000
Total Impact	(\$219,800)	(\$295,800)	(\$295,800)	(\$295,800)	(\$295,800)	(\$295,800)	(\$1,698,800)
FTE	3.00	3.00	3.00	3.00	3.00	3.00	

This analysis anticipates personnel costs for three positions lapsed for three months in FY24 and then funded through the full year each year thereafter. Full year personnel costs total \$232,900 for both Environmental Health Specialist III positions, and \$88,000 for the Office Services Coordinator position. FY24 personnel costs are slightly less due to the anticipated three-month lapse savings.

Each position incurs operating costs to purchase one-time items, such as computers and furniture, totaling \$4,600 in FY24, and also incurs ongoing operating costs of \$1,600 each year.

Fiscal Impact Analysis

This analysis estimates that approximately \$3,000 in operating costs will be incurred for staff outreach and education efforts each year.

This analysis estimates annual software licensing fees of \$80,000 per year. There are some uncertainties associated with estimating the cost of operating an electronic licensing system each year, including: whether the electronic licensing system could be incorporated into an existing county platform, the amount of additional one-time costs that may be needed to create the new system, and the cost of maintaining the system each year.



Revenues could increase by \$112,500 annually. This analysis anticipates approximately 750 licenses will be issued for a fee of \$150 each year. However, as described later in this analysis, there are uncertainties about the number of licenses to be issued and the amount of the fee to be set by Executive Regulation. Potential tax revenue is not included in this analysis because it cannot be accurately estimated at this time and is unlikely to generate significant revenue for the County.

Staff Impact

DHHS estimates that approximately 3.0 FTE would be needed to implement this bill:

- 2.0 FTE Environmental Health Specialist III positions to conduct inspections, enforce compliance, respond to complaints, and perform outreach and education; and
- 1.0 FTE Office Services Coordinator to review annual license applications.

DHHS staff emphasizes that the workload required under the bill will depend on the number of license applications received. For example, DHHS estimates that a single inspection would take approximately two hours, and an investigation of an unlicensed property complaint would take three hours. Depending on the number of applications and the number of complaints received, the staff time needed to offer this new type of license could vary substantially. DHHS also estimates that some staff time will be spent on outreach to educate the public and prospective applicants about this new type of license. DHHS notes that a 1.0 FTE Information Technology Specialist position could also be required to manage the online licensing system, but the cost of this position is not anticipated in this analysis.

Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

Information Technology Impact

Establishing an online licensing system could require new software. This analysis assumes that the Department would incur annual software license costs of \$80,000. Although not anticipated in this analysis, there may be costs associated with creating the new system that increase expenditures in the first year by an unknown, but potentially meaningful amount. This analysis also does not anticipate the cost of a 1.0 FTE Information Technology Specialist position that could be needed to manage the online licensing system.

Other Information

Later actions that may impact revenue or expenditures if future spending is projected

Future spending is not authorized in this bill.

Ranges of revenue or expenditures that are uncertain or difficult to project

A key uncertainty underpinning this fiscal impact analysis are unknown application rates for this new type of license. For example, were Shared Economy Rental license participation to match the rates seen for Short Term Residential Rentals, over 1,000 licenses would be issued. However, if participation does not grow significantly after enactment, there may only be a small number of applicants for this type of license; there are an estimated 30 pools advertised on the Swimply website for (currently unlicensed) Shared Economy Rental. As applications could range from fewer than 100 to over 1,000, there are implications for both the personnel needed to effectively implement this bill, and potential revenues generated from fees for this new type of license. Given this uncertainty, this analysis assumes 750 licenses issued each year, which represents a moderate uptake of this type of license compared to the Short Term Residential Rental licenses.

Licensing fees for this new type of license would be established by Executive Regulation. This analysis assumes the rental fee would equal the current \$150 fee for



Short Term Residential Rental licenses. Depending on the rate set by Executive Regulation, revenues may differ from what is anticipated in this analysis.

Shared Economy Rentals could generate additional revenue from Admissions and Amusements tax collections. However, Shared Economy Rental licenses are completely new to the County and there is no reliable data available to inform revenue estimates as tax revenues would depend on the market price and varying transaction frequency for each type of rental. However, the Department of Finance advises that tax revenue from Shared Economy Rentals would likely not generate a significant amount of revenue for the County. This analysis does not anticipate potential tax revenue that may be generated from Shared Economy Rentals.

Finally, as stated earlier in this analysis, there are also uncertainties associated with the cost of implementing an electronic licensing system.

Contributors

Ngozi Agugua, DHHS
Alison Dollar, Technology and Enterprise Business Solutions
Dennis Hetman, Department of Finance
Candice Prather, Department of Finance
Jason Rundell, DHHS
Kenneth Welch, DHHS
Grace Pedersen, Office of Management and Budget





BOARD OF APPEALS

February 1, 2023

The Honorable Evan Glass
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear President Glass:

On behalf of my fellow Board of Appeals' members, I wanted to submit brief comments regarding Bill No. 6-23, Housing - Sharing Economy Rental, which accompanies ZTA 23-01, Accessory Residential Uses – Sharing Economy Rental. As you are aware, this legislation would expand the Board's jurisdiction to include authority to hear appeals filed by any person aggrieved by an approval, denial, or suspension of a Sharing Economy Rental license. While the Board welcomes the addition of this type of administrative appeal to its portfolio, we are concerned about the requirement that we hold hearings on these appeals within 30 days,¹ and would request that this Bill be revised to treat these appeals like others under our jurisdiction, at a minimum like short-term rental license appeals, but preferably like building permit appeals.

As a policy matter, the truncated appeal period proposed in Bill No. 6-23 may have the unintended effect of limiting the ability of affected community members to participate in the appeal process, or of excluding them altogether. While this may be less of a concern when the appeal is from the denial or suspension of a license, and thus it is likely the property owner (or lessee) who is appealing, the Board believes that this is a legitimate concern in cases where it is the approval of a license that is being appealed, since those appeals would typically be brought by unhappy neighbors or community members.

On a technical level, the requirement that the Board hold a hearing within 30 days is inconsistent with other provisions in the County Code and Zoning Ordinance that govern administrative appeals. Section 2A-6 of the County Code and Section 59.7.6.1.C.5 of the Zoning Ordinance both require that the Board give at least 30 days' notice of administrative appeals. In addition, there are other timed submission requirements in the County Code that apply to administrative appeals. For example, Section 2A-7(d) of the County Code requires that motions for summary disposition in administrative appeals be filed at least 30 days before the date of the

¹ The Board observes that even Section 54-48 of the County Code, which provides an expedited timeframe for hearing and deciding appeals of bed and breakfast licenses and short-term rental licenses relative to the timing for hearing and deciding most types of administrative appeals (e.g. building permit appeals), provides a 60-day window from the time of filing until the hearing date. While the Board has only heard one short-term rental appeal to date, the Board expects that appeals of sharing economy rental licenses may occur with more frequency.

hearing. Also, the Board by custom holds prehearing conferences in administrative appeal cases so that it can better understand the issues involved. It then schedules the hearing for at least three, usually four or more, weeks after that conference, to allow time for the submission of written prehearing statements (the County's prehearing submission is due 20 days before the hearing, and the Appellant's is due 10 days before the hearing, in accordance with Section 2A-7(a)(1) of the County Code). While this prehearing process is not statutorily mandated, it is very helpful to both the Board members and the parties to the case, in that it forces the parties to articulate their issues and arguments within the applicable legal framework. Finally, the Board notes that the requirement to act on one of these appeals (i.e. issue a written decision) within 30 days is shorter than the 45-day timeframe currently accorded the Board in these types of cases by Section 2A-10(d) of the County Code.

As a practical matter, the Board notes that because it has to schedule the other matters it handles a minimum of 30 days out, if it were to be required to hear these appeals within 30 days, it would have to add these matters to an existing docket, which may or may not already be substantial. Furthermore, the Board notes that because the Board only meets on Wednesdays, for appeals filed any day other than Monday, the proposed requirement that hearings be held within 30 days would result in hearings having to be held in less than 30 days. Finally, the Board questions how the 30-day requirement would square with its August recess.

All of the concerns I have detailed could be addressed by revising this Bill to require that appeals of a Sharing Economy Rental license follow the same procedures that apply to most of the other types of administrative appeals that the Board hears (e.g. building permit appeals). While this would provide for a slightly lengthier process than is proposed in Bill 6-23, it is not unreasonably long, and would allow time for full participation by the public, would minimize the need to amend other provisions of law, and would better comport with the Board's current scheduling and operations. I hope that you will consider revising Bill No. 6-23 accordingly.

Sincerely,



John H. Pentecost
Chair, Montgomery County Board of Appeals

cc: Members, Board of Appeals
Members, Montgomery County Council
Livhu Ndou, Legislative Attorney

JHP:bjj



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

March 10, 2023

TO: Evan Glass, President
Montgomery County Executive

FROM: Marc Elrich, County Executive *Marc Elrich*

SUBJECT: Proposed Amendments - Bill 6-23, Housing – Sharing Economy Rental & ZTA 23-01, Accessory Residential Uses – Sharing Economy Rental

Thank you for this opportunity to comment on Bill 6-23 and ZTA 23-01 addressing shared economy rentals. I do not support Bill 6-23 and ZTA 23-01, although I understand the sponsors' intent to address the fact that county residents are already commercializing their private properties and to provide a framework for licensure, inspection, and operations.

Over the past decade, local governments across the nation have attempted to address the challenges posed by entrepreneurs and businesses cultivating the emerging shared economy market. During that time, Montgomery County responded with regulations for shared economy services such as short-term room rentals by homeowners through services like Airbnb and Vrbo. It is becoming clear that as the market continues to evolve, any personal asset can become a "shareable asset" through the shared economy. Now, Swimply and Sniffspot are expanding rental offerings to include any part, inside or out, of a person's property.

Unfortunately, our legislation on short-term rentals failed to provide an adequate framework for regulation. Our capacity to enforce existing laws is limited and will only become more strained by this legislation. To address existing shortcomings, I will be proposing legislative fixes to our short-term rental law, which I hope the Council will take up before acting on new legislation. Executive agencies receive complaints from constituents daily about neighbors engaged in unpermitted construction, the storage of solid waste, the storage of harmful chemicals, excessive noise, overcrowding, unlicensed businesses, the commercialization of already congested public streets, and negligent animal care. These nuisance neighbors not only negatively impact the

enjoyment of private property by residents living adjacent to them but become the source of disharmony in the broader residential community. Neighbors complain about neighbors, HOAs get involved, and in some cases, constituents make direct requests to their Councilmember and County Executive. The worst offenders end up in District Court. Bill 6-23 and ZTA 23-01 could potentially lead to excessive commercialization of residential homes, thereby exacerbating existing problems.

Should the Council proceed with Bill 6-23 and ZTA 23-01, I recommend the following conceptual amendments with language to be drafted by Council Staff. They are intended to provide a balanced approach that better serves everyone's interests. On the one side is the homeowner who wishes to participate and obtain the benefits of the shared economy. On the other side are the homeowner's neighbors and community who wish to avoid over commercialization of their neighborhoods. These amendments would help provide a balance between those interests.

1. Limit rental activity to once per day, 3 consecutive days per week.
2. Limit the number of rental activities to no more than 10 days per month to eliminate the possibility of 120 straight days of activity especially during the Spring and Summer months when rentals will most likely be at their peak.
3. Limit the number of guests in any rental period to 6 total persons.
4. Limit the hours for rentals to occur between 10 a.m. and sunset ("Dusk").
5. Always provide access to indoor sanitation facilities, not portable toilets.
6. Limit shared economy rentals to owner occupied properties.
7. Prohibit an owner-authorized agent to be the applicant. Only allow the owner of the property to be the applicant.
8. Require annual property inspections.
9. Require that the license be suspended for the first violation of the license or of the County Code for 30 days.
10. Require that the license be revoked for the second violation of the license or of the County Code.
11. Prohibit any rental activity associated with auto/truck/boat repair that inherently involves solid waste, environmental impacts from noise and chemicals, and the commercialization of public streets by tow trucks and other heavy commercial vehicles parking and dropping off vehicles for repair.

12. Prohibit any rental activity that deals with the preparation of food to be consumed by the public.
13. Shared economy rental licensing, renewals, investigations, and renewals should be governed by DHCA. This agency – not DHHS - already licenses short-term rentals.
14. Require the licensee to provide a publicly accessible online calendar so that executive agencies and the public can track the frequency of rentals.

In conclusion, while I support the sponsor's effort to address the challenges brought about by shared economy rentals, they must be managed in a way that respects the rights of others in the neighborhood who would be impacted by over commercialization of nearby residential properties.

Should Bill 6-23 and ZTA 23-01 proceed, the proposed additional rules would strike the balance that is needed.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER, AT-LARGE
CHAIR, EDUCATION & CULTURE COMMITTEE
PLANNING, HOUSING, AND PARKS COMMITTEE

M E M O R A N D U M

March 22, 2023

TO: Marc Elrich, County Executive

FROM: Will Jawando, Councilmember

SUBJECT: Response to Suggestions for Bill 6-23 and ZTA 23-01

As the sponsor of Bill 6-23, Sharing Economy Rentals, I am responding to your suggested amendments for Bill 6-23 and ZTA 23-01. I believe that we have the same goal – albeit different perspectives – to help create a regulatory framework that allows homeowners to participate in the sharing economy, while at the same time protecting their neighbors and communities from disruption.

Before introducing Bill 6-23 and ZTA 23-01, my office and I consulted with representatives from the Department of Housing and Community Affairs (DHCA), the Department of Permitting Services (DPS), the Department of Health and Human Services (DHHS), and well as members of your office. These meetings were invaluable in understanding the intricacies of regulating short-term rentals. As a result of these consultations, we significantly modified our original draft to incorporate department feedback.

Like you, I want our departmental staff working to address the serious complaints listed in your letter, including the unauthorized storage of harmful chemicals, unpermitted construction, the storage of solid waste and more. Taking a proactive approach to short-term rentals will help resolve issues before they become complaints. While homeowners are already taking advantage of short-term rental platforms, currently the only penalty is a zoning code violation. These violations are difficult to enforce and result in minimal fines that are ineffective at altering behavior. The proactive approach of Bill 6-23 will alleviate many minor issues by creating guardrails, educating about those guardrails, and creating a clear enforcement mechanism.

At the same time, county law should respect the rights of residents that wish to participate responsibly in the sharing economy. We have already read testimony that renting out a home amenity helped a family survive a tough time financially during COVID-19. And I've heard from renters interested in short-term rentals to practice music, exercise animals, and do other activities that our public facilities cannot always accommodate.

To aid the joint committee in its deliberations, I've responded on the next page with my feedback to many of the suggestions in your letter. I want to thank you and your office for your consideration of these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Jawando", with a long horizontal flourish extending to the right.

Will Jawando

Response to the County Executive's Suggestions
For Bill 6-23 and ZTA 23-01

Suggestions 1 and 2. While I support the legislation as drafted, if committee members are concerned about this, a possible compromise is to establish a rental limit of 3 consecutive days per week. This would also address the Executive's concern of potentially having 120 consecutive days of rental.

Suggestion 3. This legislation is much more restrictive than the short-term overnight rentals law which does not have any limit for visiting guests if they do not stay overnight. Instead of having a hard cap for the number of guests, I am working with legislative counsel to offer an amendment to create a reasonable cap based on the property size.

Suggestion 4. I appreciate the intent of this suggestion. To address this, I plan to support an amendment by Councilmember Luedtke to require the hours of rentals to be consistent with the noise ordinance.

Suggestion 5. While I believe that property owners should be required to ensure adequate sanitation facilities available for the rental, this can be addressed without requiring them to be indoors.

Suggestion 6. The legislation already limits shared economy rentals to owner-occupied properties.

Suggestions 8, 9, and 10. The current plan for inspections and licensing in this legislation is fair, reasonable and comparable with other existing laws in Montgomery County.

Suggestion 13. It is factually incorrect that DHCA currently licenses short-term rentals. However, I am conceptually supportive of this change as proposed in the County Executive's proposed legislation transmitted to the County Council on March 17th.

Suggestion 14. I am concerned by the possibility of requiring a homeowner to have a publicly accessible online calendar for the tracking of rentals. This seems far and above what is required of hosts on AirBnB and VRBO, and I believe it would have troubling privacy implications.