

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 18-23: STRUCTURE OF COUNTY GOVERNMENT – COMMUNITY ZONING AND LAND USE RESOURCE OFFICE

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 18-23 could sustain or marginally widen racial and social inequities in land use in the County as its benefits would disproportionately accrue to land developers that are disproportionately White. To advance RESJ in land use and zoning processes, OLO proposes modification and alternatives to current law for Council consideration.

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 18-23

The purpose of Bill 18-23, Structure of County Government – Community Zoning and Land Use Resource Office, is to replace the Office of the People’s Counsel with a Community Zoning and Land Use Resource Office. The County Council created the Office of the People’s Counsel in 1990 but it was not initially funded until 1999 and was last funded in 2010 although the County Executive included the People’s Counsel in the FY24 Operating Budget.

As noted in 2016,³ the People’s Counsel is empowered to:

- Participate in administrative proceedings and court appeals;
- Obtain experts to provide technical assistance and testimony;
- Represent residents in administrative proceedings as an advocate and as an expert witness;
- File complaints alleging failure to comply with a special exception grant; and
- Seek modification or revocation of special exceptions when such actions are necessary.

Generally, the People's Counsel is designed to act as an independent lawyer that advocates for the public’s interest in local zoning matters such as map amendments, conditional uses, site plans, and master plans. The intent of Bill 18-23 is to replace the People’s Counsel with a Community Zoning and Land Use Resource Officer that provides information and resources on the land use process to members of the public without directly participating as an advocate for the public’s interest.

More specifically, Bill 18-23 no longer requires an attorney to staff the new Office and prohibits the Office from participating in administrative proceedings with the County Council, Board of Appeals, Planning Board, Hearing Examiner, and the Court of Appeals. Further, in rezoning cases, Bill 18-23 also prohibits the Office from providing “an independent source of information to educate residents on how, when, and where they may participate in the public approval process.” As such, Bill 18-23 removes the obligation for land developers to consider and respond to concerns

RESJ Impact Statement

Bill 18-23

raised by the People’s Counsel as part of the land use development process and prohibits the new Office from advising residents about how they may participate in the land use development process.

Bill 18-23 was introduced on March 28, 2023.

RACIAL EQUITY, LAND USE, AND PEOPLE’S COUNSELS

Historically, racial inequities in land use have privileged White property owners at the expense of others, especially Black, Indigenous, and other People of Color (BIPOC). Land and labor theft at the expense of Indigenous and African peoples created White wealth in the County in an economy initially dominated by agriculture. Racial inequities in the development of Montgomery County continued during the 20th Century with redlining and racial covenants that are preventing BIPOC residents and religious minorities from purchasing suburban homes in Silver Spring, Chevy Chase and elsewhere in the County⁴. Further, racial segregation in housing in the form of unfair banking practices and unequal investment in schools, parks and other public facilities continued even after the passage of the Fair Housing Act of 1968 and the Community Reinvestment Act of 1977 that were intended to end these practices.⁵

Throughout the 20th century, jurisdictions have also used zoning to separate uses (e.g., residential, commercial, and industrial uses) and people.⁶ For example, zoning has been used to exclude BIPOC and low-income residents from predominantly White and affluent residents by reserving large lots for single family homes rather than affordable housing.⁷ Zoning practices have also helped concentrate White households into the most affluent areas of the County while Black and Latinx residents are concentrated in lower-income areas. For example, whereas White people accounted for 43 percent of County residents in 2020, they accounted for 69 percent of District 1 constituents where the median household income was \$265,145 compared to \$152,779 for the County.⁸

The combination of racially inequitable zoning, banking, and real estate practices have reinforced each other and fostered local racial disparities in property ownership and housing burden. As noted in Table 1, White constituents had the highest homeownership rate at 77 percent in 2021 and the lowest cost burden rate at 22 percent. This means that less than a quarter of White homeownership households expended more than 30 percent of their income on housing. Table 2 also shows that Black and Latinx households were over-represented among renters in the County.

Table 1: Homeownership and Cost Burden Rate of Homeowners. Montgomery County⁹

Race and Ethnicity ¹⁰	Homeownership Rate	Homeowner Cost Burden Rate
Asian	69.1	30.1
Black	43.3	28.1
White	77.1	22.1
Latinx	54.3	31.8

Source: Table S0201, 2021 American Community Survey 1-Year Estimates, Census Bureau.¹¹

RESJ Impact Statement

Bill 18-23

Table 2: Percent of All Households and Renter-Occupied Households by Race and Ethnicity, Montgomery County, MD¹²

Race and Ethnicity ¹³	A Households	Renter-Occupied Households
Asian	14.4	12.2
Black	18.0	30.0
Native American	0.3	0.3
Pacific Islander	0.1	0.1
White	55.0	40.5
Latinx	14.3	18.8

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

Racial disparities in wealth building opportunities, property ownership and housing also contribute to local racial disparities in entrepreneurship and the construction industry. For example, BIPOC-owned business accounted for 44 percent of Montgomery County firms in 2012 but only seven percent of local business revenue.¹⁴ Moreover, according to the 2014 Disparity Study, BIPOC-owned firms accounted for only 21 percent of construction businesses in the Metropolitan Washington, D.C. construction market able to potentially service as prime contractors for construction projects in the County while White-owned firms accounted for 79 percent of firms with the same potential.¹⁵

Racial and social disparities also determine power in local land use decision-making. For the most part, constituents with wealth hold disproportionate power in local land use decisions. As noted in one recent study “because of developers’ dependence on the discretion of elected and appointed policymakers, flexibility measures such as rezonings, conditional use permits, and variances reinforce existing (racial) inequities by following the desires of wealthier, generally (W)hite residents, and monied development interests over those of poorer residents or people of color—especially since the former group is more likely to participate in elections and public review processes.”¹⁶ Public hearings also advantage affluent voices in land use decisions as historically constituents in lower-income communities are often less able than others to engage in public hearings.¹⁷ They are often less familiar with what zoning requires, the need to apply for zoning approvals, or the need to maintain their property in compliance with zoning standards.¹⁸

As advocates for the public’s interest in land use decisions, Offices of People’s Counsel can be uniquely positioned to advocate for the interests of BIPOC and low-income constituents not typically represented in land use decisions. As noted in a 2016 memorandum from the former County Executive to the former County Council, the Office of the People’s Counsel is authorized to:¹⁹

- Participate in proceedings before the County Council, Board of Appeals, Planning Board, Hearing Examiner and Court of Appeals;
- Obtain highly qualified experts to provide technical assistance and expert testimony;
- Represent residents before Park and Planning, Council and Board of Appeals as an advocate and as an expert witness; and
- File complaints alleging failure to comply with a special exception grant; seek modification or revocation of special exceptions when such action is necessary.

Other Maryland jurisdictions that have established People’s Counsel offices with full or part-time attorneys include Prince George’s County, Baltimore County, and Harford County. Each participates in land use cases, and some provide technical assistance to the public with varying degrees of mandates in each jurisdiction.

RESJ Impact Statement

Bill 18-23

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 18-23 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?

In response to the first question, OLO evaluated the differences between the People’s Counsel and the Community Zoning and Land Use Resource Officer positions. The specified purposes of the People’s Counsel include:²⁰

- Protecting the public interest and promoting a full and fair presentation of relevant issues in administrative proceedings to help inform land use decisions;
- Providing technical assistance to citizens to encourage their effective participation; and
- Increasing public understanding of and confidence in the County land use process.

When the People’s Counsel advocates positions on behalf of the public, developers usually respond to their concerns and issues raised during the land use review and application approval process. Transforming the People’s Counsel into a non-attorney position that does not advocate for the public’s interests reduces the regulatory burden of land developers to address the People’s Counsel concerns. Thus, the primary beneficiaries of the reduced regulatory burden resulting from Bill 18-23 would be land developers who are likely disproportionately White given the demographics of local property owners and construction firm owners serving Montgomery County.

Moreover, it is unlikely that the information on the land use process provided by the Community Zoning and Land Use Resource Office will be of significant benefit to the public because the Planning Board provides similar information to interested constituents. For example, Planning Board information staff respond to public requests for information about land use applications and their reviews by Planning staff. Information staff can also help explain the development review process and timeline and address concerns and issues from members of the public.

Further, the People’s Counsel is better positioned to advocate for RESJ in the County than the proposed Community Zoning and Land Use Office. As originally created, “the People’s Counsel was intended to provide a degree of equity” and “to address disparity that exists between the resources available to developers and those available to the residential community.”²¹ If the Office of the People’s Counsel was funded, it could advocate for RESJ as part of its advocacy for the public interest in land use decisions. In contrast, the Community Zoning and Land Use Resource Office would not be authorized to advocate for RESJ in land use proceedings with the County Council, Planning Board, Zoning Hearing Examiner, Board of Appeals, and Court of Appeals.

In response to the second question, OLO finds that since land developers are the primary beneficiaries of Bill 18-23 and available data on property and construction firm owners suggests that land developers are disproportionately White, this Bill could marginally widen racial disparities in entrepreneurship, particularly in the construction sector.

RECOMMENDED AMENDMENTS

RESJ Impact Statement

Bill 18-23

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.²² OLO anticipates that Bill 18-23 could marginally widen racial disparities in entrepreneurship, particularly in the construction sector, since it primarily benefits land developers that are likely disproportionately White. Should the Council seek to elevate RESJ in land use and zoning decisions across the County, OLO offers the following options for discussion and consideration:

- **Fund the People’s Counsel as constructed under current law.** If funded, the People’s Counsel would be empowered to advocate for the public interests in land use and zoning decisions. Since BIPOC account for the majority of the County’s constituents, ideally the People’s Counsel’s advocacy for the public’s interest would include advocating for land use decisions that advance RESJ in the County.
- **Amend the authorizing legislation for the People’s Counsel to require RESJ reviews of land use proposals.** Analogous to the Racial Equity and Social Justice Act and Amendments that require the County Council to consider the potential RESJ impact of each bill and zoning text amendment it reviews, the Council could amend authorizing legislation for the Office of the People’s Counsel to require the Office to develop RESJ impact statements for land use and zoning proposals beyond zoning text amendments. Executing this recommendation would require funding of the Office of the People’s Counsel and additional staff to conduct RESJ reviews for consideration in Planning Board, Hearing Examiner, and County Council proceedings.
- **Amend the authorizing legislation for the People’s Counsel to require a “People’s Counsel Citizens Advisory Board” to provide guidance and recommendations.** To help ensure that the People’s Counsel advocacy for the public’s interest reflect the perspectives of a cross-section of County residents, the Council could amend the authorizing legislation for the People’s Counsel to adopt a “People’s Counsel Citizens Advisory Board.” The Citizen’s Advisory Board could be modeled after Harford County’s People’s Counsel Advisory Board that has the authority to “provide guidance and make recommendations to the People’s Counsel regarding any matter referred to them by the People’s Counsel, County Council, or as requested by any citizen or group of citizens of Harford County.” Inclusion of BIPOC and low-income stakeholders as advisory board members could enhance the People’s Counsel’s advocacy for RESJ as part of its advocacy for the public’s interest in land use decisions.
- **Amend Bill 18-23 to require the new Office to conduct RESJ reviews of land use proposals.** Analogous to the RESJ Act and amendments that require the County Council to consider the potential RESJ impact of each bill and zoning text amendment it reviews, the Council could amend Bill 18-23 to require the Office of Community Zoning and Land Use Resource Office to develop RESJ impact statements for each land use and zoning proposal (except ZTAs) considered by the Planning Board, Hearing Examiner, Board of Appeals, County Council, and Court of Appeals. Executing this recommendation would likely require funding beyond the Community Zoning and Land Use Resource Officer position.

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 18-23

CONTRIBUTIONS

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

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 Memorandum from Isiah Leggett, County Executive, to Nancy Floreen, President, Montgomery County Council November 16, 2016 <https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=1045&fullTextSearch=41-16>

⁴ Afzal, Khalid, 2021. “The History of Land Use and Planning in Montgomery County”, *A Montgomery County Planning Department Blog*, March 5.

⁵ Ibid

⁶ Smart Growth America. 2019. Zoning for Equity: Raising All Boats. March 21

<https://smartgrowthamerica.org/zoning-for-equity-raising-all-boats/>

⁷ Lance Freeman. 2021. Build Race equity into rezoning decisions, Brookings Institution. July,13

<https://www.brookings.edu/blog/how-we-rise/2021/07/13/build-race-equity-into-rezoning-decisions/>

⁸ Montgomery County Planning Department. 2022. Montgomery County Demographic Trends – Presentation to the Montgomery County Council. Updated January 26, 2023

<https://montgomeryplanning.org/tools/research/demographics/>

⁹ 2021 American Community Survey 5-Year Estimates, Census Bureau. As cited by Janmarie Peña, in OLO Bill 6-23 Housing-sharing Economy Rental I

¹⁰ 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.

¹¹ 2021 American Community Survey 5-Year Estimates, Census Bureau. As cited in OLO Bill 6-23 Housing-sharing Economy Rental.

¹² 2021 American Community Survey 5-Year Estimates, Census Bureau As cited by Janmarie Peña, RESJ Bill 16-23,: Landlord-Tenant Relations – Rent Stabilization.

[RESJ Bill 16-23: Landlord-Tenant Relations – Rent Stabilization \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/council/RESJ%20Bill%2016-23%20-%20Landlord-Tenant%20Relations%20-%20Rent%20Stabilization)

¹³ 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. As cited in RESJ Bill 16-23

¹⁴ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019

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

¹⁵ Griffin and Strong, Montgomery County Disparity Study, 2014

<https://www.montgomerycountymd.gov/cat/services/disparitystudy.html>

¹⁶ Lo, Lydia and Freemark, Yohana. Influencers, Bias, and Equity in Rezoning Cases: An Evaluation of Developer-Initiated Zoning Changes in Louisville, Kentucky. Research Report, Urban Institute. November 2022

[Influencers, Bias, and Equity in Rezoning Cases.pdf \(urban.org\)](https://www.urban.org/research/publication/influencers-bias-and-equity-in-rezoning-cases)

¹⁷ American Planning Association. 2022. Equity in Zoning. Policy Guide.

¹⁸ Ibid

¹⁹ Memorandum from Isiah Leggett, County Executive, to Nancy Floreen, President, Montgomery County Council November 16, 2016 <https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=1045&fullTextSearch=41-16>

²⁰Montgomery County Code Part II, Chapter 2: Administration, Article XII: People’s Council, Section 2-150. https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-118569

RESJ Impact Statement

Bill 18-23

²¹ Approved minutes of the Montgomery County Council in Legislative Session, March 8, 1989, as cited in the 2008 Office of Legislative Oversight Review of the Office of the Peoples Counsel Report Number 2008-10, p. 7.

²² Bill 27-19 Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council. December 2, 2019

<https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=2623&fullTextSearch=Bill%20AND%2027-19>