

M E M O R A N D U M

November 13, 2020

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments

PURPOSE: Worksession – Committee to make recommendations on Bill

Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments, sponsored by Lead Sponsor Councilmember Navarro and Co-Sponsors Councilmembers Jawando and Albornoz, Council Vice-President Hucker, Councilmembers Riemer and Friedson, Council President Katz and Councilmembers Glass and Rice, was introduced on September 29, 2020. A public hearing was held on October 20 with four speakers.¹

Bill 44-20 would require the Office of Legislative Oversight (OLO) to submit a racial equity and social justice impact statement for each zoning text amendment. The law already requires OLO to submit an impact statement for a bill. Bill 44-20 would also add 2 additional public members to the Racial Equity and Social Justice Advisory Committee and authorize the Executive to establish one or more task forces to study and make recommendations on a specific racial equity and social justice issue. Lead Sponsor Councilmember Navarro explained her reasons for introducing this Bill at ©7-8 and discussed some possible amendments in a November 12 memorandum at ©28-30.

The County Attorney's Office recommended 2 amendments to clarify the intent of the Bill at ©14-15.

Public Hearing

All 4 speakers supported the Bill. Tiffany Ward, Director of the Office of Racial Equity and Social Justice, speaking on behalf of the Executive, supported the Bill with the recommended amendments from the County Attorney's Office (©16). Jane Lyons, representing the Coalition for Smarter Growth (©17), and Mary Kolar, representing the Montgomery Housing Alliance (©18-19) each noted the importance of looking at land use decisions with a racial equity and social

¹#EquityMattersInMoCo #LandUseEquity

justice framework. Bruce Turnbull, representing Jews United for Justice (©20-21), requested an amendment to require a racial equity and social justice impact statement for expedited bills.²

We also received written testimony supporting the need to submit a RESJ impact statement for Zoning Text Amendments from John Paukstis, representing Habitat for Humanity Metro Maryland, Inc. (©22-23) and MORE, Montgomery County Racial Equity Network (©24-25).

Issues

1. Should a Racial Equity and Social Justice (RESJ) Impact Statement be required for each zoning text amendment (ZTA)?

All the testimony supported requiring a RESJ impact statement for each ZTA. A ZTA amends the Zoning Code. Although a ZTA must be adopted by the Council sitting as the District Council under State law, a ZTA is a type of legislation that can, and often does, have a significant effect on County residents. Unfortunately, the United States, including Montgomery County, has a history of using land use regulations to support racial inequity. It is important for the Council to consider the RESJ impact of each ZTA before adopting it. The argument for requiring this was eloquently stated by OLO in the RESJ Impact statement for this Bill at ©11-13.

2. Should the Planning Board be involved in producing the RESJ Impact statement for a ZTA?

The County Planning Board is the County's agency primarily responsible for implementing the Council's land use policies and recommending improvements. Although ZTAs often originate with the Council, the Planning Board and the Planning staff routinely provide valuable recommendations and analysis of a ZTA for the District Council. While OLO can provide an independent review of each ZTA, it would be helpful for OLO to consult with Planning staff about a proposed ZTA in order to provide a more comprehensive RESJ Impact statement. OLO discussed this possibility with Planning staff and this is likely to happen informally. A memorandum from Elaine Bonner-Tompkins explaining their conversations is at ©26-27.

However, if the Council wants to ensure that this happens, the Bill could be amended to require this as follows:

Amend lines 4-8 as follows:

- (b) *Racial Equity and Social Justice impact statement.* The Director must submit a statement to the Council describing the racial equity and social justice impact, if any, of each bill and zoning text amendment under consideration by the Council. The Director must submit a separate

² The current law already requires OLO to prepare a RESJ impact statement for expedited bills. The law does not invalidate an expedited bill enacted before OLO submits the RESJ Impact statement in order to permit the Council to move quickly when necessary. Expedited bills are treated the same for fiscal and economic impact statements.

statement for each bill or zoning text amendment. The Director must consult with the Planning Board staff before submitting a Racial Equity and Social Justice Impact statement for a zoning text amendment to the Council.

A second alternative would be to require the Planning Board to submit the impact statement instead of OLO. The Planning Board recommends this change if the Council includes funding to hire an additional staff person to be the lead person for this work. The Planning Board's letter is at ©31-32. The Planning Board also requested an amendment to delay the effective date of this requirement until 6 months after the Bill is enacted to give them time to implement it.

3. Should the Executive be required to submit a RESJ Impact statement for each supplemental appropriation requested by the Executive?

Section 2-64A(d) requires the Executive to adopt a Racial Equity and Social Justice Action Plan by Method 2 regulation. Although this provision took effect on March 2, 2019, the Executive has not yet submitted a Racial Equity and Social Justice Action Plan to the Council for approval. The Plan must include:

- (D) a requirement for the Executive to explain how each management initiative or program that would be funded in the Executive's annual recommended operating and capital budgets promotes racial equity and social justice;

The Executive Branch has argued that this provision only applies to the submission of the Executive's Recommended Budget on March 15 and does not apply to any supplemental appropriations submitted after the annual budget is approved. Although Council staff disagrees with this interpretation, the simple solution is to clarify the Council's intent. If the Council wants the Executive to submit a RESJ Impact statement for each supplemental appropriation recommended by the Executive, this can be done as follows:

Add the following after line 1:

2-64A. Office of Racial Equity and Social Justice.

* * *

- (d) *Racial Equity and Social Justice Action Plan.*

* * *

- (2) The racial equity and social justice action plan must include:

* * *

- (D) a requirement for the Executive to explain how each management initiative or program that would be funded in the Executive's annual recommended operating and capital budgets or in a supplemental appropriation promotes racial equity and social justice;

* * *

4. Should an otherwise valid expedited bill be invalid if it was enacted without a RESJ Impact statement?

Some of the testimony questioned the "exclusion" of expedited bills from the RESJ Impact statement requirement. This testimony is based on an incorrect interpretation of the current law. The law requires OLO to submit a RESJ Impact statement for all bills but clarifies that an otherwise valid expedited bill is not invalid without an impact statement. This provision mirrors the requirement for an Economic Impact statement in Section 2-81B(e) that also states that an otherwise valid expedited bill is not invalid without an Economic Impact statement. The example of Expedited Bill 40-20 concerning a trader's license is unfortunate because OLO issued an impact statement after the Bill was enacted raising racial equity issues. However, Bill 40-20 was introduced and enacted in one week to meet a State deadline. This situation is unusual and also represents a good reason for keeping the current law.

5. County Attorney recommended amendments.

The Office of the County Attorney (OCA) recommended 2 amendments (©14).

- a. Bill 44-20 would require a RESJ Impact statement for each ZTA and make a ZTA without one invalid. The County Attorney pointed out that a ZTA must be enacted by the Council sitting as the District Council under the Regional District Act and that this State law requires the District Council to change the validity of a ZTA. OCA recommends that the Council amend §2-81C(e) to clarify that an otherwise valid ZTA is not invalid due to OLO's failure to submit an impact statement. Council staff agrees.

This could be done by adding the following after line 9:

- (e) *Compliance.* Council action on an expedited bill or District Council action on a zoning text amendment that is otherwise valid is not invalid because of any failure to follow the requirements of this Section.
- b. OCA also suggests that since the Bill authorizes the Executive to set up a task force to review and make recommendations on a specific issue, the Executive should be listed as a recipient of any task force recommendation. Council staff agrees.

This could be done by amending lines 80-87 as follows:

(g) The Executive may establish one or more limited issue task forces to study and make recommendations on a specific racial equity and social justice issue. A limited issue task force established by the Executive ceases to exist once it has completed its assigned task. The appointment of members of a limited issue task force must not be subject to confirmation by the Council. Each recommendation of a limited issue task force must be shared with the Council, the Executive, and the Racial Equity and Social Justice Advisory Committee.

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Bill No. 44-20
Concerning: Racial Equity and Social
Justice – Impact Statements –
Advisory Committee – Amendments
Revised: 9/15/2020 Draft No. 3
Introduced: September 29, 2020
Expires: March 29, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Navarro
Co-Sponsors: Councilmembers Jawando, Alborno, Council Vice-President Hucker,
Councilmembers Riemer, Friedson, Council President Katz and Councilmembers Glass and Rice

AN ACT to:

- (1) require a racial equity and social justice impact statement for each zoning text amendment;
- (2) add 2 public members to the Racial Equity and Social Justice Advisory Committee;
- (3) authorize the Executive to establish one or more task forces to study and make recommendations on a specific issue; and
- (4) generally amend the law governing Racial Equity and Social Justice.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-81C

Chapter 27, Human Rights and Civil Liberties
Section 27-83

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

Sec. 1. Sections 2-81C and 27-83 are amended as follows:

2-81C. Racial Equity and Social Justice Impact Statements.

* * *

(b) *Racial Equity and Social Justice impact statement.* The Director must submit a statement to the Council describing the racial equity and social justice impact, if any, of each bill and zoning text amendment under consideration by the Council. The Director must submit a separate statement for each bill or zoning text amendment.

* * *

27-83. Racial Equity and Social Justice Advisory Committee.

(a) *Members.* The Executive must appoint, subject to confirmation by the Council, a Racial Equity and Social Justice Advisory Committee. The Committee must have [15] 17 voting members.

(1) *Voting members.* The members must reflect a range of ethnicities, professional backgrounds, socioeconomic status, and places of origin to reflect the racial, economic, and linguistic diversity of the County's communities, with an emphasis on those most disproportionately impacted by inequities. Each member should have some experience in redressing disparate impacts based on race and social justice issues.

(A) One member should be a designee of a public education system in the County.

(B) One member should be the Chair of the Housing Opportunities Commission or the Chair's designee.

(C) One member should be a designee of the County Council.

(D) One member should be an employee of the County Department of Health and Human Services.

(E) One member should be an employee of the County Department of Correction and Rehabilitation.

(F) One member should be a sworn officer of the County Police Department.

(G) One member should be the Chair of the Montgomery County Planning Board or the Chair's designee.

(H) [Eight] Ten members should be a public member with experience in redressing disparate impacts based on race and social justice issues. Each public member must reside in the County.

(2) Term. Each member serves a 3-year term. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(3) Compensation. Except for the [8] 10 public members, members must receive no compensation for their services. Each of the [8] 10 public members may receive an annual stipend of \$2,000.00 and reimbursement for expenses incurred in serving.

(b) *Chair and Vice Chair.* The Committee must annually elect one member as chair and another as vice chair and may elect other officers.

(c) *Meetings.* The Committee may meet at the call of the chair as often as required to perform its duties, but at least 6 times each year. The Committee must also meet if a majority of the members submit a written request for a meeting to the chair at least 7 days before the proposed meeting. A majority of the members are a quorum for the transaction of

business, and a majority of members present at any meeting with a quorum may take an action.

(d) *Staff.* The Office of Racial Equity and Social Justice must provide the Committee with staff, offices, and supplies as are appropriate.

(e) *Duties.* The Committee must:

- (1) adopt rules and procedures as necessary to perform its functions;
- (2) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public during business hours upon request;
- (3) develop and distribute information about racial equity and social justice in the County;
- (4) promote educational activities that increase the understanding of racial equity and social justice in the County;
- (5) recommend coordinated strategies for reducing racial and social justice inequity in the County;
- (6) advise the Council, the Executive, and County agencies about racial equity and social justice in the County, and recommend policies, programs, legislation, or regulations necessary to reduce racial and social justice inequity;
- (7) meet periodically with the racial equity and social justice lead for each department and office; and
- (8) submit an annual report by December 1 of each year to the Executive and Council on the activities of the Committee.

(f) *Advocacy.* The Committee must not engage in any advocacy activity at the State or federal levels unless that activity is approved by the Office of Intergovernmental Relations.

(g) The Executive may establish one or more limited issue task forces to study and make recommendations on a specific racial equity and social justice issue. A limited issue task force established by the Executive ceases to exist once it has completed its assigned task. The appointment of members of a limited issue task force must not be subject to confirmation by the Council. Each recommendation of a limited issue task force must be shared with the Council and the Racial Equity and Social Justice Advisory Committee.

Approved:

Sidney Katz, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 44-20

Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments

DESCRIPTION:	Bill 44-20 would require the Office of Legislative Oversight (OLO) to submit a racial equity and social justice impact statement for each zoning text amendment. The law already requires OLO to submit an impact statement for a bill. Bill 44-20 would also add 2 additional public members to the Racial Equity and Social Justice Advisory Committee and authorize the Executive to establish one or more task forces to study and make recommendations on a specific racial equity and social justice issue.
PROBLEM:	Impact statements for a zoning text amendment was omitted from the original bill. Also, additional public members are necessary to better represent the County's diverse population.
GOALS AND OBJECTIVES:	To improve racial equity and social justice in the County.
COORDINATION:	Office of Racial Equity and Social Justice, OLO
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	OLO
EVALUATION:	To be determined.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	None.



MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

**COUNCILMEMBER NANCY NAVARRO
DISTRICT 4**

**CHAIR, GOVERNMENT OPERATIONS AND
FISCAL POLICY COMMITTEE**

EDUCATION AND CULTURE COMMITTEE

MEMORANDUM

September 23, 2020

TO: Members, County Council

FROM: Nancy Navarro, Chair, Government Operations & Fiscal Policy Committee

SUBJECT: Racial Equity and Social Justice Law Amendment

Following up on my September 14, 2020 memorandum addressed to Council President Katz and County Executive Elrich, I present to you the attached bill to amend the Racial Equity and Social Justice Act that was passed in November 2019. This bill seeks to address two points which I highlighted in the previous memo- the lack of inclusion of zoning text amendments (ZTAs) and the addition of two more public members to the Racial Equity and Social Justice Commission along with authorization for the Executive to establish one or more task forces as appropriate to focus on a specific issue pertaining to racial equity and social justice.

ZTAs have an impact on the community, of this there can be no doubt. They are also a large element of local governance and are an aspect of government which has historically been used to benefit certain groups of people while explicitly disadvantaging others. If we are to truly reform our structures and uplift historically underserved communities, then we must subject ZTAs to the same racial equity analysis that all other legislation will be undergoing.

Concerning the composition of the Racial Equity and Social Justice Commission, we must expand the breadth of voices which are able to be heard. The proposed two additional members, plus the proposed authorization for the Executive to create specialized task forces to focus on specific racial equity and social justice policy issues, will provide the balanced solution needed.

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Our work is not complete- the fight to achieve more equitable structures necessitates learning from our actions. This bill does not mean that our racial equity and social justice system will be instantly perfect, but it does show that as lawmakers, we are listening. Good governance is learning and adapting, and that is exactly what this bill is meant to accomplish.

I plan to have this bill introduced on Tuesday, September 29, 2020. Please let me know as soon as possible if you would like to co-sponsor this bill.

CC: Chiefs of Staff

Marc Elrich, County Executive

Rich Madaleno, Chief Administrative Officer (Acting)

Tiffany Ward, Chief Equity Officer

Marlene Michaelson, Executive Director, County Council

Craig Howard, Deputy Director, County Council

Bob Drummer, Senior Legislative Attorney, County Council

Selena Singleton, Clerk, County Council

Economic Impact Statement

Office of Legislative Oversight

BILL 44-20 Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 44-20 to have no direct impacts on economic conditions in Montgomery County.

BACKGROUND

On November 29, 2019, the Montgomery County Council established a racial equity and social justice program with the enactment of Bill 27-19.¹ If enacted, Bill 44-20 would modify this program by requiring a racial equity and social justice impact statement for each zoning text amendment, adding two public members to the Racial Equity and Social Justice Advisory Committee, and authorizing the County Executive to establish one or more task forces to study and offer recommendations on specific issues.²

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Amending zoning laws has the potential to significantly impact economic conditions in the County in ways that reduce or increase racial and social economic inequities. By requiring racial equity and social justice impact statements, Bill 44-20 could influence zoning text amendments in the future, thereby shaping their economic impacts for different business and resident groups in the County. These potential impacts, however, would be *indirect* consequences of enacting the Bill. Put differently, requiring OLO to produce racial equity and social justice impact statements would not in itself result in any direct economic impacts.

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

VARIABLES

Not applicable.

¹ Montgomery County Council, Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Enacted on November 29, 2019, Montgomery County, Maryland.

² Montgomery County Council, Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments, Introduced on September 29, 2020, Montgomery County, Maryland, 1.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

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

Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 44-20 would have little to no direct impacts on private organizations in the County in terms of the Council's priority indicators, namely workforce, operating costs, capital investments, property values, taxation policy, economic development and competitiveness.³

Residents

OLO believes that Bill 44-20 would have little to no direct impacts on County residents in terms of the Council's priority indicators.

WORKS CITED

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments. Introduced on September 29, 2020. Montgomery County, Maryland.

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.

CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.

³ For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 44-20: HUMAN RIGHTS AND CIVIL LIBERTIES – RACIAL EQUITY AND SOCIAL JUSTICE ADVISORY COMMITTEE – MEMBERS - AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 44-20 will help narrow racial and social disparities in Montgomery County.

BACKGROUND

The County Council established the Racial Equity and Social Justice Act (Bill 27-19) on November 29, 2019.¹ On September 29, 2020, the Council introduced Bill 44-20.²

If enacted, Bill 44-20 would amend Bill 27-19 by requiring the Office of Legislative Oversight to complete racial equity and social justice impact statements for each zoning text amendment. Bill 44-20 would also add two public members to the Racial Equity and Social Justice (RESJ) Advisory Committee and authorize the County Executive to establish one or more task forces to study and offer recommendations on specific issues.

Zoning text amendments (ZTA's) are designed to advance public goals in land use that can include:³

- Promoting health, public health and general welfare;
- Promoting the conservation of natural resources;
- Providing adequate light and air and preventing environmental pollution; and
- Facilitating adequate transportation, water, sewerage, schools, recreation, parks and other public facilities.

Yet, historically, land use policies have often been used to harm rather help communities of color. From the seizure of land from indigenous Americans to make room for White settlers, to the use of eminent domain to build highways to benefit suburban development at the expense of inner cities, land use policies have been used to foster and sustain racial and social inequities.⁴ Given this history, Bill 44-20 would subject ZTA's to the same racial equity and social justice analysis as required of other new legislation.

Like racial equity tools, inclusive community engagement is also recognized as a best practice for advancing equity in government decision-making.⁵ In alignment with this best practice, Bill 44-20 would expand community engagement to implement the County's Racial Equity and Social Justice Act in two ways. First, the bill would expand the size of the County's RESJ Advisory Committee from 15 to 17 members with the addition of two additional public members (from 8 to 10 members). Second, the bill would authorize the Executive to create additional task forces inclusive of community members to address racial and social inequities in the County.

RESJ Impact Statement

Bill 44-20

DEMOGRAPHIC DATA

Understanding the potential impact of Bill 44-20 on racial equity and social justice in the County requires understanding the County's demographics and patterns of segregation by race, ethnicity, and income.

A review of available data shows that Montgomery County is racially and ethnically diverse. In 2015:⁶

- White, Non-Hispanic residents accounted for 47% of the County's population
- Black and Latinx residents each accounted for 18% of the County's population; and
- Asian residents accounted for 15% of the County's population.

Yet, Montgomery County is marked by racial and socio-economic stratification consistent with a history of housing discrimination and redlining. For example, White residents accounted for 72% of District 1 residents where family incomes averaged \$205,000 in 2015.⁷ Conversely, residents of color comprised the majority in Districts 2, 3, 4, and 5 where average family incomes ranged from a low of \$102,500 in District 5 to a high \$120,500 in District 3.⁸ As such, family incomes were nearly twice as high in the majority-White areas of the County as compared to the communities where people of color accounted for a vast-majority of residents.

ANTICIPATED RESJ IMPACTS

Residents: OLO anticipates a favorable impact of Bill 44-20 on diminishing racial and social inequities because it will require the Council to consider the potentially disparate impacts of zoning text amendments in its decision-making. Consideration of disparate impacts may lead to the mitigation of unintended consequences so that zoning text amendments benefit communities of color and low-income communities or, at a minimum, do not harm these communities.

Including more community members from communities of color and low-income communities in the RESJ Advisory Committee and on ad-hoc RESJ task forces may also enhance equity in government decision-making. The anticipated benefits of more inclusive community engagement include:⁹

- Empowering communities to make decisions for themselves;
- Improving the quality and responsiveness of government services to achieve better outcomes; and
- Reducing inequalities and fostering greater ownership.

METHODOLOGIES, ASSUMPTIONS AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis relies on several sources of information that include:

- Racial Equity Profile Montgomery County, Office of Legislative Oversight¹⁰
- Racial Equity in Government Decision-Making: Lessons from the Field, Office of Legislative Oversight¹¹
- The Zoning Text Amendment Process, Montgomery Planning¹²
- Racial Inequities in Montgomery County: 2011-2015, Urban Institute¹³
- Inclusive Outreach and Public Engagement, Seattle Race and Social Justice Initiative¹⁴
- Systemic Inequality: Displacement, Exclusion, and Segregation, The Center for American Progress¹⁵

RESJ Impact Statement

Bill 44-20

RECOMMENDED AMENDMENTS

Since Bill 44-20 is intended to amend Bill 27-19 and many parts of Bill 27-19 have yet to be fully implemented, OLO considered it premature to offer additional recommended amendment to the County's Racial Equity and Social Justice Act at this time.

CAVEATS

Two caveats to this statement should be noted. First, predicting the impact of legislation on racial and social inequities in Montgomery County is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than to determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Dr. Elaine Bonner-Tompkins, OLO Senior Legislative Analyst, drafted this RESJ impact statement with assistance from Dr. Theo Holt, OLO RESJ Performance Management and Data Analyst.

¹ Montgomery County Council, Bill No. 27-29 Racial Equity and Social Justice,

<https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/RacialEquity/Bill27-19.pdf>

² Montgomery County Council, Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_10921_Bill_44-2020_Introduction_20200929.pdf

³ Montgomery Planning, The Zoning Text Amendment Process, https://montgomeryplanning.org/wp-content/uploads/2020/06/MP_ZTAOnePager_061020_side1.pdf

⁴ Center for American Progress, Systemic Inequality: Displacement, Exclusion, and Segregation

<https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>

⁵ Office of Legislative Oversight, Racial Equity in Government Decision-Making: Lessons from the Field

https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/OLOReport2018_8.pdf

⁶ Urban Institute, Racial Inequities in Montgomery County, 2011-2015,

https://www.urban.org/sites/default/files/publication/95386/2017.12.28_montgomery_county_finalized_7.pdf; data tables

<https://www.urban.org/research/publication/racialinequities-montgomery-county-2011-15>.

⁷ Ibid, District 1 includes Bethesda, Chevy Chase, and Potomac

⁸ Ibid, District 5 refers to Silver Spring and Burtonsville; District 3 references Rockville and Gaithersburg

⁹ Seattle Racial and Social Justice Initiative, Inclusive Outreach and Public Engagement Guide,

https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Business/RFPs/Attachment5%20_InclusiveOutreachandPublicEngagement.pdf

¹⁰ <https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/RevisedOLO2019-7.pdf>

¹¹ https://www.montgomerycountymd.gov/OLO/Resources/Files/2018%20Reports/OLOReport2018_8.pdf

¹² https://montgomeryplanning.org/wp-content/uploads/2020/06/MP_ZTAOnePager_061020_side1.pdf

¹³ https://www.urban.org/sites/default/files/publication/95386/2017.12.28_montgomery_county_finalized_7.pdf

¹⁴ https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Business/RFPs/Attachment5%20_InclusiveOutreachandPublicEngagement.pdf

¹⁵ <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Tiffany Ward, Director
Office of Racial Equity and Social Justice

FROM: Edward B. Lattner, Chief *Edward B. Lattner*
Division of Government Operations

DATE: October 9, 2014

RE: **Bill 44-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments**

As described in the Council introduction packet, Bill 44-20 would require the Office of Legislative Oversight (OLO) to submit a racial equity and social justice (RESJ) impact statement for each zoning text amendment (ZTA). The law already requires OLO to submit an RESJ impact statement for a bill. Bill 44-20 would also add two additional public members to the Racial Equity and Social Justice Advisory Committee and authorize the Executive to establish one or more task forces to study and make recommendations on a specific racial equity and social justice issue.

Our office recommends two amendments.

1. RESJ Statements For ZTAs.

Bill 44-20's proposed amendment to § 2-81C(b) would require OLO to submit a RESJ impact statement for each ZTA. Existing law, § 2-81C(e), provides: "Compliance. Council action on an **expedited bill** that is otherwise valid is not invalid because of any failure to follow the requirements of this Section." (Emphasis added.) Therefore, OLO's failure to submit a RESJ impact statement would make an otherwise valid **ZTA** invalid. Under the Regional District Act, the Council would have to enact any change to the validity of a ZTA while sitting as the District Council. The issue can be avoided if the Council amends § 2-81C(e) to provide: "Council action on an expedited bill or zoning text amendment that is otherwise valid is not invalid because of any failure to follow the requirements of this Section."

2. Task Force.

Bill 44-20 would also authorize the Executive to establish and appoint members to one or more task forces, without Council confirmation,¹ to study and make recommendations to the Council and the Racial Equity and Social Justice Advisory Committee on a specific racial equity and social justice issue. Given that the County Executive is to establish and appoint the members of the task force, we recommend that the County Executive be identified as one of the recipients of the task force's recommendations.

eb1

cc: Robert H. Drummer, Senior Legislative Attorney
Marc P. Hansen, County Attorney
Dale Tibbitts, Special Assistant to the CE
Tammy J. Seymour, OCA

20-005795
C:\Users\lattne\Desktop\OCA Review Bill 44-20 RESJ Impact Statements.docx

¹ This office believes that County Executive could appoint, without Council confirmation, members of a task force established solely to advise the County Executive.

TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH

BILL 44-20 - Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments

Before the Montgomery County Council

October 20, 2020

Good afternoon Councilmembers, I am Tiffany Ward, Director of the Office of Racial Equity and Social Justice, and I thank you for the opportunity to provide testimony on behalf of County Executive Elrich today. The County Executive supports this Bill. He also supports the recommended amendments submitted by the Office of the County Attorney.

We look forward to continuing to work with the County Council on this shared Initiative with more voices contributing on the Racial Equity and Social Justice Advisory Committee.

Thank you again.

October 15, 2020

Montgomery County Council
Council Office Building
100 Maryland Ave.
Rockville, MD 20850

**Bill 44-20 - Racial Equity and Social Justice - Impact Statements - Advisory Committee Amendments
(Support)**

Testimony for October 20, 2020

Jane Lyons, Maryland Advocacy Manager

Good afternoon, President Katz and Councilmembers. My name is Jane Lyons and I'm speaking on behalf of the Coalition for Smarter Growth, the leading organization in the D.C. region advocating for walkable, bikeable, inclusive, transit-oriented communities. Thank you for the opportunity to testify on Bill 44-20.

Bill 44-20 would require the Office of Legislative Oversight to submit a racial equity and social justice impact statement for zoning text amendments. We are excited to see the inclusion of these impact statements on ZTAs, given the explicit racial and exclusionary history of zoning in Montgomery County.

Over the summer, CSG partnered with the group Challenging Racism to host a series of Courageous Conversations on Housing, Land Use, and Racism. We discussed the history of federal redlining policies' impact on Montgomery, but also learned about how many of the county's early developers were ardent segregationists who used every tool at their disposal, including the creation of single-family zoning, to build neighborhoods that were not welcome to non-whites.

The county is still working today to reverse the legacy of those decisions, and other land use and planning decisions that have contributed to upholding the east-west racial and socioeconomic divide. As the county is now working to create more welcoming, inclusive communities, we believe that racial equity and social justice impact statements for ZTAs will be a useful tool.

Given the complexity of race, planning, and zoning issues, we recommend creating an official role for the Planning Department and their professional expertise in the creation of the impact statements for ZTAs. Discerning the equity impacts of zoning is not an exact science and leaves room for nuance, which is where we believe the knowledge of the Planning staff will be extremely useful.

Thank you for your consideration.



MONTGOMERY HOUSING ALLIANCE

www.montgomeryhousingalliance.org

A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

TESTIMONY ON BILL 44-20, HUMAN RIGHTS AND CIVIL LIBERTIES – RACIAL EQUITY AND SOCIAL JUSTICE ADVISORY COMMITTEE – MEMBERS – AMENDMENTS

Montgomery Housing Alliance

October 20, 2020

Good afternoon Council President Katz and members of the Council. My name is Mary Kolar, and I am testifying on behalf of Montgomery Housing Alliance. MHA is a coalition of organizations focused on increasing the rate of affordable housing preservation and development in Montgomery County. MHA members include non-profit developers, organizations that serve people in need of affordable housing, and other groups who count affordable housing as one of their policy goals.

MHA strongly supports Bill 44-20, especially the proposed requirement for a racial equity and social justice impact statement for each new zoning text amendment. We commend Councilmember Navarro for introducing this important legislation and the full Council for unanimously sponsoring the bill.

As affordable housing providers and advocates, MHA members recognize the way zoning decisions crucially impact low-income residents and communities of color. Throughout the country, zoning and land use policies often have, whether intentionally or unintentionally, been used to advantage certain populations, while disadvantaging others. Montgomery County is no exception. In particular, zoning decisions have historically impacted housing outcomes and contributed to segregated neighborhoods. Residential segregation results in inequitable access to many important aspects of residential life, including healthcare, transportation, schools, healthy food options, and parks and recreation facilities. Housing discrimination and segregation leads to deeply negative outcomes for low-income households and households of color – especially African American households. There persists a dramatic gap between homeownership rates for African American families and white families. In fact, the African American homeownership rate is as low as it was 50 years ago. This impacts African American families' ability to benefit from home equity, and has generational impacts: children of homeowners experience better health, education, and earnings outcomes. Equitable zoning policies are critical in order to provide all County residents equal access to opportunities.

 COMMUNITY DEVELOPMENT
NETWORK OF MARYLAND

*The Montgomery Housing Alliance is a coalition of
the Community Development Network of Maryland*



MONTGOMERY HOUSING ALLIANCE

www.montgomeryhousingalliance.org

A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

As the County strives to deliberately address institutional inequities, issues of housing must be at the forefront. Zoning policies are a critical factor in furthering housing justice. Instituting inclusive policies that foster development of high quality, affordable units across the entire continuum of housing in all communities is an effective way to address racial and economic inequities that persist in the County.

Again, we applaud the Council's efforts to build a more inclusive and equitable Montgomery County. Bill 44-20 is an important step towards the goal.

Thank you for the opportunity to provide input as you consider this matter.

 COMMUNITY DEVELOPMENT
NETWORK OF MARYLAND

*The Montgomery Housing Alliance is a coalition of
the Community Development Network of Maryland*

**Montgomery County Council Public Hearing – Bill 44-20
Amendments to the Racial Equity and Social Justice Act
October 20, 2020**

My name is Bruce Turnbull and this testimony is presented on behalf of both myself, as a resident of Montgomery County for more than 40 years, and Jews United for Justice (JUFJ). JUFJ represents over 2,000 Jews and allies from across Montgomery County, who act on our shared Jewish values by pursuing social and economic justice and racial equity in our local communities.

The Torah and Talmud teach that humans, in our infinite diversity, are all made in the Divine image, and each of us is precious and deserving. Based on these values, JUFJ was an early and strong supporter of the enactment of the Racial Equity and Social Justice Act (“Act”). We encourage the Council and the Executive Branch to continue to be proactive and energetic in implementing this important law. We support the changes proposed in Bill 44-20, and want to use this opportunity to raise an additional suggestion for an amendment to the law.

The preparation of Racial Equity and Social Justice (“RESJ”) impact statements and their careful consideration by the Council is an important element of this Act. The initial RESJ impact statement prepared by the Office of Legislative Oversight (“OLO”) was an excellent start to this process, and we look forward to working with the OLO in their preparation processes and the Council in its consideration of the findings of these impact statements.

The first RESJ impact statement that the OLO prepared pointed out a potentially significant gap in the Act – its treatment of “expedited” legislation. Such bills are exempt from the Act’s requirement for the preparation and Council consideration of RESJ impact statements, although notably impact statements are provided for fiscal and economic impacts of expedited legislation. JUFJ suggests that the Council use this situation to fill this gap in the current law by requiring that the Council consider RESJ impacts of expedited legislation, including consideration of OLO input on such impacts. Recognizing the need for “expedited” action should not negate the importance of the Council being aware of and taking into account potential racial equity and social justice impacts of such legislation.

In the initial situation, the Council was considering Bill 40-20E to modify the trader’s license fee. The bill was designated as expedited, presumably because the bill’s sponsors believed that delay in its consideration would create hardship for some of those paying these fees. The OLO prepared its normal legislative “action” packet for the Council, dated September 29. That packet included impact statements for fiscal and economic effects of the legislation, but no RESJ impact statement. The Council voted to approve the legislation during its September 29 work session, and the County Executive signed it into law that same day.

At the time the bill was considered by the Council, there was no RESJ impact statement available. Nevertheless, the OLO prepared an RESJ impact statement that was issued on September 30, the day following the Council consideration. That statement found that the bill would “slightly widen racial and social disparities among business owners and among residents.” The statement further said that there are modifications that the Council could consider that would minimize or eliminate these negative impacts but noted that the purpose of the legislation was not to address such impacts.

We see two problems here – First, OLO was within a day of issuing its RESJ impact statement when the Council voted to approve the legislation. There is no indication that the Council inquired or attempted to consider the RESJ impacts of this legislation and there was no requirement for the Council to address possible exacerbation of inequities after the bill had already passed.

The second problem is that the RESJ impact statement did not contain suggested amendments to mitigate adverse effects because the bill itself was not intending to address such effects. Here is what the impact statement said:

If the intent of Expedited Bill 40-20 were to narrow disparities in business ownership by race and ethnicity, OLO could offer such amendments. The intent of Expedited Bill 40-20, however, is not to narrow racial and social inequities in the County. As such, this RESJ impact statement does not offer recommended amendments for Expedited Bill 40-20.

JUFJ believes that one of the key points of the RESJ impact statement process is to inform the Council of adverse racial equity and social justice impacts in legislation that itself is not directed at such impacts. Indeed, RESJ impact statements may have their most important effect if they point out unintended or unexpected consequences of legislation that is ostensibly directed at issues other than racial equity and social justice.

Consequently, JUFJ encourages the Council to amend the Act to provide for RESJ impact statements for expedited legislation and to direct the OLO to include proposed amendments in RESJ impact statements for all legislation.

JUFJ thanks the Council for this opportunity to submit our views on this important legislation.



October 22, 2020

Council President Sidney Katz
Montgomery County Council
Stella Warner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Testimony regarding Bill 44-20 – Racial Equity and Social Justice Impact Statements – Advisory Committee Amendments

Habitat for Humanity would like to thank Lead Sponsor, Councilmember Navarro, and Co-Sponsors Councilmembers Alborno, Friedson, Glass, Hucker, Jawando, Katz, Rice, and Riemer for introducing this important legislation. Habitat for Humanity strongly supports Bill 44-20 as it requires Racial Equity and Social Justice Impact Statements for Zoning Text Amendments.

Zoning and land use policies have long been used to restrict housing types and sizes in certain neighborhoods. The effect of these policies has been to restrict access for lower income individuals and people of color to desirable communities by essentially pricing them out. Effects of exclusionary and restrictive zoning policies go far beyond housing. Housing segregation, caused by zoning and land use policies, leads to inequitable access to high quality healthcare, food, transportation, schools, parks and so much more. Housing segregation and discrimination have had a devastating effect on lower income individuals, but most specifically on Black households.

The Black homeownership rate is as low as it was 50 years ago and the ownership gap between Black families and white families is as far apart as it was in 1934. By allowing a variety of housing types in desirable neighborhoods, including duplexes, triplexes, and condos, we can work to bridge that gap while allowing families access to the high quality amenities enjoyed by others in our County.

Since Habitat for Humanity's founding on Koinonia Farm, a racially integrated community established in 1942, the organization has been working to build socioeconomically integrated communities where all people have access to safe, decent, and affordable housing. Over and over, Habitat has seen the generational change that comes from purchasing a home. Children of homeowners are more likely to be healthy and miss fewer days of school, go to college, earn more money, and many end up inheriting more wealth. It is imperative that we ensure every family in our community has equal access to opportunities allowing them to thrive and reach their full potential.

One of the most effective and important ways we can address racial and income inequities is by instituting antiracist, inclusive zoning policies that allow for the building of high quality, affordable units

across the entire continuum of housing in all communities across the County. Bill 44-20 is an important step in ensuring that future zoning text amendments not only do no harm, but that they work to make our County a more equitable place for all residents.

We appreciate the Council's dedication to social justice and racial equity. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "John Paukstis". The signature is fluid and cursive, with the first name "John" and last name "Paukstis" clearly legible.

John Paukstis
President & CEO
Habitat for Humanity Metro Maryland, Inc.

CC: Council Vice President Tom Hucker
Councilmember Gabe Albornoz
Councilmember Andrew Friedson
Councilmember Evan Glass
Councilmember Will Jawando
Councilmember Nancy Navarro
Councilmember Craig Rice
Councilmember Hans Riemer



**Written Statement in Support of Bill 44-20
Amendments to the Racial Equity and Social Justice Act
Submitted October 23, 2020**

The Montgomery County Racial Equity (MORE) Network is made up of individual community activists and community-based organizations for whom racial equity is a priority, with a commitment to centering the lived experiences and voices of Black, Indigenous, and People of Color. Our goals are to ensure that Montgomery County develops policies that make concrete, tangible, and measurable changes to eliminate racial inequities and injustices in our communities. Last year, MORE was instrumental in organizing a diverse cross-section of the community to successfully advocate for the passage of the Racial Equity and Social Justice Act (RESJ).

We are submitting this written statement in support of Bill 44-20, which would strengthen RESJ by requiring the Office of Legislative Oversight to complete racial equity and social justice impact statements for each zoning text amendment (ZTA), adding two community members to the RESJ Advisory Committee, and authorizing the County Executive to establish one or more task forces to study and offer recommendations on specific issues. In particular, we believe that providing racial equity and social justice impact statements for ZTAs are important, given the context of historically racist land use policies in both the United States and Montgomery County. Zoning has been used to keep certain neighborhoods exclusionary, segregated, and without the same investments and amenities enjoyed by primarily white communities. Equitable zoning policies are a vital step to building a more racially just Montgomery County which may exemplify the steps we must take to improve as a Nation.

In addition, we urge the Council to consider the testimony offered by MORE Network member Jews United for Justice (JUFJ) on October 20, 2020. In its testimony, JUFJ raises a suggestion to further amend RESJ to require racial equity and social justice impact statements for expedited legislation. While expedited bills are currently exempt from the Act's requirement for racial equity impact statements, it is notable that fiscal and economic impact statements are provided for these bills. Recognizing the need for "expedited" action should not negate the importance of the Council also being aware of and taking into account potential racial equity and social justice impacts of such legislation.

We also support the recommendation in JUFJ's testimony for the County Council to direct OLO to provide suggested amendments in the racial equity and social justice impact statements. The impact statement for Bill 40-20E included the following:

If the intent of Expedited Bill 40-20 were to narrow disparities in business ownership by race and ethnicity, OLO could offer such amendments. The intent of Expedited Bill 40-20, however, is not to narrow racial and social inequities in the County. As such, this RESJ impact statement does not offer recommended amendments for Expedited Bill 40-20.

We believe that for the impact statements to be most effective, they should both identify ways to improve legislation to prevent increasing existing inequities and even more importantly, recommend ways to decrease inequities. OLO is well positioned to offer these amendments as part of drafting each equity impact statement and we feel strongly that should be clarified in the existing legislation.

Thank you for this opportunity to submit our views on Bill 44-20.

MEMORANDUM

To: Government Operations Committee

From: Elaine Bonner-Tompkins, Ph.D. Senior Legislative Analyst
Theo Holt, Ph.D., Performance Management and Data Analyst
Office of Legislative Oversight

Cc: Bob Drummer, Senior Legislative Attorney, County Council
Chris Cihlar, Ph.D., Director, Office of Legislative Oversight
Tiffany Ward, Director, Office of Racial Equity and Social Justice

Date: November 13, 2020

Re: Update on OLO Conversations with Planning Department on Bill 44-20

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This memorandum provides an update on OLO staff conversations with Montgomery County Planning staff and the Montgomery County Planning Board in anticipation of the passage of Bill 44-20.

As currently drafted, Bill 44-20 amending Bill 27-19 would require OLO to develop racial equity and social justice (RESJ) impact statements for zoning text amendments (ZTA's). Given the Montgomery County Planning Board's expertise and role as the Council's principal advisor on land use and zoning decisions, OLO staff reached out to Planning Department staff to begin a conversation on how both offices could work collaboratively to develop RESJ statements on ZTA's. An update on our outreach efforts and communications with the Planning Department Staff follows.

- **October 14** – OLO staff reach out to Planning Department requesting a meeting with key staff on Bill 44-20. We shared a draft ZTA RESJ tool developed by OLO with feedback from County Council staff with the hope of beginning a conversation with Montgomery Planning on how we could work collaboratively to execute the ZTA RESJ impact statement requirements proposed under Bill 44-20.
- **October 26** – Meeting convened with Planning Department staff to discuss Bill 44-20 included Tanya Stern and Molline Jackson. No consensus among staff was reached beyond the goal to continue to the conversation on collaboration. Planning Department staff expressed concern about the additional work/staffing needed to develop RESJ statements on ZTA's and the current timeline. We as OLO staff also expressed concerns about our current capacity to meet new requirement given our limited understanding of zoning and land use decision-making.
- **November 3** – Second meeting convened with Planning Department staff (Tanya Stern, Gregory Russ, and Molline Jackson), Montgomery County Chief Equity Officer Tiffany Ward, and us. Consensus was achieved on Planning and OLO working together to develop a process for executing RESJ impact statements for ZTA's including co-developing a RESJ ZTA tool and process. OLO and Planning Department staff also agreed to request from the Council a six-month extension on the implementation date of the ZTA RESJ impact statement requirement under Bill 44-20 to enable both offices to build their capacity to meet this requirement (e.g. develop process, train staff).

Additionally, OLO staff joined the Planning Board's November 12th worksession on Bill 44-20 to offer comments and address questions. Under separate cover, Planning Department staff will communicate the Planning Board's feedback and recommendations for amending Bill 44-20.

Based on our conversations with Planning Department staff and Planning Board to date, there are three observations that we want to share with the Council:

- **First, OLO has had several productive conversations with Planning regarding Bill 44-20.** We view the Planning Department's engagement as key to developing high-quality RESJ impact statements on ZTA's that assist the County Council in their deliberations. Both OLO and Planning recognize the current challenge of developing RESJ impact statements within three weeks of a ZTA being introduced. As such, we hope there is room for applying a RESJ lens to the development of ZTA's before their introductions to enable the completion of RESJ statements for ZTA's in a timely fashion.
- **Second, OLO would need additional time to implement Bill 44-20 relative to ZTA's due to the need to closely coordinate with Planning Department staff to develop these RESJ statements.** We envision a marriage between OLO's expertise on RESJ and the Planning Department's expertise on ZTA's as essential to developing the analysis to understand the RESJ implications of ZTA's. We have begun these conversations and hope to continue them so that collaboratively we can bring to the Council's consideration a well thought out process for completing RESJ statements for ZTA's.
- **Third, OLO stands ready to assist the Council in implementing the RESJ requirements for ZTA's regardless of which office takes the lead in drafting these RESJ statements.** We recognize that there are benefits and drawbacks to OLO or the Planning Department taking the lead in developing RESJ statements for ZTA's. If OLO serves as the lead in developing RESJ statements for ZTA's (as currently drafted under Bill 44-20), OLO would need to develop its zoning expertise that may necessitate bringing on new staff and/or consultants toward this end. Conversely, if the Planning Department assumed the lead in drafting RESJ statements for ZTA's, the RESJ analysis would have the benefit of Planning's zoning expertise, but a potential tradeoff is the loss in objectivity that a third party such as OLO could provide as the lead. OLO believes that this tradeoff, however, could be minimized by having OLO vet ZTA RESJ statements initiated by Planning Department staff.

In sum, there are tradeoffs with any approach taken to developing RESJ statements for ZTA's. Whatever the Council decides, OLO will execute the Council's request to best of its ability. Should you have any immediate questions, please feel free to reach Elaine at elaine.bonner-tompkins@montgomerycountymd.gov, Theo at theo.holt@montgomerycountymd.gov or either of us by phone via Teams. Thank you.



MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

**COUNCILMEMBER NANCY NAVARRO
DISTRICT 4**

**CHAIR, GOVERNMENT OPERATIONS AND
FISCAL POLICY COMMITTEE**

EDUCATION AND CULTURE COMMITTEE

MEMORANDUM

November 13, 2020

TO: Members of the County Council

FROM: Nancy Navarro, Chair, Government Operations & Fiscal Policy Committee

SUBJECT: On amending aspects of the Racial Equity and Social Justice law

On September 29, 2020, [Bill 44-20](#), Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments, was introduced, and a public hearing held on October 20, 2020. Bill 44-20 would require the Office of Legislative Oversight (OLO) to submit a racial equity and social justice impact statement for each zoning text amendment. The law already requires OLO to submit an impact statement for a bill. Bill 44-20 would also add two additional public members to the Racial Equity and Social Justice Advisory Committee and authorize the Executive to establish one or more task forces to study and make recommendations on a specific racial equity and social justice issue. Subsequently, on October 14, 2020, the GO committee held its [second briefing](#) on the implementation of the [Racial Equity and Social Justice law](#). Ahead of the November 18, 2020 Government Operations and Fiscal Policy (GO) Committee worksession on Bill 44-20, my staff has been in consultation with County Council staff and County Executive staff to discuss this bill and other possible amendments as well as what was suggested by stakeholders during the public comments and in correspondence. This memorandum serves as a summary of the discussions and feedback so far, I welcome additional feedback from you before the November 18 worksession. So far, the discussions center around the following guiding questions:

1. *Is there enough clarity regarding the documents/initiatives, etc. that would require a statement of racial equity impact (by the County Executive) or an equity impact statement (OLO)?*
There is currently disagreement among County Council and County Executive staff on what would require an impact statement from the executive (for example, resolutions and supplementals). We

need language that would clarify the requirements with specificity. This should also be specified in the method 2 regulation that is being drafted. There is also a recommendation from the Jews United for Justice (JUFJ) to amend the bill to require equity impact statements for expedited bills, and also require that the Office of Legislative Oversight include recommendations for possible amendments, in the equity impact statements

2. *Should there be language specifying consequences for failing to prepare an equity impact statement?*

There is no consensus as to what, if any the consequences should be for not providing racial equity impact statement. At the very least, there should be an accounting of each failure to provide the statement - and this should be published as part of the annual report.

3. *Should there be a requirement for collection of disaggregated data?*

I understand that this requirement would be codified in the method 2 regulation. This requirement should also be part of the law, albeit not as prescriptive as in the regulation.

4. *Is there anything else that needs to be in the amendment or discussed?*

- What are the capacity needs of the Office of Racial Equity and Social Justice? A vision of robust funding that is multi-year would be helpful. The County needs the capacity to perform what are essentially equity audits.
- Should Montgomery County Public Schools be required to produce equity impact statements on its annual operating budget and all requests for funding that must be approved by the County Council? Given that it is a state agency, what are the legal impediments to enforcing this requirement?

In addition, the Office of the County Attorney has proposed two technical amendments:

- Bill 44-20's proposed amendment to § 2-81C(b) would require OLO to submit a RESJ impact statement for each ZTA. Existing law, § 2-81C(e), provides: "Compliance. Council action on an expedited bill that is otherwise valid is not invalid because of any failure to follow the requirements of this Section." (Emphasis added.) Therefore, OLO's failure to submit a RESJ impact statement would make an otherwise valid ZTA invalid. Under the Regional District Act, the Council would have to enact any change to the validity of a ZTA while sitting as the District Council. **The issue can be avoided if the Council amends § 2-81C(e) to provide: "Council action on an expedited bill or zoning text amendment that is otherwise valid is not invalid because of any failure to follow the requirements of this Section."**
- Bill 44-20 would also authorize the Executive to establish and appoint members to one or more task forces, without Council confirmation, to study and make recommendations to the Council and the Racial Equity and Social Justice Advisory Committee on a specific racial equity and social justice issue. **Given that the County Executive is to establish and appoint the members of the task force, the Office of the County Attorney recommends that the County Executive be identified as one of the recipients of the task force's recommendations.**

I look forward to working with my colleagues and staff to address these issues at our GO session on November 18, 2020. Please contact me if you have any questions or concerns.

CC: Chiefs of Staff

Rich Madaleno, Chief Administrative Officer

Marlene Michaelson, Executive Director, County Council

Craig Howard, Deputy Executive Director, County Council

Tiffany Ward, Chief Equity Officer

Bob Drummer, Senior Legislative Attorney

Elaine Bonner-Tompkins, Senior Legislative Analyst



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

November 13, 2020

The Honorable Nancy Navarro
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Board Comments on Bill 44-20: Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments

Dear Councilmember Navarro:

On November 12, 2020, Montgomery County Planning Department staff briefed the Montgomery County Planning Board on Bill 44-20: Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments, specifically the bill's provision to require racial equity and social justice impact statements for new Zoning Text Amendments (ZTAs). Planning Department staff had met with the Office of Legislative Oversight (OLO) to discuss how they can collaborate to implement Bill 44-20's requirement of racial equity and social justice impact statements for ZTAs. Additionally, the Planning Department had received a request from OLO for the Planning Department to take the lead, with support from OLO, in conducting racial equity and social justice analysis for new ZTAs and creating the impact statements. OLO made this request given their limited staffing and expertise in zoning matters, the Planning Department's subject matter expertise and existing role in evaluating and advising the Planning Board on proposed ZTAs, as well as the Planning Department's recent work to develop an equity in master planning methodology.

The Planning Board unanimously supports the intent of Bill 44-20 and believes adding racial equity and social justice impact statements to new ZTAs is a good idea. In addition, the Planning Board recommends designating the Planning Department as the lead for producing these statements for new ZTAs. This recommendation from the Planning Board, along with other related recommendations, are detailed as follows and offered for consideration during the Government Operations and Fiscal Policy Committee November 18th work session on Bill 44-20.

Bill 44-20, as currently drafted, would add ZTAs to OLO's existing charge, under the Racial Equity and Social Justice Act, to produce racial equity and social justice impact statements for introduced bills. The Planning Board believes the responsibility of conducting racial equity and social justice impact analysis for ZTAs falls more appropriately within the Planning Board's authority as the county's advisor on land use matters and the Planning Department's expertise on zoning matters and equitable land use planning. The Planning Board recommends that the County Council amend the Racial Equity and Social Justice Act to shift the assignment of creating racial equity and social justice impact statements for ZTAs from OLO to the Planning Department. Please note that this change would have a budget impact. The Planning Department would require funding to add staff capacity to conduct racial equity and social justice impact analyses and produce impact statements for ZTAs.

The Planning Department does not currently have staff capacity to conduct this work on an ongoing basis. The Department's lead staff expert on zoning matters is retiring and will leave the department in December. This position will not be refilled during FY21 because of the Department's hiring freeze under its savings plan. Existing zoning-related work duties will be handled by staff who have other job duties. The Planning Department has already met the County's request to produce a 6% savings plan for FY21 and has no room in its budget to take on new unfunded work program duties. Additionally, this type of impact analysis would require focused, in depth work to create a product that will be meaningful to advise the Council's deliberative process. It is important to note that OLO hired an additional staff person to expand its capacity to conduct racial equity and social justice impact analysis of bills.

Additionally, the Board request the County Council amend Bill 44-20 to set the effective date of the bill's requirement to create racial equity and social justice impact statements for ZTAs six (6) months after the effective date of Bill 44-20. This additional timeframe would allow OLO and the Planning Department to jointly develop a tool to conduct a racial equity and social justice impact analysis for a new ZTA. This recommended amendment will be similar to the differing timeframes of the effective dates of the Racial Equity Act and its provision to require racial equity and social justice impact statements for introduced bills. The Racial Equity Act became effective on March 1, 2020, while the requirement of racial equity and social justice impact statements for bills became effective on August 1, 2020, to allow OLO time to develop a methodology for creating these impact statements.

Lastly, the Board expresses its support for Council-drafted ZTAs being made available for Planning Department and OLO review prior to introduction to provide more time to conduct the racial equity and social justice impact analysis. Under the current law, OLO has a requirement to produce a racial equity and social justice impact analysis for bills 21 days after introduction, and Bill 44-20 would apply the same timeline for ZTAs. OLO has advised the Planning Department that their efforts to obtain draft bills prior to introduction has been beneficial in conducting an in-depth impact analysis. We believe a similar process would also be beneficial in conducting a racial equity and social justice impact analysis for a zoning text amendment.

The Planning Board and staff look forward to the discussion on these recommendations at the work session on November 18, and to continued collaboration with the county to create equitable communities in Montgomery County.

Sincerely,

Casey Anderson
Chair

cc: Planning Board
Gwen Wright, Director, Montgomery Planning
Tanya Stern, Deputy Director, Montgomery Planning
Robert Drummer, Senior Legislative Attorney, Montgomery County Council
Dr. Chris Cihlar, Director, Office of Legislative Oversight
All Councilmembers