Montgomery County Council

Committee: Joint
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #SharingEconomy #PrivatePoolRental

AGENDA ITEMS # 4&5
March 7, 2023
Public Hearing

SUBJECT

Bill 6-23; Housing – Sharing Economy Rental
Zoning Text Amendment 23-01, Accessory Residential Uses – Sharing Economy Rental

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

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony – no vote expected

DESCRIPTION/ISSUE

Bill 6-23 and ZTA 23-01 will authorize and regulate the hourly rental of private residential property.

SUMMARY OF KEY DISCUSSION POINTS

- ZTA 23-01, Accessory Residential Uses – Sharing Economy Rental, will create the use Sharing Economy Rental. A sharing economy rental would be defined as any portion of a home or the property it's on that is rented for a fee for less than 12 continuous hours.
- Bill 6-23 would place licensing authority under the Department of Health and Human Services (DHHS). The bill outlines the certifications that an applicant must make to apply for a license; and provides the processes for license approval and renewal, suspension, and revocation.
- A joint Committee worksession of Health & Human Services (HHS), Economic Development (ECON), and Planning, Housing and Parks (PHP) is tentatively scheduled for March 27, 2023.

This report contains:

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Agenda Items #4&5
March 7, 2023
Public Hearing

MEMORANDUM

March 2, 2023

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Bill 6-23; Housing – Sharing Economy Rental
Zoning Text Amendment 23-01, Accessory Residential Uses – Sharing Economy Rental

PURPOSE: Public Hearing – no Council votes required

Bill 6-23, Housing – Sharing Economy Rental and Zoning Text Amendment 23-01, Accessory Residential Uses – Sharing Economy Rental, sponsored by Lead Sponsor Councilmember Jawando and Co-Sponsors Councilmembers Luedtke, Sayles, and Mink, was introduced on January 31, 2023. A Joint PHP/HHS/ECON Committee worksession is scheduled for March 27, 2023.

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

BACKGROUND

ZTA 23-01 and Bill 6-23 will authorize and regulate the hourly rental of private residential property. As the sharing economy expands, companies such as Swimply and SniffSpot have gained traction in Montgomery County.[1] These companies allow homeowners to rent out their swimming pools, backyards, and other parts of their property at an hourly rate. This commercial activity is not currently allowed in the County.

BILL SPECIFICS

[1] "sharing economy, noun, economic activity that involves individuals buying or selling usually temporary access to goods or services especially as arranged through an online company or organization" https://www.merriam-webster.com/dictionary/sharing%20economy

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

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

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

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

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

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

Chapter 54, Transient Lodging Facilities
Sections 54-1

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

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

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

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

Chapter 25C. Housing, Sharing Economy Rental.

25C-1. Definitions.

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

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

Department means the Department of Health and Human Services.

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

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

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

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

25C-2. License required.

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

25C-3. Certification for a License.

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

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

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

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

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

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

(f) no sleeping quarters will be offered;

(g) sanitation facilities operate as designed;

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

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

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

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

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

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

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

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

(1) in a single-unit or attached unit, abutting and confronting neighbors;

(2) in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit;

(3) the municipality in which the residence is located;

(4) any applicable homeowner association, condominium, housing cooperative; and

(5) the owner of the unit or the owner's agent, if the applicant is not the owner;

(p) the application is not prohibited by any homeowners' association, condominium document, or rental lease;

(q) the common ownership community fees for the dwelling unit are no more than 30 days past due;

(r) except for persons visiting the primary resident, only registered guests will be allowed on the property; and

(s) any online listing will include the Sharing Economy Rental license number.

25C-4. Applications.

The Director must establish an electronic method of submitting, issuing, renewing, denying, and revoking an application for a license through the internet.

25C-5. Fees.

The Executive must establish annual fees for licenses under this Article by regulation adopted under method (3) of Section 2A-15 of this Code. Fees must not exceed an amount necessary to defray the costs of administering this Chapter.

25C-6. License Approval and Renewal.

(a) The Director must:

(1) accept the self-certification of the applicant after verifying compliance by reviewing available records;

(2) complete an inspection of the property before issuing the initial license;

(3) approve or deny an initial license within 30 working days after receipt of the application and all required fees unless the Director receives a challenge to the certifications under Section 25C-7;

(4) issue the license for a term of one year, renewable for additional one-year terms, subject to payment of the license fee and compliance with all applicable laws and certifications required for the license; and

(5) inspect the property every 2 years.

(b) All reports of inspections must be in writing. If the property fails inspection, a license must not be issued or renewed until the violation has been corrected.

25C-7. Challenge to Certifications.

(a) A challenge to any required certification made by the applicant may be filed with the Director within 30 days after the application is filed by:

(1) a resident or owner of real property located within 300 feet of a licensed or proposed license;

(2) the municipality in which the residence is located;

(3) any applicable homeowners association, condominium, housing cooperative; or

(4) the owner of the unit or the owner's agent, if the applicant is not the owner.

(b) The Director must, within 60 days after receipt of the challenge:

(1) provide notice of the challenge to the applicant;

(2) provide an opportunity for the applicant to respond to the challenge;

(3) investigate the questions of fact raised by the challenge; and

(4) revoke or deny the license if the Director finds that one or more facts certified by the applicant is false.

25C-8. Suspension and Revocation.

(a) The Director may suspend any license issued under this Chapter if the Director finds that the licensee has violated this Chapter or any other applicable law or regulation.

(b) The license must be revoked for any applicant receiving at least three complaints that are verified as a violation of the license or of the County Code within any 12-month period.

(c) Renewal or reinstatement of licenses must follow procedures established by the Director.

25C-9. Appeals.

Any person aggrieved by an approval, denial, or suspension of a Sharing Economy Rental license may appeal the decision to the Board of Appeals. The Board of Appeals must hold a hearing on the appeal within 30 days after the notice of appeal has been filed and must act on the appeal within 30 days after the hearing.

25C-10. Effect of a revocation.

For a period of 3 years after a license is revoked, the Director must not issue a Sharing Economy Rental license to:

(a) the former licensee or a member of the former licensee's household; or

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

25C-11. Complaints.

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

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

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

25C-12. Maintenance of premises.

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

25C-13. Report of violations of article.

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

* * *

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

51-1. Definitions.

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

* * *

Private swimming pool means any swimming pool that is:

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

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

* * *

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

54-1. Definitions.

* * *

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

Ordinance No.: ________________
Zoning Text Amendment No.: 23-xx
Concerning: Accessory Residential Uses – Sharing Economy Rental
Revised: 1/20/2023 Draft No.: 1
Introduced: January 31, 2023
Public Hearing: March 7, 2023
Adopted: ________________
Effective: ________________

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

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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

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

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

ORDINANCE

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

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

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

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

* * *

Sharing Economy Rental: See Section 3.3.3.I

* * *

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

* * *

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

* * *

Section 3.1.6. Use Table

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

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

*   *   *

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

Division 3.3. Residential Uses

*   *   *

Section 3.3.3. Accessory Residential Uses

*   *   *

I. Sharing Economy Rental

1. Defined

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

2. Use Standards

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

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

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

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

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

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

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

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

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

~~h~~i. A record of all rentals must be maintained and readily available for inspection.

[I]J. Short-Term Residential Rental

* * *

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

Division 8.2. Residential Floating Zones

* * *

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

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

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

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

* * *

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

Division 8.3. Planned Unit Development Zones

* * *

Section 8.3.2. PD Zone

* * *

B. Uses

1. Residential Uses

* * *

c. Short-Term Residential Rental is allowed as a limited use under Section **[**3.3.3.I.**]** <u>3.3.3.J.</u>

* * *

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

LEGISLATIVE REQUEST REPORT

Bill 6-23
Housing – Sharing Economy Rental

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

Montgomery County Planning Board
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

2425 Reedie Drive
Floor 14
Wheaton, MD 20902

MontgomeryPlanningBoard.org

February 28, 2023

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

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 23-01 and Bill 6-23

BOARD RECOMMENDATION

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

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

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

The Board has some general concerns that are at a higher level than specific use standards. The foremost concern is ensuring the County Code provides clear guidance for what constitutes a Sharing Economy Rental and how that differs from a private gathering among family and friends. Is the exchange of compensation what constitutes a rental, or is it the advertisement of the rental (for instance, on a web platform) the threshold? The Board urges this question be considered as the Council deliberates this ZTA and bill at its work sessions and include clarifying language in the use definition.

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

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

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

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

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

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, February 23, 2023.

Jeffrey Zyontz

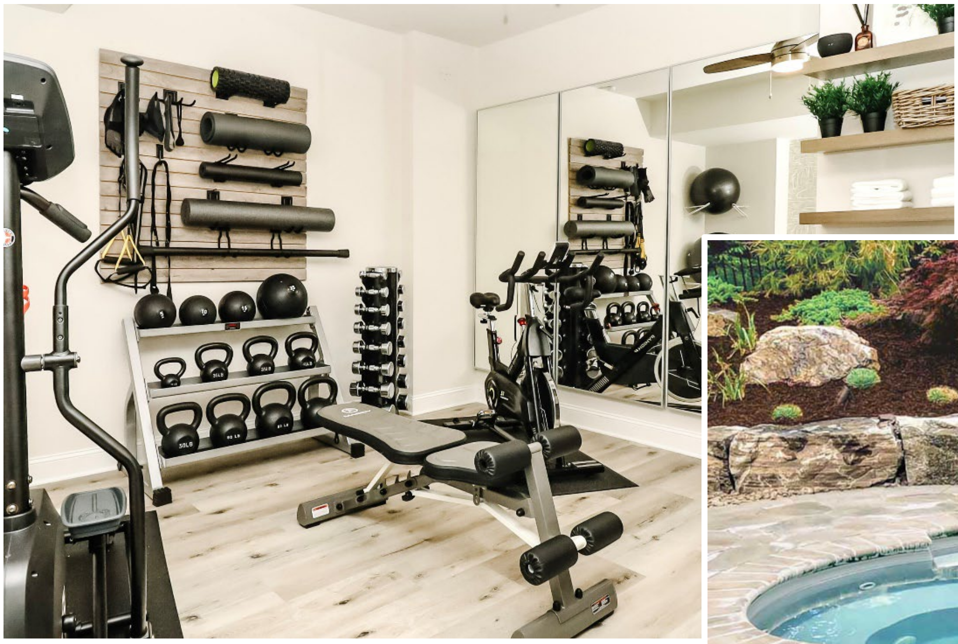
Jeffrey Zyontz
Chair

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

Attachment A

Montgomery Planning

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



Description

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

ZTA 23-01 & Bill 6-23

Completed: 02-16-2023

MCPB
Item No. 12
02-23-2023

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

Planning Staff

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INTRODUCED BY

Councilmember Jawando

INTRODUCTION DATE

01/31/2023

REVIEW BASIS

Chapter 59 – Zoning

Chapter 25C – Housing, Sharing Economy Rental

Summary:

- Staff recommends the Planning Board transmit comments to the District Council in support of ZTA 23-01 and Bill 6-23 with amendments.

- The sharing economy continues to expand into new ventures, including new apps such as Swimply, which connects pool owners with the larger community, allowing for the private rental of backyard pools or other private amenities on an hourly basis.

- ZTA 23-01 and Bill 6-23 would define, authorize and regulate a new Accessory Residential Use, called Sharing Economy Rental, establishing a process for homeowners to legally rent all or a portion of their residential property on an hourly basis for private gatherings and events.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

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

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

SECTION 2: ZTA AND BILL ANALYSIS

ZTA NO. 23-01 AS INTRODUCED

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

Under Section 3.3.3. Accessory Residential Uses, an entire new subsection I. is added for Sharing Economy Rental. The proposed definition for Sharing Economy Rental is *the rental of any portion of a* *dwelling or the property on which it sits for a fee where both the property and the dwelling are privately-owned by the same person or entity and where the rental period is less than 12 continuous hours.*

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

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

BILL NO. 6-23 AS INTRODUCED

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

Table 1 – Comparison of standards between Chapters

Certification or Standard	Zoning Standard[1]	License Certification
Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.	X	
The building in which the Sharing Economy Rental is located complies with all applicable zoning standards under Chapter 59 of this Code.		X
The swimming pool, if provided, complies with Chapter 51 of this Code.		X
The total number of guests in any rental period who are 18 years or older is limited to 6.	X*	X
The total number of days with rentals in a 12-month period is limited to 120 days.	X*	X
Rentals will only occur between the hours of 8:00 a.m. and 10:00 p.m.	X*	X

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

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

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

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

LIMITED USE STANDARDS

The focus of staff's analysis on the ZTA is with the Use Standards section 3.3.3.I.2, starting on page 5 of the ZTA or page (13) of Attachment A. These use standards were drafted based on the use standards that exist for the Short-Term Residential Rental use (Airbnb and similar rental companies). The analysis of these standards, and the concerns raised by them are under the assumption that standards on the Sharing Rental Economies are intended to minimize externalities on surrounding residences. The impacts of many of these standards are difficult to fully assess given the uniqueness of each property and the type of facilities that are being rented. Generally, there are a few overarching concerns Planning staff has with the standards proposed in the ZTA, largely stemming from the wide range of activities that could potentially fall under the use of Sharing Economy Rental, and the different standards that would be most appropriate to those different activities. Some differences that staff see as potentially having a significant impact on appropriate standards include:

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

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

a. *Sharing Economy Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.*
   The intent of prohibiting a Farm Tenant Dwelling is reasonable since these dwellings are not the primary owner of the residential property, which by definition would make them ineligible

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

b. *The Sharing Economy Rental must be the property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.*
This standard is reasonable, given the contracts are intended to be between the property owner and the private party. This would also help ensure a property's sole purpose did not become a facility rental venue but rather remained as a residential dwelling.

c. *The property owner or owner-authorized resident must be present at the residence during the rental period.*
This standard is reasonable to ensure rentals do not escalate beyond the contracted limitations and may help keep externalities, such as noise, to a minimum.

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

e. *Rental hours are limited to 8:00 a.m. to 10:00 p.m.*
Similar to the concerns raised with standard d. above, assessing adequate hours of operation is difficult without knowing the specific type of rental occurring on any given property. The size of the rental is one consideration, and the location indoors vs. outdoors is another. Planning staff notes the daytime noise level limits in the County on weekdays run from 7:00

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

e. *The property owner or owner-authorized resident must obtain a license under Chapter 25C.* The purpose of the companion Bill 6-23 is to establish the license process for Sharing Economy Rentals which this standard references. This standard is reasonable as written, with the exception of it being identified as limited use standard e., which is duplicative of the prior standard. This should become limited use standard f., with each standard below also shifting down the list one letter.

f. *The total number of guests in any rental period who are 18 years or older is limited to 6 persons* While the intent of limiting the size of a Shared Economy Rental makes sense, the standard limits adults (but not children) is another direct reference to the Short-Term Residential Rental and may not be the most appropriate standard for a Sharing Economy Rental. The limit on the number of adults could curb parking demand but would seem to be of little other benefit if the total number of attendees is not limited. Some of the Sharing Economy Rental activities would likely not reach this threshold, but certain outdoor rentals (particularly cookouts or pool parties) could easily exceed these limits. If the limitation on the number of adults is about parking, a potential solution would be to change the parking provisions to make additional parking a condition of larger events. If the standards were intended to limit noise, Planning staff would suggest having a total guest limit would be more appropriate, or to limit the size of outdoor rentals but not indoor rentals. Staff could also see the benefit in setting a limit (one a month, or twelve a year) for larger gatherings as an alternative way to mitigate such impacts.

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

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

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

OTHER CONCERNS

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

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

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

SECTION 3: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

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

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

RACIAL EQUITY & SOCIAL JUSTICE

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

SECTION 4: CONCLUSION

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

ATTACHMENTS

Attachment A – ZTA 23-01 and Bill 06-23 Introduction Packet
Attachment B – Climate Impact Assessment

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 6-23: HOUSING – SHARING ECONOMY RENTAL

SUMMARY

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

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.[2]

PURPOSE OF BILL 6-23

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

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

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

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

THE SHARING ECONOMY AND RACIAL EQUITY

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

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

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

ANTICIPATED RESJ IMPACTS

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

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

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

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

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

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

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[17] OLO finds the RESJ impact of Bill 6-23 is indeterminant. As such, OLO does not offer recommended amendments.

CAVEATS

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

CONTRIBUTIONS

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

APPENDIX

Table 1: Homeownership Rate by Race and Ethnicity, Montgomery County[18]

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

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

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

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

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

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

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

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

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[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. https://www.racialequitytools.org/glossary
[2] Ibid
[3] Ahmed Abdul Hadi Haqqani, et al, "Sharing Economy: A Systematic Review of Definitions, Drivers, Applications, Industry Status and Business Models," IFAC, June 2022. https://www.sciencedirect.com/science/article/pii/S2405896322017311?ref=cra_js_challenge&fr=RR-1
[4] Introduction Staff Report for Bill 6-23, Housing – Sharing Economy Rental, Montgomery County Council, Introduced January 31, 2023. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131_4D-6.pdf

[5] Mehmet Cansoy and Juliet B. Schor, "Who Gets to Share in the 'Sharing Economy'? Racial Inequities on Airbnb." Boston College Sociology Department, 2016. https://www.bc.edu/content/dam/bc1/schools/mcas/sociology/pdf/Who%20gets%20to%20share%20in%20the%20sharing%20economy_.pdf
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[8] Cansoy and Schor
[9] Bastian Jaeger and Willem W. A. Sleegers, "Racial Disparities in the Sharing Economy: Evidence from More than 100,000 Airbnb Hosts across 14 Countries," Journal of The Association of Consumer Research, January 18, 2023. https://www.journals.uchicago.edu/doi/abs/10.1086/722700?journalCode=jacr
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[12] Edward Ongweso Jr, "Civil Rights Groups Say Uber Actively Hurts Black People," Vice News, September 23, 2020. https://www.vice.com/en/article/7kpn9z/civil-rights-groups-say-uber-actively-hurts-black-people
[13] Kyle Barron, et al, "The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb," SSRN, March 4, 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006832
[14] RESJ Impact Statement for Expedited Bill 22-22, Office of Legislative Oversight, Montgomery County, Maryland, July 29, 2022. https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/BillE22-22.pdf
[15] Cansoy and Schor
[16] Julia Carrie Wong, "Airbnb: How U.S Civil Rights Laws All Racial Discrimination on the Site," The Guardian, May 6, 2016. https://www.theguardian.com/technology/2016/may/06/airbnb-racism-civil-rights-laws-sharing-economy
[17] Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council
[18] Latinx is an ethnicity rather than a race; therefore, Latinx people are included in multiple racial groups throughout this impact statement unless where otherwise noted. Estimates for Native American and Pacific Islander constituents not available for all data points presented in impact statement.

Climate Assessment

Office of Legislative Oversight

Bill 6-23: Housing – Sharing Economy Rental

Summary

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

Background and Purpose of Bill 6-23

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

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

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

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

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

Anticipated Impacts

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

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

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

Recommended Amendments

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

Caveats

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

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

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

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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

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

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

[4] "Environmental Impacts and Potential of the Sharing Economy", Skjelvik, J., Erlandsen A. M., and Haavardsholm, O., 10/19/17, "Putting the Sharing Economy into Perspective", Frenken, K. and Schor, J., 1/22/17 , "The Sharing Economy Promotes Sustainable Societies", Mi, Z. and Coffman, D., 3/14/2019.
"A Decade of the Sharing Economy: Concepts, Users, Business, and Governance Perspectives", Mont, O., Palgan, Y. V., Bradley, K., and Zvolska, L., 10/1/2020

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

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

February 1, 2023

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

Dear President Glass:

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

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

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

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

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

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

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

Sincerely,

John H. Pentecost
Chair, Montgomery County Board of Appeals

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

JHP:blj

Economic Impact Statement
Montgomery County, Maryland

Bill 6-23 Housing – Sharing Economy Rental

SUMMARY

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

BACKGROUND AND PURPOSE OF BILL 6-23

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

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

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

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

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[1] Haqqani, et al, "Sharing Economy: A Systematic Review."
[2] Introduction Staff Report for Bill 6-23.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

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

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

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

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

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

VARIABLES

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

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

IMPACTS

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

Businesses, Non-Profits, Other Private Organizations

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

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

[3] Montgomery County Code, Sec. 2-81B.
[4] For instance, certain County property owners rent their swimming pools through the online platform, Swimply.
[5] Correspondence with Council attorney, Livhu Ndou.

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

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

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

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

Residents

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

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

Net Impact

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

DISCUSSION ITEMS

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

WORKS CITED

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

Introduction Staff Report for Bill 6-23, Housing – Sharing Economy Rental, Introduced January 31, 2023.

Montgomery County Code. Sec. 2-81B, Economic Impact Statements.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

AUTHORS

Stephen Roblin (OLO) prepared this report.