



**Committee:** Joint  
**Committee Review:** Completed  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** Final action – vote expected  
**Keywords:** #TransientLodgingFacilities #DHHS #DHCA  
#ShortTermResidentialRental

AGENDA ITEM #10A  
November 7, 2023  
**Action**

## SUBJECT

Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental Lead

Sponsor: Council President Glass at the request of the County Executive

## INVITED ATTENDEES

- Jason Sartori, Chief – Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III – Countywide Planning & Policy, Planning Department
- Kenneth Welch, Environmental Health Manager – Licensure and Regulatory Services, Health and Human Services (DHHS)
- Scott Bruton, Director, Department of Housing and Community Affairs (DHCA)
- Pofen Salem, Division Chief – Finance, DHCA
- Nathan Bovelleville, Division Chief – Community Development, DHCA
- Tamala Robinson, Manager – Code Enforcement, DHCA
- Tiffany Johnson, Manager – Licensing, DHCA
- Commander David McBain, Patrol Services Bureau – 3<sup>rd</sup> District Station, Montgomery County Department of Police (MCPD)
- Ehsan Motazedi, Deputy Director, Department of Permitting Services (DPS)
- Victor Salazar, Division Chief – Zoning and Code Compliance, DPS

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Health and Human Services (HHS), Planning, Housing, and Parks (PHP), and Economic Development (ECON) Committees unanimously recommend enactment of Bill 22-23 as amended.
- Roll call vote expected on the enactment of the Bill with amendments, as recommended by the Committee.

## DESCRIPTION/ISSUE

Bill 22-23 will amend the provisions for Short-Term Residential Rentals. Specifically, Bill 22-23 will reassign enforcement responsibility to DHCA; increase the maximum penalty; amending the application process; and clarify the processes for challenges, suspensions, revocations, and appeals.

## SUMMARY OF KEY DISCUSSION POINTS

- In Bill 22-23, the County Executive proposed substantial revisions to the Short-Term Residential Rental and Bed and Breakfast provisions of Chapter 24, that were intended to address difficulties in enforcement.

- A joint Committee worksession of the HHS, PHP, and ECON Committees was held on October 12, 2023. The Committee unanimously recommended approval of Bill 22-23 with amendments. The Committee agreed to move licensing and enforcement from DHHS to DHCA, and to provide the Director with more flexibility in both approving, renewing, suspending, and revoking licenses.

**This report contains:**

Staff Report	Pages 1-9
Bill 22-23	© 1
County Executive Transmittal Memorandum	© 15
County Executive Written Testimony	© 17
Legislative Request Report	© 19
Racial Equity Impact Statement for Bill 22-23	© 20
Climate Assessment for Bill 22-23	© 25
Economic Impact Statement	© 28
Fiscal Impact Statement	© 32
Planning Board recommendation	© 35
Planning Staff report	© 37
Staff Report for October 12, 2023 Joint Committee Worksession	© 47

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**M E M O R A N D U M**

November 2, 2023

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental

PURPOSE: Action – roll call vote expected

The Health and Human Services (HHS), Planning, Housing, and Parks (PHP), and Economic Development (ECON) Committees unanimously recommend:

**Approval of Bill 22-23 with amendments.**

**COMMITTEE ATTENDEES**

- Jason Sartori, Chief – Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III – Countywide Planning & Policy, Planning Department
- Kenneth Welch, Environmental Health Manager – Licensure and Regulatory Services, Health and Human Services (DHHS)
- Scott Bruton, Director, Department of Housing and Community Affairs (DHCA)
- Pofen Salem, Division Chief – Finance, DHCA
- Nathan Bovellet, Division Chief – Community Development, DHCA
- Tamala Robinson, Manager – Code Enforcement, DHCA
- Tiffany Johnson, Manager – Licensing, DHCA
- Commander David McBain, Patrol Services Bureau – 3<sup>rd</sup> District Station, Montgomery County Department of Police (MCPD)
- Ehsan Motazedi, Deputy Director, Department of Permitting Services (DPS)
- Victor Salazar, Division Chief – Zoning and Code Compliance, DPS

**INTRODUCTION**

Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, lead sponsor Council President Glass at the Request of the County Executive, was introduced on April 18, 2023. Bill 22-23 would reassign enforcement responsibility to DHCA; increase the maximum penalty; adjust

the application process; and clarify the processes for challenges, suspensions, revocations, and appeals.<sup>1</sup>

## **PUBLIC HEARING**

A public hearing was held on June 13, 2023. Several speakers testified, both in opposition and support. Written testimony reflected the testimony provided during the public hearing.<sup>2</sup>

Those in support testified that home rentals are not like hotels, so enforcement should be moved to DHCA. Testimony reflected that while many operate short-term residential rentals without problems, there have also been negative community impacts from some operators due to parking issues, increased traffic, and loud parties. Testimony expressed concern that short-term residential rentals drive out affordable housing, that poorly operated short-term residential rentals are disruptive to the community, and that the County has had issues with enforcement. Those in support noted that the bill would provide the County with increased enforcement abilities and provide neighbors with more meaningful opportunities to object to proposed short-term residential rentals.

In opposition to the bill, many testified that they benefit from operating short-term residential rentals because it provides additional income that allows residents to stay in the County, improve their homes, and age in place. In addition, testimony explained that short-term residential rentals benefit many visitors to the County, including traveling nurses and those who need to stay in the County for longer than a few days. Airbnb testified that a large portion of hosts are women or senior citizens. Those opposed testified that the bill would unnecessarily limit tenant rights. Some testified that jurisdiction should stay with HHS because of health and safety concerns, such as those who rent their homes and have swimming pools. Testimony also asked to allow accessory dwelling units (ADUs) to operate short-term residential rentals.

## **SUMMARY OF IMPACT STATEMENTS**

### ***Racial Equity Impact Statement***

The Office of Legislative Oversight (OLO) found that the racial equity and social justice (RESJ) impact of Bill 22-23 is indeterminant. The impact statement notes the sharing economy industry has been characterized by racial inequities and disparities, because while the platforms provide increased access to goods and services, research suggests the benefits are not equally distributed amongst guests or hosts. OLO examined each stakeholder group and found that:

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<sup>1</sup> Introduced at the same time was Zoning Text Amendment (ZTA) 23-04, Residential Uses – Short-Term Residential Rental, lead sponsor Council President Glass at the Request of the County Executive. ZTA 23-04 would limit the number of overnight guests regardless of age and remove language for owner-authorized agents. The joint Committee did not recommend approval of ZTA 23-04. Therefore, it is not before the Council for action.

<sup>2</sup> Written testimony can be found here:  
<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20230613/index.html>

- homeowners could face increased costs from stronger enforcement, and that while the majority of homeowners in the County are white or Asian, BIPOC homeowners are cost-burdened at higher levels;
- constituents using bed and breakfasts and short-term residential rentals could benefit from stronger enforcement of health and safety protocols but could as a result face higher prices; and
- constituents living near bed and breakfasts and short-term residential rentals could benefit from stronger enforcement mitigating inconveniences, but it is unclear whether certain communities could be subject to more enforcement than others and whether racial and ethnic disparities in enforcement could emerge by community demographics.

### ***Climate Assessment***

OLO anticipates Bill 22-23 will have no impact on the County’s contribution to addressing climate change as the Bill is proposing changes to existing laws governing bed and breakfast and short-term residential rentals to ensure County law enforcement of these rentals.

### ***Economic Impact Statement***

OLO found that enacting Bill 22-23 would have a neutral impact on economic conditions in the County in terms of the Council’s priority indicators. OLO predicted the bill would increase operating costs and decrease revenues for homeowners who operate bed and breakfasts and short-term residential rentals; and that the bill would increase rents for resident customers but that this negative impact would be mitigated by homeowners passing a portion of the higher costs to non-resident customers. OLO also noted that enhanced enforcement could prevent certain homeowners’ associations from banning short-term residential rentals which would decrease the market.

### ***Fiscal Impact Statement***

The Office of Management and Budget (OMB) found that under Bill 22-23 revenues are projected to increase by \$48,800 in FY24, with annualized revenues of at least \$218,000 beginning in FY25 and each year thereafter. OMB noted that this is a net change in expenditures and revenues, meaning the figures are offset by expenditure reductions DHHS is expected to see. The revenue figures assume no revenue from citation fines will be collected in FY24 as the program is initiated and new staff are hired. OMB expects increased enforcement to result in license applications increasing to 1,300 to align with the number of short-term residential rental properties that are estimated to be currently operating in the County. Under the strengthened enforcement provisions, DHCA expects to issue approximately 50 citations in the first full year and for citations to increase by one each year thereafter, generating \$1,000 in revenue per citation.

Expenditures are estimated to increase by \$270,100 in FY24, increasing to \$542,700 beginning in FY25 and each year thereafter. Expenditures are expected to increase to support additional staff, vehicle purchases, and other miscellaneous operating costs. DHCA expects to need two licensing staff, two inspectors, and one IT specialist which would create \$536,100 in new personnel costs annually. Operating expenditures are comprised of the miscellaneous operating supplies needed for the new positions (\$20,600 one-time and \$2,600 ongoing costs) and two vehicles to facilitate

the Housing Code Inspectors' property inspections and enforcement work (\$113,800 one-time vehicle purchase and \$2,000 ongoing operation and maintenance costs).

### ***Planning Board Recommendation***

The Planning Board met on June 1, 2023, and unanimously recommended modifications to Bill 2-23. The Board supported most of the technical changes made in Bill 22-23, including reassignment to DHCA; amendment of the application requirements; and clarification of the processes for challenges, suspension, revocation, and appeals. However, the Board had major concerns about many of the policy changes such as increased penalties, removing owner-authorized residents, and limiting the number of guests without exceptions for children. The Board noted that it was unclear whether these changes would result in meaningful improvement in enforcement, or whether they would instead reduce flexibility for both hosts and guests.<sup>3</sup>

## **BACKGROUND**

### **History of Short-Term Residential Rentals**

Before the passage of a bill and ZTA allowing short-term residential rentals in 2017, residential occupancy of a dwelling was only allowed on a monthly or longer basis. After introduction and public hearing, the Council asked the Planning Department to conduct additional public outreach. Three public meetings were held, in addition to meeting with the relevant agencies. At the time, public testimony ranged from support because of the additional income that could be generated; hesitancy from the hotel industry due to the competition caused; concern about the reduction of affordable housing; and opposition due to potential increases in noise, traffic, and crime. Many issues were addressed, including parking, the number of guests allowed, the number of rentals allowed in a year, and other licensing requirements. These discussions generated a new ZTA and bill, that were passed by the Council in October 2017 with effective dates of July 1, 2018.<sup>4</sup>

### **Intent of Bill 22-23**

According to the County Executive, while most short-term residential rentals operate within the County's regulatory framework, others "cause serious problems for neighboring properties and, in at least one case, potential threats to public safety." This is confirmed in the Economic Impact Statement, which states that DHHS and DPS reported that only a small number of short-term residential rentals receive complaints. To address the complaints, Bill 22-23 includes recommended changes from the County Attorney's Office, DHHS, and DHCA to address the perceived shortcomings in County Law, particularly in enforcement. Of note, while much of the

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<sup>3</sup> For these reasons, the Board unanimously did not support ZTA 23-04.

<sup>4</sup> On October 10, 2017, the Council passed Bill 2-16 (10/10/2017 Council Session, Item #6A) and, sitting as the District Council, passed ZTA 17-03 (10/10/2017 District Council Session, Item #4E).

Municipalities may opt out of Chapter 54. Chapter 54 does not apply to: Chevy Chase Village, Chevy Chase, Chevy Chase, Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, and Washington Grove.

testimony centers around short-term residential rentals such as Airbnb or Vrbo, this section of the County Code also applies to bed and breakfasts.

MCPD reports that they do not have any datasets that separate out the complaints for short-term residential rentals, so cannot provide information on the number of complaints received related to short-term residential rentals. DPS reports that while they investigate complaints associated with illegal residential uses, any complaints regarding short-term residential rentals, including licensing issues, are sent to HHS. According to HHS, around the time of the worksession there were approximately 1,450 advertised short-term residential rentals. However, only 178 had active licenses. There were 3 bed and breakfasts currently licensed. Complaints and inquiries are primarily through MC311. The County Executive's Office testified that the County receives 2-3 complaints per week, generally for unlicensed or reoccurring problem properties.

### **Provisions of Bill 22-23 (as introduced)**

Some of the bracketed and underlined language in Bill 22-23 represents language that is being moved, not necessarily changes in the law. Bill 22-23 also proposes several changes to the current law. These include:

- Moving licensing and enforcement from DHHS to DHCA.
- Making the maximum penalty \$1,000 with each day of the violation being a separate offense.
- Requiring the guest registry to include a name, address, date and time of rental, license plate number, and that the record be kept for at least 3 years.
- Only allowing a property owner to be an applicant.
- Changing the maximum number of overnight guests to include those under the age of 18.
- Requiring the designated representative to be identified by name, address, and phone number; and be available to the Department when the primary resident is not present.
- Increasing the Director's authority to approve, deny, renew, or reinstate a license.
- Increasing the period during which an application for a license will not be approved if the applicant has been found guilty of violating Chapter 54 from 12 months to 36 months.
- Increasing the Director's authority to suspend or revoke a license.
- Requiring written notice be provided to the relevant parties when a license is issued or renewed, including the procedures for filing an appeal.
- Allowing a challenge to be filed by the same parties entitled to notice.
- Removing the requirement that BOA must hold a hearing within 60 days and act within 30 days of the hearing.

### **COMMITTEE RECOMMENDATION**

The Health and Human Services (HHS), Planning, Housing, and Parks (PHP), and Economic Development (ECON) Committees held a joint worksession on both Bill 22-23 and ZTA 23-04 on October 12, 2023. Participating in the discussion were representatives from the County Executive's Office, MCPD, HHS, DHCA, DPS, and the Planning Department. The staff report for that worksession is included in this packet.

Before going into the specifics of Bill 22-23 and ZTA 23-04, the Committee discussed the shortcomings in current enforcement efforts. Some of the issues discussed included: the inability to revoke licenses because it was difficult to get 3 verified complaints within 12 months through the Court system; union issues with having staff available from 9pm-midnight, the most common time for complaints; insufficient funding for enforcement; whether an Enterprise fund should be created to cover the cost of enforcement; and the need for public outreach so that those operating are aware a license is required.

The Committee noted that before changes were made to the application and license requirements, the County needed to get better at enforcing the existing law. The overall recommendation was to limit the bill to a change in jurisdiction and increase the Director's ability to do enforcement. This left the following portions of Bill 22-23:

- Change licensing and enforcement from DHHS to DHCA.
- Increase the Director's authority to approve, deny, renew, or reinstate a license.
- Increase the period of violation from 12 months to 36 months.
- Allow the Director to suspend or revoke a license.
- Remove the requirement that BOA must hold a hearing within 60 days and act within 30 days of the hearing.

The Committee also agreed with the proposed change to allow the Director to suspend or revoke a license for reasons other than 3 violations within a year, but with amendment:

- Violation of Chapter 54 or any other applicable law or regulation.
- Conviction of violating any provisions of Criminal Law Article of Maryland Code while operating a short-term residential rental or bed and breakfast.
- A pattern of operating in a manner dangerous to the health and safety of the community or operating in a manner that is a nuisance because of noise or other activity.

The Committee did not recommend approval of the remaining portions of Bill 22-23 and did not recommend approval of ZTA 23-04.

## **DISCUSSION OF COMMITTEE-RECOMMENDED BILL 22-23**

### **Jurisdiction**

Bill 22-23 would move short-term residential rental and bed and breakfast licensing and enforcement from DHHS to DHCA. While DHHS is in the business of licensing and inspection for commercial entities like hotels, DHCA has the expertise for long-term rentals and ADUs. The Committee agreed that DHCA was the appropriate agency for licensing and enforcement.

*Council Staff recommends an additional amendment that was not before the Committee. After the worksession, DHCA noted that given the additional staffing needed for this transition, an effective date after budget would be beneficial. According to the Fiscal Impact Statement,*



*DHCA estimates that it will need two licensing staff, two inspectors, and one IT specialist were the bill to be enacted. Council Staff therefore recommends an effective date of July 1, 2024.*

**Sec. 2. Effective Date. This Act takes effect on July 1, 2024.**

**License Approval and Renewal**

Bill 22-23 will increase the Director’s authority to approve, deny, renew, or reinstate a license in the following ways:

- Rather than being required to accept the self-certification of the applicant after verifying compliance by reviewing available records, the Department will be able to inspect the property;<sup>5</sup>
- Increasing the time to approve or deny a license from 15 working days of receipt of completed application to 30-60 days (this increase allows adequate time for neighbors to challenge the application); and
- May require licensee to appear before the Director and show cause why license should not be suspended or revoked.

The Committee agreed with this portion of Bill 22-23.

Under current law, an application for a license will not be approved if the applicant has been found guilty of violating Chapter 54 in the last 12 months. Bill 22-23 would increase this to 36 months. The Committee recommended an amendment that this would not include a person whose only violation was operating without a license, since the goal is to bring all of those who are operating illegally into compliance. The amendment reads:

(d) must not deny a license for the sole reason that an applicant was operating without a license, if it is the applicant’s first time receiving such a violation;

**Revocation or suspension of license**

Bill 22-23 would have allowed the Director to suspend or revoke a license for the following reasons:

- Violation of Chapter 54 or any other applicable law or regulation;
- Operating in a manner disruptive to the general peaceful enjoyment of the community;
- Operating in a manner dangerous to the health and safety of the community;
- Operating in a manner that is a nuisance because of noise or other activity; or

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<sup>5</sup> Council Staff noted that to avoid equity issues and to provide applicants with proper notice, the Department should provide guidance, such as on its website or on application forms, as to what the requirements for inspection will be. This could include when an inspection will be called for and what conditions the property must meet. The Committee agreed, and the DHCA Director stated that this could be done.

- Having been convicted of violating any provisions of Criminal Law Article of Maryland Code while operating a short-term residential rental or bed and breakfast.

The Committee agreed that the Director should have additional flexibility in suspending or revoking a license but disagreed with the subjective nature of some of these provisions. Therefore, the Committee recommended the following amendment:

The Director may suspend or revoke any license issued under this Article if the Director finds that the licensee:

- (1) has violated this Chapter or any other applicable law or regulation;
- (2) has been convicted of violating any of the provisions of the Criminal Law Article of the Maryland Code listed in in Section 54-20 while operating the bed and breakfast or short-term residential rental; or
- (3) has repeatedly operated in a manner that is dangerous to the health and safety of the community or is a nuisance because of noise or other activity.

## Challenges

Anyone aggrieved by license approval, denial, or revocation may appeal to the Board of Appeals (BOA).<sup>6</sup> The BOA must hold a hearing on the appeal within 60 days of notice of the appeal being filed and must act on that appeal within 30 days of the hearing.<sup>7</sup> The 30- to 60-day timeline is a quick turnaround for the BOA and effects its ability to schedule other equally important matters. Bill 22-23 removes the requirement that BOA must hold a hearing within 60 days and act within 30 days of the hearing.<sup>8</sup> The Committee agreed with this change.

### This packet contains:

Bill 22-23	© 1
County Executive Transmittal Memorandum	© 15
County Executive Written Testimony	© 17

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<sup>6</sup> As an aside, there is a difference between those who can file a challenge with the Director (the list of parties entitled to notice) and those who can file an appeal (any person aggrieved).

<sup>7</sup> Other administrative appeals allow time for summary disposition (at least 30 days before date of the hearing), prehearing conferences (3-4 weeks before the hearing), and a longer timeframe to issue decisions (45 days).

<sup>8</sup> Council Staff has not found any language that clearly stays an application during the appeals process. This means an applicant could choose to keep operating in a situation where they were granted a license and their neighbor appeals the issuance of that license. However, this is the case with many appeals, such as an appeal of a building permit.

Legislative Request Report	© 19
Racial Equity Impact Statement for Bill 22-23	© 20
Climate Assessment for Bill 22-23	© 25
Economic Impact Statement	© 28
Fiscal Impact Statement	© 32
Planning Board recommendation	© 35
Planning Staff report	© 37
Staff Report for October 12, 2023 Joint Committee Worksession	© 47

Bill No. 22-23  
Concerning: Transient Lodging Facilities  
- Short-Term Residential Rental  
Revised: 11/1/2023 Draft No. 2  
Introduced: April 18, 2023  
Expires: December 7, 2026  
Enacted: [date]  
Executive: [date signed]  
Effective: [date takes effect]  
Sunset Date: [date expires]  
Ch. [#], Laws of Mont. Co. [year]

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Glass at the Request of the County Executive

### AN ACT to:

- (1) assign enforcement responsibility to the Department of Health and Human Services for Article II (hotels) and to the Department of Housing and Community Affairs for Article III (bed and breakfasts and short-term residential rentals);
- [[2) increase the maximum penalty for a violation of Article III of Chapter 54;]]
- [[3)]](2) amend the application process for a bed and breakfast or short-term residential rental license, including license criteria and notice requirements;
- [[4) clarify the process for challenging an application for bed and breakfast or short-term residential rental license;]]
- [[5)]](3) clarify the process for suspending or revoking a bed and breakfast or short-term residential rental license;
- [[6)]](4) clarify the process for appealing the Director's decision on a bed and breakfast or short-term residential rental license to the Board of Appeals; and
- [[7)]](5) make other stylistic changes.

By amending

Montgomery County Code  
Chapter 54, Transient Lodging Facilities  
Sections 54-1, 54-2, 54-3, 54-13, 54-26, 54-43, 54-44, 54-45, 54-46, 54-47, and 54-48

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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

1           **Sec. 1. Sections 54-1, 54-2, 54-3, 54-13, 54-26, 54-43, 54-44, 54-45, 54-46,**  
2 **54-47, and 54-48 are amended, as follows:**

3                               **Article I. In General.**

4 **54-1. Definitions.**

5                                       \*       \*       \*

6           *Director* means the Director of the Department of Health and Human Services,  
7 or the Director’s designee, in Article II of this Chapter. *Director* means the Director of  
8 the Department of Housing and Community Affairs, or the Director’s designee, in  
9 Article III of this Chapter.

10           *Department* means the Department of Health and Human Services in Article II  
11 of this Chapter. *Department* means the Department of Housing and Community  
12 Affairs in Article III of this Chapter.

13                                       \*       \*       \*

14           [[Primary Resident means a person who regularly resides at the location  
15 designated for legal purposes of obtaining a driver’s license and filing tax returns or  
16 any other proof of occupancy approved by the Director.]]

17                                       \*       \*       \*

18           *Short-Term Residential Rental* means the residential occupancy of a dwelling  
19 unit for a fee for less than 30 consecutive days [[by the same individuals]] as allowed  
20 under Section 59-3.3.3.I of this Code.

21                                       \*       \*       \*

22 **54-2. Authority of Executive to regulate and license.**

23           The Executive may adopt regulations, under method (3), concerning the  
24 operation, maintenance, conduct, application, licensing, and license fees for a hotel,  
25 short-term residential rental, or bed and breakfast.

26 **Sec. 54-3. [Guest register—Required] [[Violation of article; penalties]] Guest**  
27 **register—Required.**

28 [Any person who owns or operates a hotel, in the County must maintain on the  
 29 premises a permanent register containing:

- 30 (a) the name of each visitor;
- 31 (b) the residence address of each visitor, including state, city or town, street  
 32 and street number or rural mail delivery route number;
- 33 (c) the number of the room or facility occupied by each visitor; and
- 34 (d) the date and time of registration and checkout of each visitor.

35 The register must include a record of the license plate numbers and state of  
 36 registration of any automobiles or trailers that guests are using. The owner or operator  
 37 of the establishment must see that the license plate and automobile or trailer  
 38 registration information is correct. A person must not occupy any room until the  
 39 registration required under this section is provided. The permanent register may be in  
 40 a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages  
 41 or cards must be numbered consecutively before use and all numbered pages or cards  
 42 must be kept even though they are not used. The register required by this section must  
 43 be kept for at least 3 years and must be open to inspection upon the request of the  
 44 Director or of any law enforcement officer of the county or the state.]

45 Any person who owns or operates a hotel, in the County must maintain on the  
 46 premises a permanent register containing:

- 47 (a) the name of each visitor;
- 48 (b) the residence address of each visitor, including state, city or town, street  
 49 and street number or rural mail delivery route number;
- 50 (c) the number of the room or facility occupied by each visitor; and
- 51 (d) the date and time of registration and checkout of each visitor.

52 The register must include a record of the license plate numbers and state of  
 53 registration of any automobiles or trailers that guests are using. The owner or operator  
 54 of the establishment must see that the license plate and automobile or trailer

55 registration information is correct. A person must not occupy any room until the  
 56 registration required under this section is provided. The permanent register may be in  
 57 a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages  
 58 or cards must be numbered consecutively before use and all numbered pages or cards  
 59 must be kept even though they are not used. The register required by this section must  
 60 be kept for at least 3 years and must be open to inspection upon the request of the  
 61 Director or of any law enforcement officer of the county or the state.

62 [[A violation of any provision of Article II or Article III of this Chapter is a class  
 63 A violation. However, notwithstanding Section 1-19, the maximum penalty for a civil  
 64 violation of Article III is \$1,000 for an initial or repeat offense. Each day a violation  
 65 continues is a separate offense.]]

66 \* \* \*

67 **Article II. HOTELS.**

68 **Division 1. GENERALLY.**

69 \* \* \*

70 **54-13. [Violation of article; penalties] [[Guest register – Required]] Violation of**  
 71 **article; penalties.**

72 [A violation of any provision of Article II or Article III of this Chapter is a class  
 73 A violation.]

74 A violation of any provision of Article II or Article III of this Chapter is a class  
 75 A violation.

76 [[Any person who owns or operates a hotel in the County must maintain on the  
 77 premises a permanent register containing:

- 78 (a) the name of each visitor;
- 79 (b) the residence address of each visitor, including state, city or town, street  
 80 and street number or rural mail delivery route number;
- 81 (c) the number of the room or facility occupied by each visitor; and

82 (d) the date and time of registration and checkout of each visitor.

83 The register must include a record of the license plate numbers and state of  
84 registration of any automobiles or trailers that guests are using. The owner or operator  
85 of the establishment must see that the license plate and automobile or trailer  
86 registration information is correct. A person must not occupy any room until the  
87 registration required under this section is provided. The permanent register may be in  
88 a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages  
89 or cards must be numbered consecutively before use and all numbered pages or cards  
90 must be kept even though they are not used. The register required by this section must  
91 be kept for at least 3 years and must be open to inspection upon the request of the  
92 Director or of any law enforcement officer of the county or the state.]]

93 \* \* \*

94 **Division 2. LICENSES.**

95 \* \* \*

96 **54-26. Revocation or suspension generally.**

97 \* \* \*

98 (b) The Director may revoke or suspend any license issued under this  
99 Division if the Director finds that the hotel is disruptive to the general  
100 peaceful enjoyment, dangerous to the health and safety, of the  
101 community, or is a nuisance because of noise or indecent or immoral  
102 activity by any guest, owner, operator or employee. The Director may  
103 also revoke or suspend any license issued under this Chapter if the owner  
104 or operator of the hotel has, while operating the hotel, been convicted of  
105 violating:

106 (1) the provisions of the Criminal Law Article of the Maryland Code  
107 as listed in Section 54-20; or

108 \* \* \*



109 **Article III. [BED AND BREAKFAST AND SHORT-TERM RESIDENTIAL**  
 110 **RENTAL] Bed and Breakfast and Short-Term Residential Rental.**

111 \* \* \*

112 **54-43. [Certification] Application for a License.**

113 An application for a license to operate a bed and breakfast [license] or short-  
 114 term residential rental or a license renewal for either use must be signed by the  
 115 applicant and include the State Sales Tax and Use Registration number. The applicant  
 116 must [[provide supporting documents as the Department may require and]] certify that:

117 [(a) the building in which the bed and breakfast license or short-term  
 118 residential rental is located complies with all applicable zoning standards  
 119 under Chapter 59 of this Code;]

120 (a) the building in which the bed and breakfast license or short-term  
 121 residential rental is located complies with all applicable zoning standards  
 122 under Chapter 59 of this Code;

123 [[a) the applicant is the owner of the dwelling unit where the bed and breakfast  
 124 or the short-term residential rental is located;]]

125 [(b) the total number of overnight guests in the short-term residential rental  
 126 who are 18 years or older is limited to 6, and the total number of overnight  
 127 guests over 18 years of age per bedroom is limited to 2;]

128 (b) the total number of overnight guests in the short-term residential rental  
 129 who are 18 years or older is limited to 6, and the total number of overnight  
 130 guests over 18 years of age per bedroom is limited to 2;

131 [[b) the dwelling unit where the bed and breakfast or short-term residential  
 132 rental is located is the primary residence of the applicant;]]

133 [(c) only habitable rooms will be used by guests;]

134 (c) only habitable rooms will be used by guests;

135 [[c) the building in which the bed and breakfast or short-term residential rental

136 is located complies with all applicable zoning standards under Chapter 59  
 137 of this Code;]]

138 [(d) smoke detectors in all units and carbon monoxide detectors in all units  
 139 using natural gas operate as designed;]

140 (d) smoke detectors in all units and carbon monoxide detectors in all units  
 141 using natural gas operate as designed;

142 [(d) the applicant will maintain a registry of all guests at the bed and breakfast  
 143 or the short-term residential rental, readily available for inspection by the  
 144 Department;]]

145 [(e) sanitation facilities operate as designed;]

146 (e) sanitation facilities operate as designed;

147 [(e) except for persons visiting the primary resident, only registered guests  
 148 under (d) will be allowed in the dwelling unit or on the property;]]

149 [(f) the applicant has not been found guilty of a violation of this Chapter in  
 150 the past 12 months;]

151 [(f) the number of registered guests in the short-term residential rental who  
 152 are 18 years or older is limited to 2 per bedroom, provided that the total  
 153 number of registered guests in the short-term residential rental must not  
 154 exceed 6;]]

155 [(g) all local taxes and required fees are paid in full;]

156 (f) all local taxes and required fees are paid in full;

157 [(g) only habitable rooms will be used by guests;]]

158 [(h) the dwelling unit where the bed and breakfast or short-term residential  
 159 rental is located is the primary residence of the applicant;]

160 (g) the dwelling unit where the bed and breakfast or short-term residential  
 161 rental is located is the primary residence of the applicant;

162 [(h) smoke detectors, and carbon monoxide detectors where natural gas is

- 163 used, operate as designed;]]
- 164 [(i) the applicant is the owner or owner-authorized agent of the facility;]
- 165 (h) the applicant is the owner or owner-authorized agent of the facility;
- 166 [(i) sanitation facilities operate as designed;]]
- 167 [(j) the applicant posted rules and regulations inside the rental, including
- 168 contact information for a representative designated for emergency
- 169 purposes;]
- 170 (i) the applicant posted rules and regulations inside the rental, including
- 171 contact information for a representative designated for emergency
- 172 purposes;
- 173 (j) notwithstanding section 54-45(d), the applicant has not been found guilty
- 174 of a violation of this Chapter in the past 36 months;
- 175 [(k) the designated representative resides within 15 miles of the unit and be
- 176 accessible for the entirety of any contract where the primary resident is
- 177 not present;]
- 178 (k) the designated representative resides within 15 miles of the unit and be
- 179 accessible for the entirety of any contract where the primary resident is
- 180 not present;
- 181 [(k) all local taxes and required fees are paid in full;]]
- 182 [(l) a record of all overnight visitors will be maintained and readily available
- 183 for inspection;]
- 184 (l) a record of all overnight visitors will be maintained and readily available
- 185 for inspection;
- 186 [(l) a representative designated for emergency purposes, identified by name,
- 187 address, and phone number, resides within 15 miles of the unit and will
- 188 be available to the Department for the entirety of any contract whenever
- 189 the owner is not present;]]

- 190 [(m) where applicable, the following parties were notified:
- 191 (1) in a single-unit or attached unit, abutting and confronting
- 192 neighbors;
- 193 (2) in a multi-unit building, neighbors living across the hall and those
- 194 that share a ceiling, floor, and walls with the applicant’s unit;
- 195 (3) the municipality in which the residence is located;
- 196 (4) any applicable homeowner’s association, condominium, housing
- 197 cooperative; and
- 198 (5) the owner of the unit or the owner’s rental agent, if the applicant is
- 199 not the owner;]

- 200 [(m) where applicable, the following parties were notified:
- 201 (1) in a single-unit or attached unit, abutting and confronting
- 202 neighbors;
- 203 (2) in a multi-unit building, neighbors living across the hall and those
- 204 that share a ceiling, floor, and walls with the applicant’s unit;
- 205 (3) the municipality in which the residence is located;
- 206 (4) any applicable homeowner’s association, condominium, housing
- 207 cooperative; and
- 208 (5) the owner of the unit or the owner’s rental agent, if the applicant is
- 209 not the owner;]

210 [[m) the applicant posted rules and regulations inside the dwelling unit,

211 including the name, address, and phone number for the representative

212 designated for emergency purposes;]]

213 [(n) the application is not prohibited by any homeowner’s association or

214 condominium document, or a rental lease;]

215 (n) the application is not prohibited by any homeowner’s association or

216 condominium document, or a rental lease;

217 [(n) where applicable, the applicant has notified the following parties of the  
 218 application and the procedure for challenging the application before the  
 219 Director:

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

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

224 (3) the municipality in which the bed and breakfast or short-term  
 225 residential rental is located; and

226 (4) any applicable homeowner's association, condominium, housing  
 227 cooperative.]]

228 [(o) the common ownership community fees for the dwelling unit are no more  
 229 than 30 days past due;]

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

232 [(o) the use of the dwelling unit as a bed and breakfast or short-term  
 233 residential rental is not prohibited by any homeowner's association or  
 234 condominium document, or a rental lease;]]

235 [(p) except for persons visiting the primary resident, only registered guests  
 236 will be allowed on the property; and]

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

239 [(p) the common ownership community fees for the bed and breakfast or  
 240 short-term residential rental are no more than 30 days past due;]]

241 (q) any on-line rental listing will include the short-term residential rental  
 242 license number[.]]]; and]].

243 [(r) the dwelling unit will not be used as a short-term residential rental for

244 more than 120 days in a calendar year when the property owner is not  
 245 physically present in the dwelling unit.]]

246 **54-44. Applications.**

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

250 **54-45. License Approval and Renewal.**

251 The Director [must]:

252 (a) [accept the self-certification of the applicant after verifying compliance  
 253 by reviewing available records;] must review the application, including  
 254 supporting documents provided by the applicant, for conformance with  
 255 this Chapter and all other applicable laws and regulations;

256 (b) may inspect the property;

257 [(b)](c) must approve or deny a license or a license renewal [within 15] no  
 258 earlier than 30 and no later than 60 [working] days after receipt of [the] a  
 259 completed application and all required fees unless the Director receives a  
 260 challenge to the [certifications] application under Section 54-46; [[and]]

261 (d) must not deny a license for the sole reason that an applicant was operating  
 262 without a license, if it is the applicant's first time receiving such a  
 263 violation; and

264 [(c)][(d)] (e) must, if the license or license renewal is approved:

265 (1) issue the license for a term of one year, renewable for additional  
 266 one-year terms, subject to re-application, payment of the license  
 267 fee, and compliance with all applicable laws and certifications  
 268 required for the license[.]; and

269 (2) provide written notice to the parties listed in section [[54-43(n)]]  
 270 54-43(m) of the issuance of the license and the procedure to file an

271 appeal with the Board of Appeals.

272 **54-46. Challenge to [Certifications] Applications.**

273 (a) Within 30 days after the application is filed, a [A] challenge [to any  
 274 required certification made by the applicant] may be filed with the  
 275 Director [within 30 days after the application is filed] by [[any party  
 276 entitled to notice under section 54-43(n).]]]:

- 277 (1) a resident or owner of real property located within 300 feet of a
- 278 licensed or proposed license;
- 279 (2) the municipality in which the residence is located;
- 280 (3) any applicable homeowners association, condominium, housing
- 281 cooperative; or
- 282 (4) the owner of the unit or the owner’s rental agent, if the applicant is
- 283 not the owner.]

- 284 (1) a resident or owner of real property located within 300 feet of a
- 285 licensed or proposed license;
- 286 (2) the municipality in which the residence is located;
- 287 (3) any applicable homeowners association, condominium, housing
- 288 cooperative; or
- 289 (4) the owner of the unit or the owner’s rental agent, if the applicant is
- 290 not the owner.

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

- 292 (1) provide notice of the challenge to the applicant;
- 293 (2) provide an opportunity for the applicant to respond to the
- 294 challenge;
- 295 (3) investigate [the] any question of fact raised by the challenge; [and]
- 296 (4) [revoke] approve or deny the license or license renewal after
- 297 reviewing the application, including supporting documents

298 provided by the applicant and challenger, for conformance with  
 299 this Chapter and all other applicable laws and regulations; and [if  
 300 the Director finds that one or more facts certified by the applicant  
 301 is false.]

302 (5) if the license or license renewal is approved:

303 (i) issue the license for a term of one year, renewable for  
 304 additional one-year terms, subject to re-application,  
 305 payment of the license fee, and compliance with all  
 306 applicable laws and certifications required for the license;  
 307 and

308 (ii) provide written notice to the parties listed in section [[54-  
 309 43(n)]] 54-43(m) of the issuance of the license and the  
 310 procedure to file an appeal with the Board of Appeals.

#### 311 **54-47. Suspension and Revocation.**

312 (a) [The license must be suspended for any applicant receiving at least three  
 313 complaints that are verified as a violation of the license or of the County  
 314 Code within any 12-month period.] The Director may suspend or revoke  
 315 any license issued under this Article if the Director finds that the licensee:

316 (1) has violated this Chapter or any other applicable law or regulation;  
 317 [[2) has operated, or permitted to be operated, the bed and breakfast or  
 318 short-term residential rental in a manner that is disruptive to the  
 319 general peaceful enjoyment of the community, dangerous to the  
 320 health and safety of the community, or is a nuisance because of  
 321 noise or other activity; or]]

322 [[3)](2) has been convicted of violating any of the provisions of the  
 323 Criminal Law Article of the Maryland Code listed in in Section 54-  
 324 20 while operating the bed and breakfast or short-term residential



325                            rental[[:]]; or  
 326                            (3)    has repeatedly operated in a manner that is dangerous to the health  
 327                            and safety of the community or is a nuisance because of noise or  
 328                            other activity.

329                            (b)    [Renewal or reinstatement of licenses must follow procedures established  
 330                            by the Director.] Prior to any suspension or revocation, the Director may  
 331                            require the holder of the license to appear before the Director and show  
 332                            cause why the license should not be suspended or revoked.

333    **54-48. Appeals.**

334                            Any person aggrieved by [an approval] the issuance, renewal, denial, revocation  
 335                            or suspension of a bed and breakfast license or short-term rental license may appeal  
 336                            the Director’s decision to the Board of Appeals within 30 days of the Director’s  
 337                            decision, regardless of whether a challenge to the application was filed under Section  
 338                            54-46. [The Board of Appeals must hold a hearing on the appeal within 60 days after  
 339                            the notice of appeal has been filed, and must act on the appeal within 30 days after the  
 340                            hearing.]

341  
 342




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
*County Executive*

MEMORANDUM

March 17, 2023

TO: Evan Glass, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Proposed Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to the Montgomery County Zoning Ordinance, Chapter 59

I am transmitting the attached proposed Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to the Montgomery County, Zoning Ordinance, Chapter 59 of the Montgomery County Code for the County Council’s introduction.

Although most short-term rentals operate within the County’s regulatory framework, there are some that do not, causing serious problems for neighboring properties and, in at least one case, potential threats to public safety. These cases have highlighted shortcomings in County Law, particularly in enforcement. At my request, the Office of the County Attorney, the Department of Health and Human Services, and the Department of Housing and Community Affairs reviewed these shortcomings and recommended changes to the law. This Bill sets forth their recommendations, as follows:

1. Assign enforcement responsibility of bed and breakfast and short-term residential rental licensing to the Department of Housing and Community Affairs.
2. Increase the maximum penalty for violations.
3. Amend the application process for bed and breakfast and short-term residential rental licensing, including a requirement that the applicant is the primary resident.
4. Specify a limit on guests and require smoke and carbon monoxide detectors.
5. Clarify of the process for challenging an application for bed and breakfast and short-term residential rental license.
6. Clarify of the process for suspending or revoking a bed and breakfast or short-term residential rental license.

Bill XX-23, Transient Housing – Short-Term Rental License and ZTA 23-XX, Amendments to  
the Montgomery County Zoning Ordinance, Chapter 59

March 17, 2023

Page 2 of 2

Please let me know if you need additional information in support of this Bill. Thank you.

Enclosure

**Testimony on behalf of County Executive Marc Elrich on Bill 22-23 Transient Housing - Short Term Rental License, and ZTA 23-04, Residential Uses – Short Term Residential Rental**

Thank you for the opportunity to testify on behalf of County Executive Elrich regarding Bill 22-23, Transient Housing - Short Term Rental License and ZTA 23-04, Residential Uses – Short Term Residential Rental. The County Executive thanks the Council President for introducing this legislation.

There are 158 short-term residential rentals licensed, but we believe there are more than 1200 in Montgomery County. Most short-term rentals operate without issues, there are some that do not, creating serious community impacts and, in at least one case, potential threats to public safety. These cases have made us aware of shortcomings in County Law and prompted us to rethink licensing requirements and compliance.

The legislation assigns the administration of short-term residential rental licensing to the Department of Housing and Community Affairs. While the Department of Health and Human Services does tremendous work with limited resources, home rentals in residential areas are not the same as hotels, they are more akin to rental housing already managed by DHCA. This move will allow us to utilize the expertise of the code enforcement and rental housing teams in inspections and compliance.

Currently, the County relies on self-attestation to determine compliance and compliance is entirely complaint driven. Penalties - when levied – can be less than the cost of a single rental. The County receives 2-3 complaints per week, generally for unlicensed or re-occurring problem properties. The complaints fall into several categories:

**Special events**

Only registered guests are allowed at a rental, but we see issues with special occasions when other family members visit those staying at a home. We have also seen promoted, ticketed events and parties with acute community impacts.

Increasing the maximum penalty for violations and establishing a process for suspending or revoking a license will allow us to address issues more swiftly.

**Overcrowding**

The total number of overnight guests who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2. Some larger homes can accommodate more guests, but this is not always the case, especially when multiple families stay together. We see examples of overcrowding with guests sleeping in areas of the home that lack adequate egress or life-safety equipment.

The legislation allows no more than 6 guests, and no more than 2 per bedroom. The bill also requires smoke and carbon monoxide detectors.

### **Primary residence requirements**

A dwelling unit where the short-term residential rental is located must be the primary residence of the applicant. It is extremely difficult and time consuming to determine if this is the case.

The legislation requires the applicant is the owner of the property and the property is that person's primary residence as listed by the State Department of Assessments and Taxation.

### **Lack of notification to neighbors**

Neighbors often find out that a short-term residential rental is licensed in their neighborhood after the 30-day challenge period has passed.

The legislation requires written notice to neighbors and clarifies the process for challenging an application.

### **Maximum allowable rentals in a calendar year**

The maximum of 120 days in a calendar year is not enforceable. The County relies on the neighbors to count the days which pits neighbors versus neighbors.

The legislation requires a point of contact and a registry of guests to be kept and made available to inspectors.

Drafting this legislation included our talented staff in the Department of Health and Human Services, the Department of Housing and Community Affairs, and the Office of the County Attorney. We look forward to engaging with the PHP committee on Bill 22-23 and ZTA 23-04 to address the shortcomings that we have seen in the existing structure as I highlighted, and the solutions proposed in this legislation.

## LEGISLATIVE REQUEST REPORT

BILL: XX-23, Transient Housing - Short-Term License

- DESCRIPTION:** Bill XX-23 assign enforcement responsibility of bed and breakfast and short term residential rental licensing to the Department of Housing and Community Affairs; increase the maximum penalty for violations; amend the application process for bed and breakfast and short-term residential rental licensing, including a requirement that the applicant is the primary resident; specify a limit on guests and require smoke and carbon monoxide detectors; clarify of the process for challenging an application for bed and breakfast and short-term residential rental license; clarify of the process for suspending or revoking a bed and breakfast or short-term residential rental license.
- PROBLEM:** All short-term rentals do not operate within the County’s regulatory framework, which causes problems for neighboring properties. This highlights shortcomings in County law, particularly in enforcement.
- GOALS AND OBJECTIVES:** To ensure County law enforcement on all short-term rentals
- COORDINATION:** The Office of the County Executive and Office of the County Attorney
- FISCAL IMPACT:** Office of Management and Budget
- ECONOMIC IMPACT:** Office of Legislative Oversight
- EVALUATION:** To be researched
- EXPERIENCE ELSEWHERE:** To be researched
- SOURCE OF INFORMATION:** Office of the County Attorney, Edward Lattner, 240-777-6735  
Office of the County Executive, Ken Hartman, 240-777-8206
- APPLICATION WITHIN MUNICIPALITIES:** To be researched
- PENALTIES:** A violation of any provision of Article II or Article III of this Chapter is a class A violation. However, notwithstanding Section 1-19, the Maximum penalty for a civil violation of Article III is \$1,000 for an initial

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## **BILL 22-23: TRANSIENT LODGING FACILITIES – SHORT-TERM RESIDENTIAL RENTAL**

### **SUMMARY**

The Office of Legislative Oversight (OLO) finds the racial equity and social justice impact (RESJ) of Bill 22-23 is indeterminant, due to insufficient information on stakeholders connected to bed and breakfasts and short-term residential rentals, and whether racial and ethnic disparities could emerge from stronger enforcement of laws governing such short-term rental arrangements.

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### **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.<sup>1</sup> 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.<sup>2</sup>

---

### **PURPOSE OF BILL 22-23**

By County law, a ‘bed and breakfast’ is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests, while a ‘short-term residential rental’ is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.<sup>3</sup> Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfasts and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:<sup>4</sup>

- Assign enforcement responsibility for bed and breakfasts and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership.<sup>5</sup> Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

# RESJ Impact Statement

## Bill 22-23

In March 2023, OLO published a RESJIS for Bill 6-23, Housing – Sharing Economy Rental. OLO builds on Bill 6-23’s analysis for this RESJIS.

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### 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 Sharing Economy (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.”<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup>
- 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.”<sup>9</sup> 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.”<sup>10</sup>
- 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.”<sup>11</sup>
- 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.”<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> This effect would disproportionately harm BIPOC renters as they are cost burdened at higher levels than White renters.<sup>15</sup>

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### ANTICIPATED RESJ IMPACTS

If Bill 22-23 works as intended, there will be stronger enforcement of laws governing bed and breakfasts and short-term residential rentals – short-term rental arrangements that are typically facilitated by platforms such as Airbnb and Vrbo. To consider the anticipated impact of Bill 22-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?



# RESJ Impact Statement

## Bill 22-23

- What racial and social inequities could passage of this bill weaken or strengthen?

To answer these questions, OLO considered the various stakeholders that would be impacted by stronger enforcement of bed and breakfasts and short-term residential rentals and RESJ concerns for each group:

- **Homeowners who operate bed and breakfasts or short-term residential rentals** could face increased costs from stronger enforcement, including from expenses necessary to comply with the law or fines from violations of the law. They could also face an increased risk of losing their operating license under certain conditions, including from violations of the law. There is no definitive data on short-term rental operators in the County by race and ethnicity. While homeowners in the County are more likely to be White or Asian (Table 1, Appendix), it is unclear whether short-term rentals could be a more attractive income-generating opportunity for BIPOC homeowners, considering they are cost burdened at higher levels than White homeowners (Table 2, Appendix). Further, it is unclear whether certain homeowners could be subject to more enforcement than others, and whether racial and ethnic disparities in enforcement could emerge.
- **Constituents using bed and breakfasts or short-term residential rentals** could benefit from stronger enforcement of health and safety protocols, though they may face higher prices. Based on research from SE platforms noted in the previous section, short-term rental users may be disproportionately White and BIPOC users may experience discrimination. However, there is no definitive data on short-term rental users in the County by race and ethnicity.
- **Constituents living near bed and breakfasts or short-term residential rentals** could benefit from stronger enforcement mitigating inconveniences in their neighborhoods related to short-term rentals. It is unclear whether certain communities could be subject to more enforcement than others, and whether racial and ethnic disparities in enforcement could emerge by community demographics.

Taken together, OLO finds the RESJ impact of Bill 22-23 is indeterminant.

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## 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.<sup>16</sup> OLO finds the RESJ impact of Bill 22-23 is indeterminant. As such, OLO does not offer recommended amendments. However, should the Council seek to improve the RESJ impact of this Bill, the following policy option can be considered:

- **Collecting RESJ and enforcement data for bed and breakfasts and short-term residential rentals.** Requiring applicants to report their race and ethnicity when applying for a bed and breakfast or short-term residential rental license could provide a better understanding of the demographics of short-term rental operators in the County. Collecting demographic data along with data on enforcement actions, such as the imposition of fines or license revocations, would allow for analysis that could determine whether racial and ethnic disparities emerge from stronger enforcement of the law.

# RESJ Impact Statement

## Bill 22-23

### 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<sup>17</sup>**

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.

<sup>1</sup> 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>

<sup>2</sup> Ibid

<sup>3</sup> Montgomery County, Maryland, County Code § 54-1

<sup>4</sup> Introduction Staff Report for Bill 22-23, Montgomery County Council, Introduced April 18, 2023. [https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230418/20230418\\_3-4A.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230418/20230418_3-4A.pdf)

<sup>5</sup> Ibid

<sup>6</sup> 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>

# RESJ Impact Statement

## Bill 22-23

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<sup>7</sup> Benjamin Edelman, et al, “Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment,” American Economic Journal: Applied Economics. April 2017. <https://www.aeaweb.org/articles?id=10.1257/app.20160213>

<sup>8</sup> Sara Clemence, “Black Travelers Say Home-Share Hosts Discriminate, and a New Airbnb Report Agrees,” The New York Times, December 13, 2022. <https://www.nytimes.com/2022/12/13/travel/vacation-rentals-racism.html>

<sup>9</sup> Cansoy and Schor

<sup>10</sup> 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>

<sup>11</sup> Yanbo Ge, et al, “Racial Discrimination in Transportation Network Companies,” Journal of Public Economics, October 2020.

<https://www.sciencedirect.com/science/article/pii/S0047272720300694>

<sup>12</sup> Akshat Pandey and Aylin Caliskan, “Disparate Impact of Artificial Intelligence Bias in Ridehailing Economy’s Price Discrimination Algorithms,” AAAI/ACM Conference on Artificial Intelligence, Ethics, and Society, May 2021. <https://arxiv.org/abs/2006.04599>

<sup>13</sup> 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>

<sup>14</sup> 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](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006832)

<sup>15</sup> 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>

<sup>16</sup> Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

<sup>17</sup> 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 22-23: Transient Lodging Facilities – Short-Term Residential Rental

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 22-23 will have no impact on the County's contribution to addressing climate change as the Bill is proposing changes to laws governing bed and breakfast and short-term residential rentals in order to ensure County law enforcement on these rentals.

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### BACKGROUND AND PURPOSE OF BILL 22-23

By County law, a 'bed and breakfast' is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests, while a 'short-term residential rental' is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.<sup>1</sup> Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfast and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:<sup>2</sup>

- Assign enforcement responsibility for bed and breakfast and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership.<sup>3</sup> Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

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## ANTICIPATED IMPACTS

As Bill 22-23 is proposing changes to laws governing bed and breakfast and short-term residential rentals, OLO anticipates it will have 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.

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## RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.<sup>4</sup> OLO does not offer recommendations or amendments as Bill 22-23 is likely to have 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.

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## 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.

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## 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.

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## CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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<sup>1</sup> Montgomery County, Maryland, County Code § 54-1

<sup>2</sup> [Introduction Staff Report for Bill 22-23, Montgomery County Council, Introduced April 18, 2023.](#)

<sup>3</sup> Ibid

<sup>4</sup> Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

# Economic Impact Statement

Montgomery County, Maryland

## Bill 22-23      Transient Lodging Facilities – Short-Term Residential Rental

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 22-23 would have a neutral impact on economic conditions in the County in terms of the Council’s priority indicators. As discussed below the Bill likely would increase operating costs and decrease revenues for certain homeowners who operate short-term residential rentals or a bed and breakfast, and increase rents to certain residents who use these facilities. However, OLO anticipates several factors to mitigate these negative impacts. For one, the Bill would negatively impact only a small percentage of all homeowners in the sector, and its negative impact on resident customers would be small on a per customer basis. Moreover, costs to County businesses and residents would be mitigated by homeowners passing on a portion of the higher costs to non-resident customers. Finally, it is worth noting that enhanced enforcement could prevent certain Homeowner Associations from banning short-term residential rentals, which would decrease the market.

### BACKGROUND AND PURPOSE OF BILL 22-23

By County law, a “bed and breakfast” is defined as a detached house that is owner-occupied with no more than five guest rooms for rent and customarily serves breakfast to guests. A “short-term residential rental” is defined as the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.<sup>1</sup> Rental arrangements such as these have increased with the growing popularity of online platforms such as Airbnb and Vrbo.

The purpose of Bill 22-23 is to update the law governing bed and breakfast and short-term residential rentals in the County. The proposed changes incorporate recommendations made by the Office of the County Attorney (OCA), the Department of Health and Human Services (DHHS), and the Department of Housing and Community Affairs (DHCA) to address enforcement difficulties since the law was adopted in 2017. If enacted, Bill 22-23 would:

- Assign enforcement responsibility for bed and breakfast and short-term residential rentals to DHCA;
- Increase the maximum penalty for a violation of bed and breakfast and short-term residential rental laws;
- Clarify and update certain provisions regarding the application for a bed and breakfast or short-term residential rental license; and
- Clarify various processes for bed and breakfast and short-term residential rental licenses, including processes for challenging an application for a license, suspending or revoking a license, and appealing the decision on a license to the Board of Appeals.<sup>2</sup>

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<sup>1</sup> Montgomery County Code, [Sec. 54-1](#).

<sup>2</sup> [Introduction Staff Report for Bill 22-23](#).

Bill 22-23 was introduced along with Zoning Text Amendment (ZTA) 23-04, which amends certain requirements related to the number of rental days and property ownership. Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental, was introduced by the Council President on behalf of the County Executive on April 18, 2023.

## **INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS**

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 22-23 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.<sup>3</sup>

To examine the Bill’s impacts on the Council’s priority indicators, OLO performs a qualitative assessment based on the following sources of information:

- Correspondence with County personnel from DHHS, DPS, and OCA; and
- County webpages on Short-Term Residential Rentals and Bed and Breakfasts.

## **VARIABLES**

The primary variables that would affect the economic impacts of enacting Bill 22-23 are the following:

- Total number of license revocations or suspensions;
- Total number of licenses issued;
- Average rents; and
- Percentage of 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 enacting Bill 22-23 would have a small negative impact on certain private organizations in the County in terms of the Council’s priority economic indicators.

The primary businesses impacted by the Bill would be homeowners who operate short-term residential rentals or bed and breakfasts. According to personnel from DHHS, there are currently 1,158 advertised short-term residential rentals, 153 of which are licensed with the County. Currently, there are three licensed bed and breakfast facilities.

By strengthening the County’s powers to revoke and suspend licenses and increasing penalties for violating laws and regulations regarding short-term residential rentals and bed and breakfasts, certain homeowners would be negatively impacted in terms of operating costs and business income. Higher penalties would increase operating expenses and

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



revoked or suspended licenses would reduce business revenue for affected homeowners. Holding all else equal, affected homeowners would experience net losses in business income. However, certain homeowners likely would pass on a portion of these costs to their customers in the form of higher rents, thereby mitigating these negative impacts.

Moreover, OLO expects a small percentage of homeowners to be impacted by these policy changes. Enforcement of applicable laws and regulations is complaint-driven. According to DHHS and DPS personnel, only a minority of short-term residential rentals receive complaints to the County.

The Bill may increase operating costs for certain homeowners in two other ways. By requiring businesses to maintain a permanent register, certain businesses may experience minor operating expenses associated with updating their bookkeeping systems. In addition, DHCA may increase the share of short-term residential rentals or bed and breakfasts that are licensed with the County. Homeowners who otherwise would not attain a license in the absence of the policy change would pay an annual licensing fee of \$150. Again, certain homeowners likely would pass on a portion of increased costs to their customers in the form of higher rents.

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

## **Residents**

OLO anticipates that enacting Bill 22-23 would have a small negative impact on certain residents in the County in terms of the Council's priority economic indicators. For one, all short-term residential rentals and bed and breakfasts must be the primary residence of owners. Therefore, any homeowners negatively affected by the policy changes as described above would be residents. Holding all else equal, increased operating costs or forgone revenue would reduce their household income. Second, certain homeowners likely would pass on increased costs to customers in the form of higher rents, a portion of which likely would be residents. Holding all else equal, these residents would experience a minor decrease in discretionary income.

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

## **Net Impact**

OLO anticipates that enacting Bill 22-23 would have a neutral impact on overall economic conditions in the County in terms of the Council's priority economic indicators. As described above, the Bill likely would increase operating costs and decrease revenues for certain homeowners who operate short-term residential rentals or bed and breakfast, and increase rents to certain residents who use these facilities. However, OLO anticipates several factors to mitigate these negative impacts. For one, the Bill would negatively impact only a small percentage of all homeowners in the sector, and its negative impact on resident customers would be small on a per customer basis. Moreover, costs to County businesses and residents would be mitigated by homeowners passing on a portion of the higher costs to non-resident customers. Finally, it is worth noting that enhanced enforcement could prevent certain Homeowner Associations from banning short-term residential rentals, which would decrease the market.

## DISCUSSION ITEMS

Not applicable

## WORKS CITED

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

Montgomery County Council. [Introduction Staff Report for Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental.](#) Introduced on April 18, 2023.

## 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.

## AUTHOR

Stephen Roblin (OLO) prepared this report.



# Fiscal Impact Statement

Office of Management and Budget

## Bill 22-23 Transient Lodging Facilities - Short-Term Residential Rental

**Bill Summary** Bill 22-23 moves the enforcement authority of bed and breakfast and short-term residential rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA). The Bill also amends the application process for bed and breakfast or short-term residential rental licenses; increases the penalty for violations; and strengthens language for enforcement purposes.

**Fiscal Impact Summary** Revenues are projected to increase by \$48,800 in FY24, with annualized revenues of at least \$218,000 beginning in FY25 and each year thereafter. Expenditures are estimated to increase by \$270,100 in FY24, increasing to \$542,700 beginning in FY25 and each year thereafter.

Fiscal Year	2024	2025	2026	2027	2028	2029	Total
Personnel Costs	\$134,000	\$536,100	\$536,100	\$536,100	\$536,100	\$536,100	\$2,814,500
Operating Expenses	\$136,100	\$6,600	\$6,600	\$6,600	\$6,600	\$6,600	\$169,100
<b>Total Expenditures</b>	<b>\$270,100</b>	<b>\$542,700</b>	<b>\$542,700</b>	<b>\$542,700</b>	<b>\$542,700</b>	<b>\$542,700</b>	<b>\$2,983,600</b>
Revenues	\$48,800	\$218,000	\$221,900	\$225,900	\$229,900	\$234,000	\$1,178,500
<b>Total Impact</b>	<b>(\$221,300)</b>	<b>(\$324,700)</b>	<b>(\$320,800)</b>	<b>(\$316,800)</b>	<b>(\$312,800)</b>	<b>(\$308,700)</b>	<b>(\$1,805,100)</b>
FTE	5.00	5.00	5.00	5.00	5.00	5.00	

This fiscal impact analysis only reflects the *net* change in expenditures and revenues that will result from enactment of this bill. Therefore expenditure increases DHCA expects to incur when implementing this bill are partially offset by expenditure reductions DHHS expects when the existing short-term residential rental licensing function is transitioned out of its purview. The bill also addresses enforcement challenges experienced since the County began licensing short-term residential rentals. With an increased citation fine and availability of adequate resources to effectively implement the bill, DHCA projects that most short-term residential rentals will comply with the County's licensing requirements. While the bill may be implemented in FY24, it will likely take several months to initialize the program and hire staff. This fiscal impact analysis assumes that employees begin working by the fourth quarter of FY24 (nine-month lapse); one-fourth of currently operating short-term residential rentals apply for a license in FY24; and no revenue from citation fines is collected in FY24. Each year thereafter, full year operations are assumed.

**Revenues:** Revenues reflect the sum of DHCA's projected license fee revenues and citation fine revenues, less existing revenues DHHS already incurs through the program. DHHS indicates that an average of 180 licenses are issued annually at \$150 per license, for total annual revenue of \$27,000. With the bill's strengthened enforcement provisions, DHCA expects license applications to increase to 1,300 to align with the number of short-term residential rental properties that are estimated to be currently operating in the County. Total license fee revenue for 1,300 properties would total \$195,000, for a net revenue increase of \$168,000 under the bill. After the initial 1,300 are licensed, DHCA also expects the number of applications to grow approximately 1.5% each year, in line with annual growth in applications seen in other types of licenses. The bill also increases the penalty for a citation from the current \$500 amount to a maximum of \$1,000. DHHS currently issues very few citations each year (only four have been issued in the past three years). Under the strengthened enforcement provisions, DHCA expects to issue approximately 50 citations in the first full year and for citations to increase by one each year thereafter, generating \$1,000 in revenue per citation (\$50,000 in the first full year of operations). No citation revenue is projected in FY24 during the initial months of operation under DHCA's purview.

**Fiscal Impact Analysis**

	Prior to Enactment	FY24*	FY25	FY26	FY27	FY28	FY29
<b>License Fee Revenue</b>							
Licenses Issued**	180	325	1,300	1,320	1,339	1,359	1,380
License Fee	\$150	\$150	\$150	\$150	\$150	\$150	\$150
<b>Subtotal License Fee Revenue</b>	<b>\$27,000</b>	<b>\$48,750</b>	<b>\$195,000</b>	<b>\$197,925</b>	<b>\$200,894</b>	<b>\$203,907</b>	<b>\$206,966</b>
Less Existing Revenue			-\$27,000	-\$27,000	-\$27,000	-\$27,000	-\$27,000
<b>Net License Fee Revenue</b>		<b>\$48,750</b>	<b>\$168,000</b>	<b>\$170,925</b>	<b>\$173,894</b>	<b>\$176,907</b>	<b>\$179,966</b>
<b>Citation Fine Revenue</b>							
Number of citations***	< 2 per year	0	50	51	52	53	54
Citation fine	\$500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
<b>Fine revenue</b>	<b>Negligible</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$51,000</b>	<b>\$52,000</b>	<b>\$53,000</b>	<b>\$54,000</b>
<b>GRAND TOTAL NET REVENUES</b>		<b>\$48,750</b>	<b>\$218,000</b>	<b>\$221,925</b>	<b>\$225,894</b>	<b>\$229,907</b>	<b>\$233,966</b>

\* FY24 reflects three months of operation (April-June 2024), reflecting the time it will take DHCA to hire staff and implement the program. No citation revenue is expected in FY24.

\*\* DHCA assumes license applications will increase by 1.25% each year, in line with recent experience for other license programs.

\*\*\* DHCA assumes citation rates will increase by 4.5% each year, in line with recent experience for other license programs.

**Expenditures:** Expenditures increase to support additional staff; vehicle purchases; and other miscellaneous operating costs. DHCA expects to need two licensing staff, two inspectors, and one IT specialist which create \$536,100 in new personnel costs annually, as discussed further in the *Staff Impact* section of



this analysis. Operating expenditures are comprised of the miscellaneous operating supplies needed for the new positions (\$20,600 one-time and \$2,600 ongoing costs); two vehicles to facilitate the Housing Code Inspectors' property inspections and enforcement work (\$113,800 one-time vehicle purchase and \$2,000 ongoing operation and maintenance costs).

	FY24*	FY25	FY26	FY27	FY28	FY29
<b>Personnel Costs</b>						
<u>Licensing and Regulation</u>						
FTE	2.0	2.0	2.0	2.0	2.0	2.0
Program Specialist II (G21)	\$25,031	\$100,126	\$100,126	\$100,126	\$100,126	\$100,126
<i>Subtotal</i>	<i>\$50,063</i>	<i>\$200,252</i>	<i>\$200,252</i>	<i>\$200,252</i>	<i>\$200,252</i>	<i>\$200,252</i>
<u>Code Enforcement</u>						
FTE	2.0	2.0	2.0	2.0	2.0	2.0
Housing Code Inspector III (G23)	\$26,922	\$107,687	\$107,687	\$107,687	\$107,687	\$107,687
<i>Subtotal</i>	<i>\$53,844</i>	<i>\$215,375</i>	<i>\$215,375</i>	<i>\$215,375</i>	<i>\$215,375</i>	<i>\$215,375</i>
<u>Information Technology</u>						
FTE	1.0	1.0	1.0	1.0	1.0	1.0
Information Technology Specialist III (G26)	\$30,128	\$120,510	\$120,510	\$120,510	\$120,510	\$120,510
<i>Subtotal</i>	<i>\$30,128</i>	<i>\$120,510</i>	<i>\$120,510</i>	<i>\$120,510</i>	<i>\$120,510</i>	<i>\$120,510</i>
<b>Subtotal Personnel Costs</b>	<b>\$134,034</b>	<b>\$536,137</b>	<b>\$536,137</b>	<b>\$536,137</b>	<b>\$536,137</b>	<b>\$536,137</b>
<b>Operating Expenditures</b>						
One-Time Purchase of Two Vehicles for Inspectors	\$113,828					
Vehicle Operation and Maintenance	\$1,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
One-time Equipment to Support Staff (Laptop, Phone, Supplies)	\$20,610					
Ongoing Staff Communications and Software Costs	\$655	\$2,620	\$2,620	\$2,620	\$2,620	\$2,620
<b>Subtotal Operating Expenditures</b>	<b>\$136,093</b>	<b>\$6,620</b>	<b>\$6,620</b>	<b>\$6,620</b>	<b>\$6,620</b>	<b>\$6,620</b>
<b>GRAND TOTAL EXPENDITURES</b>	<b>\$270,127</b>	<b>\$542,757</b>	<b>\$542,757</b>	<b>\$542,757</b>	<b>\$542,757</b>	<b>\$542,757</b>

\* Personnel costs are lapsed nine months to reflect DHCA's anticipated hiring timeline after bill enactment. Vehicle operations and maintenance and ongoing operating expenditures to support staff communications and software are also anticipated for three months in FY24.

**Staff Impact**

**DHHS Staff Impact:** No full DHHS position is devoted to this function. DHHS estimates that a Senior Administrator of DHHS Licensure and Regulatory Services spends 150 hours annually on researching for approval of licensing, corresponding with complainants, answering licensing questions, and sending enforcement letters for violations; and that a field inspector spends a total estimated 25 hours annually verifying violations and an estimated additional 50 hours assisting in complaints and questions. Upon enactment, DHHS plans to repurpose staff time to other functions and will not delete any positions as a result of transferring short-term residential rentals licensing to DHCA.

**DHCA Staff Impact:** While DHHS required relatively little staff time to administer this function, DHCA advises the bill's strengthened enforcement provisions will necessitate additional staff time to ensure greater compliance with County licensing requirements. There are currently an estimated 1,300 short-term residential rentals in the County, but fewer than 13% are licensed. To license and inspect 1,300 properties, DHCA expects to need two licensing staff and two inspectors. FY24 personnel costs are lapsed nine months to align with DHCA's anticipated hiring timeline after bill passage. DHCA also indicates that an IT position is needed to implement the bill.

**DHCA Licensing Staff:** A single program specialist is expected to handle approximately 600 properties. Two Program Specialist II (Grade 21) positions are needed to serve the 1,300 short-term residential rentals in the County. The annualized personnel costs for a Program Specialist II position is approximately \$100,100, or \$200,300 for both positions.

**DHCA Code Enforcement Staff:** In addition, DHCA expects to need two Housing Code Inspector III positions (Grade 23) to inspect properties and investigate complaints. One Housing Code Inspector typically has the capacity for 1,200 inspections per year. However, Short Term Residential Rental inspections are expected to differ from DHCA's other inspection work because there will be a need for: re-inspections if violations are found at a property; multiple visits prior to issuance of a citation; and a post-citation inspection before civil citations are adjudicated. Annualized personnel costs for a Housing Code Inspector are \$107,700, or \$215,400 for both positions.

**DHCA Information Technology Staff:** DHCA indicates that its existing IT capacity cannot absorb the increased workload associated with required enhancements of existing Licensing and Code Enforcement databases, as well as ongoing infrastructure maintenance to support integration of the Host Compliance platform into DHCA's IT systems. DHCA estimates that an Information Technology Specialist III (Grade 26) will be needed to implement the bill. Annualized personnel costs for an Information Technology Specialist III are \$120,500.

**Actuarial Analysis**

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

**Information Technology Impact**

DHHS currently utilizes an online database for tracking, enforcement, and licensing of short-term residential rentals. Upon transferring the function to DHCA, DHHS' use of the database will end (decreasing DHHS expenditures by \$80,000). DHCA plans to continue to use the DHHS' existing database contract at the same cost. As a result, there is no expected net expenditure increase for database costs after enactment. In addition, as described in the *Staff Impact* section of this analysis, DHCA anticipates needing one Information Technology Specialist III to implement the bill.

**Other Information**

*Later actions that may impact revenue or expenditures if future*

The bill does not authorize future spending.



spending is projected

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

DHCA expects a significantly higher frequency of applications, licenses, and citations issued than DHHS' recent experience. Revenue estimates could vary significantly depending on the accuracy of DHCA's estimates. For example, upon more stringent enforcement, currently unlicensed short-term residential rentals could choose to either apply for a license or discontinue operations. Until the effect of stringent enforcement begins to influence licensing and citation rates, the impact on revenues will likely remain unpredictable. Operating expenditures also depend on DHCA's expectation that there will be increased applications for licenses and increased enforcement activity. If the demand for licensing services and enforcement is different than current estimates, the staff needed to effectively implement the bill will vary.

Contributors

Tamala Robinson, DHCA  
Tiffany Johnson, DHCA  
Melissa Nolin, DHCA  
Nathan Bovelle, DHCA  
Pofen Salem, DHCA  
Jason Rundell, DHHS  
Kenneth Welch, DHHS  
Anita Aryeetey, OMB  
Grace Pedersen, OMB





**June 5, 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:** Bill 22-23 and Zoning Text Amendment No. 23-04

#### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on June 1, 2023 and by a vote of 5:0 recommended modifications to Bill 22-23, and to not support Zoning Text Amendment (ZTA) 23-04. This paired Bill and ZTA would amend the county's rules and enforcement mechanisms pertaining to Short-Term Residential Rentals. These changes include shifting the primary enforcement of Short-Term Residential Rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA), modifying the license process, clarifying the rules around challenges, suspensions, revocations, appeals of licenses and enforcement actions, and modifying rules on who can apply both as a host and as a tenant of a Short-Term Residential Rental.

The Planning Board supports many of the technical elements of Bill 22-23, including the reassignment of enforcement to DHCA, amending some of the application requirements, clarifying the challenge process for applications, the suspension or revocation of rental licenses, and the appeals process. The Board however has major concerns over many of the policy aspects of the Bill such as increasing the first time and maximum penalties for violations, removing owner-authorized residents from being applicants, or limiting the total number of guests based on bedrooms without exceptions for children. The request for these changes seemed to be based on unspecified concerns over enforcement described in the County Executive's transmittal. Without further explanation, there is no way to discern if these policy changes will result in meaningful improvement to enforcement or if the result will instead result in reduced flexibility for lessors and travelers. Staff asked for the complaints that were cited as the need for the policy changes and none were provided.

The Board does not support any of the proposed changes in ZTA 23-04 and recommends the ZTA not be approved. The only changes proposed in the ZTA were two of the policy changes that are also not supported in the Bill; removing owner-authorized residents from the process and placing limits on renters to no more than two per bedroom, with a total guests limited at six.

The Honorable Evan Glass

June 5, 2023

Page Two

The Board appreciates the opportunity to pass along its comments for Bill 22-23 and ZTA 23-04. The Board appreciates the added clarity to the entire application and licensing process for Short-Term Residential Rentals but remains concerned the proposed changes to their operations do more harm than good. Planning Staff are available and committed to work with the Council as the Bill and ZTA move forward.

#### **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, June 1, 2023.



**Jeffrey Zyontz**

Chair

Attachments: A - Planning Staff Report  
B - Introduction Packet for Bill 22-23 and ZTA 23-04  
C - Climate assessment For ZTA 23-04



**RESIDENTIAL USES – SHORT TERM RESIDENTIAL RENTALS  
ZTA 23-04 & BILL 22-23**

Description

Bill 22-23 and ZTA 23-04 amend provisions around Short-Term Residential Rentals. Bill 22-23 reassigns licensing and enforcement responsibilities to the Department of Housing and Community Affairs, modifies the application process, increases penalties and clarifies the processes for challenges, suspensions, revocations and appeals. ZTA 23-04 limits the total number of overnight guests regardless of age, and removes owner-authorized agents or residents from applying for the use.

ZTA 23-03  
Completed: 5-25-2023

MCPB  
Item No. 6  
6-1-2023

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



## Planning Staff

BB

Benjamin Berbert, Planner III, Countywide Planning and Policy  
[Benjamin.Berbert@montgomeryplanning.org](mailto:Benjamin.Berbert@montgomeryplanning.org), 301-495-4644

ymg

Lisa Govoni, Planner IV, Countywide Planning and Policy  
[Lisa.Govoni@montgomeryplanning.org](mailto:Lisa.Govoni@montgomeryplanning.org), 301-650-5624

JS

Jason Sartori, Chief, Countywide Planning and Policy  
[Jason.Sartori@montgomeryplanning.org](mailto:Jason.Sartori@montgomeryplanning.org), 301-495-2172

### ZTA SPONSORS

Lead Sponsor: Council President Glass, at the request of the County Executive

### INTRODUCTION DATE

April 18, 2023

### REVIEW BASIS

Chapter 54

Chapter 59



### Summary:

- Bill 22-23 and ZTA 23-04 will amend the provisions for Short-Term Residential Rentals.
- Bill 22-23 will reassign enforcement responsibility to DHCA; increase the maximum penalty; amend the application process; and clarify the processes for challenges, suspensions, revocations, and appeals.
- ZTA 23-04 will require the dwelling unit to be the property owner's primary residence, limit the number of overnight guests regardless of age, and remove language for owner-authorized agents.

## TABLE OF CONTENTS

SECTION 1: BACKGROUND .....	3
RATIONALE FOR INTRODUCTION .....	3
SECTION 2: BILL 22-23 AND ZTA 23-04 AS INTRODUCED .....	3
BILL NO. 22-23 AS INTRODUCED .....	3
ZTA NO. 23-04 AS INTRODUCED .....	6
SECTION 3: BILL & ZTA ANALYSIS AND RECOMMENDATIONS .....	6
BILL 22-23 ANALYSIS AND RECOMMENDATIONS .....	6
ZTA 23-04 ANALYSIS AND RECOMMENDATIONS .....	8
SECTION 4: LEGISLATED ANALYSIS.....	8
CLIMATE ASSESSMENT.....	9
RACIAL EQUITY AND SOCIAL JUSTICE (RESJ).....	9
SECTION 5: CONCLUSION .....	9
ATTACHMENTS .....	9

## SECTION 1: BACKGROUND

### RATIONALE FOR INTRODUCTION

Zoning Text Amendment (ZTA) 23-04, Residential Uses – Short-Term Residential Rental, and Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental were both introduced April 18, 2023 (Attachment A). A tentative Council Public Hearing date is set for both items on June 13, 2023. The ZTA and the bill were both introduced at the request of the County Executive.

These changes to existing county law are requested by the Executive Branch in part because there have been occasions of short-term residential rentals resulting in potential threats to public safety. These instances have highlighted shortcomings in the existing law and in its enforcement mechanisms. Some of the changes proposed by Bill 22-23 have a correlation to ongoing Council discussions on Bill 6-23 Sharing Economy Rental, such as which county agency is responsible for enforcement, the expected types of civil penalties, and general limitations around the prospective uses.

## SECTION 2: BILL 22-23 AND ZTA 23-04 AS INTRODUCED

### BILL NO. 22-23 AS INTRODUCED

Bill 22-23 amends the provision for Short-Term Residential Rentals. Bill 22-23 reassigns enforcement of short-term rentals from the Department of Health and Human Services (DHHS) to the Department of Housing and Community Affairs (DHCA). The bill also increases the maximum penalty, amends the application process, and clarifies the processes related to challenges, suspensions, revocations, and appeals.

#### Definitions

Under Section 54-1, Definitions, director means the Director of Department of Housing and Community Affairs, or the Director's designee in Article III (Bed and Breakfast and Short-Term Residential Rental).

Department means the Department of Health and Human Services in Article II (hotels), and Department means the Department of Housing and Community Affairs in Article III (Bed and Breakfast and Short-Term Residential Rental).

The definition of primary resident is also added, which is defined as a person who regularly resides at the location designated for legal purposes of obtaining a driver's license and filing tax returns or any other proof of occupancy approved by the Director.

The definition of short-term residential rental is amended to add “by the same individuals.” The proposed definition reads “means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days by the same individuals as allowed under Section 59-3.3.3. I of this Code.”

#### Authority of Executive to Regulate and License

Section 54-2 is amended to allow the Executive to adopt regulations, under method (3)<sup>1</sup>, concerning the operation, maintenance, conduct, application, licensing, and license fees for a hotel, short-term residential rental, or bed and breakfast.

These changes allow the Executive to adopt regulations related to applications for hotel, bed and breakfasts, with the new addition of short-term residential rentals.

#### Violation of Article; Penalties

The penalty for a civil violation under Section 54-4 is a class A violation. The maximum penalty for a civil violation is increased to \$1,000 for an initial or repeat offense (increased from \$500 for an initial offense, and \$750 for a repeat offense). Each day a violation continues is a separate offense.

#### Application for License

Section 44-53 adds several new additions, modifications or clarifications to the application for license of a bed and breakfast and short-term rental. They include:

1. The applicant must be the owner of the dwelling unit where the bed and breakfast or the short-term residential rental is located (as modified from the owner or owner-authorized agent of the facility).
2. The applicant will maintain a registry of all guests at the bed and breakfast or the short-term residential rental, readily available for inspection by the department.
3. The applicant has not been found guilty of a violation of this Chapter in 36 months (changed from 12 months).
4. The number of registered guests in the short-term residential rental who are 18 years or older is limited to two per bedroom, provided that the total number of registered guests in the short-term residential rental must not exceed six, regardless of age. Currently, the total number of **overnight** guests in the short-term residential rental who are 18 years or older is limited to six, and the total number of overnight guests 18 years of older is limited to two per bedroom.
5. The dwelling unit will not be used as a short-term residential rental for no more than 120 days in a calendar year when the property owner is not physically present.

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<sup>1</sup> Method 3 fee regulations are approved by the County Executive.

## License Approval and Renewal

The Director of DHCA must review the application, including supporting documents provided by the applicant, for conformance with the chapter and all other applicable laws and regulations. This a change, where the current law requires the Director to accept the self-certification of the applicant after verifying compliance. The Department may also inspect the property.

This section (54-45) also changes the timeline requirements for license or license renewal approval or denial from 15 days to no earlier than 30 and no later than 60 days.

If the license is approved, written notice on the issuance of the license and procedure to file an appeal with the Board of Appeals is required to the parties in section 54-43(n), which includes abutting and confronting neighbors in a single-unit or attached unit, neighborhoods living across the hall and those that share a ceiling, floor, walls, with the applicant's unit in a multi-unit building, the municipality in which the bed and breakfast or short-term residential rental is located, an applicable homeowner's association, condominium, or housing cooperative.

## Challenge to Applications

Within 30 days after the application is filed, a challenge may be filed with the Director by any party entitled to notice. Parties entitled to notice include abutting and confronting neighbors in a single-unit or attached unit, neighborhoods living across the hall and those that share a ceiling, floor, walls, with the applicant's unit in a multi-unit building, the municipality in which the bed and breakfast or short-term residential rental is located, an applicable homeowner's association, condominium, or housing cooperative.

## Suspension and Revocation

The Director may suspend or revoke any license issued if the Director finds that the licensee:

1. Has violated this Chapter or any other applicable law or regulation.
2. Has operated, or permitted to be operated, the bed and breakfast or short-term residential rental in a manner that is disruptive to the general peaceful enjoyment of the community, dangerous to the health and safety of the community, or is a nuisance because of noise or other activity.
3. Has been convicted of violating any of the provisions of the Criminal Law Article of the Maryland Code listed in in Section 54- 20 while operating the bed and breakfast or short-term residential rental.

This is a change from the current law, where the license may be suspended for any applicant receiving at least three verified complaints as a violation of the license in 12-months.

Prior to suspension or revocation, the Director may require the holder of the license to appear before the Director and show cause as to why the license should not be suspended or revoked.

## Appeals

Any person aggrieved by the issuance, renewal, denial, revocation or suspension of a bed and breakfast license or short-term rental license may appeal the Director's decision to the Board of Appeals within 30 days of the Director's decision.

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### ZTA NO. 23-04 AS INTRODUCED

ZTA 23-04 makes changes to the use standards for Short-Term Residential Rental, under Section 3.3.3. Accessory Residential Use, subsection I. Short-Term Residential Rental. The first three changes, in subsections b. and c. on ZTA lines 17, 19 and 22 remove the phrase 'or owner-authorized resident'. The current standards in subsection b. allow an eligible dwelling unit to be the owner's, or owner-authorized resident's primary dwelling. With this change, an eligible dwelling unit may only be the owner's primary residence. Subsection c. provides differing standards for how many days a dwelling may be rented based on whether the owner or authorized resident is present or not. The ZTA removed the 'authorized resident' language in keeping with the change to the previous section.

The final change in the ZTA modifies subsection e. on line 29 to remove 'who are 18 years or older'. Currently, there is a limit of up to six overnight guests who are 18 years or older, but otherwise no total limit on the number of guests. The effect of the ZTA caps total guests, regardless of age, at six.

## SECTION 3: BILL & ZTA ANALYSIS AND RECOMMENDATIONS

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### BILL 22-23 ANALYSIS AND RECOMMENDATIONS

The proposed changes in Bill 22-23 effectively do several things:

1. Assigns enforcement responsibility to the Department of Health and Human Services for Article II (hotels) and to the Department of Housing and Community Affairs for Article III (bed and breakfasts and short-term residential rentals).

During the Council discussion on the creation of the initial Short-Residential Rental ZTA ([ZTA 17-03](#)) and bill ([Bill 2-16](#)), one of the discussion items was about the appropriate enforcement agency<sup>2</sup>. At the time it was decided DHHS would do the enforcement because the agency is currently responsible for licensing and enforcement related to transient lodging and similar facilities. However, Planning staff has no issue with updating the enforcement agency to DHCA since it already handles enforcement for

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<sup>2</sup> [http://montgomerycountymd.granicus.com/MetaViewer.php?view\\_id=169&event\\_id=7407&meta\\_id=142911](http://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=7407&meta_id=142911)

long-term rental housing. It seems appropriate to have DHCA handle enforcement for short-term rentals and bed and breakfasts as well.

2. Increases the maximum penalty for a violation of Article III of Chapter 54.

The maximum penalty under the proposed bill is increased to \$1,000 for an initial or repeat offense, even though it is a Class A violation. Currently, a Class A violation for a civil violation maximum penalty is \$500 for an initial offense, and \$750 for a repeat offense. Planning staff does not understand why the maximum penalty would be higher than what is already in the code for a Class A violation ([Sec 1-19. Fines and penalties](#)) or higher than [the penalty for failing to obtain a rental license](#). Staff supports keeping the maximum penalty for the violation consistent with what is already in the code and what is already the penalty for failing to obtain a rental license, which \$500 for an initial civil violation maximum penalty, and \$750 for a repeat offense.

3. Amends the application process for a bed and breakfast or short-term residential rental license.

One of the biggest changes proposed in the bill is the removal of “owner-authorized agent of the facility” from those that can apply for a license. Planning staff does not support this change. As noted below in the ZTA analysis, this does not allow short-term rentals to be offered by renters who are authorized to do so by their landlord. Previously, there was a noticing requirement of the owner of the unit or the owner’s rental agent if the applicant is not the owner. Staff believes this noticing is sufficient and should be added back in to allow renters who have the approval of their landlord to have a short-term rental.

The new changes also clarify that the dwelling unit will not be used as a short-term residential rental for more than 120 days (about 4 months) in a calendar year when the property owner is not present. Planning staff supports this recommendation, as this requirement is consistent with what is already in the Zoning Code.

Also changed is that the number of registered guests in the short-term residential rental who are 18 years or older is limited to two per bedroom, provided that the total number of registered guests in the short-term residential rental must not exceed six, regardless of age. Currently, the total number of **overnight** guests in the short-term residential rental who are 18 years or older is limited to six, and the total number of overnight guests 18 years or older is limited to two per bedroom, with no limits on guests under 18 years of age.

Planning staff does not support the recommended changes, as it views the changes as potentially too restrictive to families traveling to the county. Staff would support amending this section of the bill to continue limiting adults to no more than six and cap the total rental size based on two guests of any age per bedroom. A second option would be to provide some type of exemption for parties larger than six from the same immediate family unit.

4. Clarifies the process for challenging an application for bed and breakfast or short-term residential rental license.

Planning staff supports the recommended changes, which would change the license approval process from self-certification to a review by the Director of DHCA and allow inspection.

5. Clarifies the process for suspending or revoking a bed and breakfast or short-term residential rental license.

Planning staff supports the recommended changes, which provide clear guidance on suspension and revocation of a license.

6. Clarifies the process for appealing the Director’s decision on a bed and breakfast or short-term residential rental license to the Board of Appeals.

Planning staff supports the recommended change, which would allow for the appeal of DHCA’s decision to the Board of Appeals within 30 days of the Director’s decision.

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#### ZTA 23-04 ANALYSIS AND RECOMMENDATIONS

While the changes proposed in ZTA 23-04 are minor, Planning staff has some concerns. The first change discussed was the three instances where ‘or owner-authorized resident’ is being deleted from the code. This effectively cuts out 35% percent of the households in the county from being able to participate in Short Term Residential Rentals because they are renter rather than owner occupied dwellings. Planning staff also note that rental units in the county are disproportionately non-white, setting up a racial equity issue. While it is likely that most residential leases contain restrictions on further sub-letting, some may not, and may even have express permission from the property owner. As such, Planning staff does not support a blanket prohibition on removing owner-authorized residents, and instead recommends amendments in the accompanying Bill to better define how a renter must receive authorization from the landlord, in addition to setting up clear parameters for enforcement should that become necessary.

The other concern is the change in the number of allowed Short Term Residential Rental tenants. The current code limits rentals to two adults per bedroom with a maximum of six adults and places no limits on the number of children. Planning staff understands there may be issues related to crowding and nuisances when large numbers of adults share a property, but is concerned the proposed change to limit total guests to six may be too restrictive for single, larger family units traveling together. Staff would support amending this section to continue limiting adults to no more than six, and cap the total rental size based on two guests of any age per bedroom. A second option would be to provide some type of exemption for parties larger than six from the same immediate family unit.

## SECTION 4: LEGISLATED ANALYSIS



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## CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to transmit 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 impact assessment for ZTA 23-04 is attached in Attachment B. The Climate Assessment anticipates no changes to greenhouse gas emissions, carbon sequestration, community resilience or adaptive capacity as a result of the ZTA.

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## RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)

Planning staff has included the RESJ statement from the Office of Legislative Oversight (OLO) as Attachment C to this report. OLO could not discern the net impact of ZTA 23-04 on RESJ in the county because data on the demographics of both existing rental providers and existing renters are unavailable.

## SECTION 5: CONCLUSION

Planning staff recommends that the Planning Board support Bill 22-23 and ZTA 23-04 with recommended modifications. These modifications include:

1. Keep the maximum penalty for a violation consistent with County Code for a Class A violation (\$500 for an initial civil violation maximum penalty, and \$750 for a repeat offense).
2. Revert the language back to allow for owner-authorized agents of the facility, to allow authorized renters to have a short-term rental.
3. Continue limiting adult guests to no more than six and cap the total rental size based on two guests of any age per bedroom. An alternative is to provide an exemption for parties larger than six from the same immediate family unit.

**M E M O R A N D U M**

October 9, 2023

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

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental  
ZTA 23-04, Residential Uses – Short-Term Residential Rental

PURPOSE: Worksession #1

**INVITED ATTENDEES**

- Artie Harris, Chair, Planning Board
- Tanya Stern, Acting Director, Planning Department
- Jason Sartori, Chief – Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III – Countywide Planning & Policy, Planning Department
- Kenneth Welch, Environmental Health Manager – Licensure and Regulatory Services, Health and Human Services (DHHS)
- Scott Bruton, Director, Department of Housing and Community Affairs (DHCA)
- Pofen Salem, Division Chief – Finance, DHCA
- Nathan Bovellet, Division Chief – Community Development, DHCA
- Tamala Robinson, Manager – Code Enforcement, DHCA
- Tiffany Johnson, Manager – Licensing, DHCA
- Ehsan Motazedi, Deputy Director, Department of Permitting Services (DPS)
- Victor Salazar, Division Chief – Zoning and Code Compliance, DPS
- Commander David McBain, Patrol Services Bureau – 3<sup>rd</sup> District Station, Montgomery County Department of Police (MCPD)

**INTRODUCTION**

Bill 22-23, Transient Lodging Facilities – Short-Term Residential Rental and Zoning Text Amendment (ZTA) 23-04, Residential Uses – Short-Term Residential Rental, lead sponsor Council President Glass at the Request of the County Executive, were introduced on April 18, 2023.

Bill 22-23 and ZTA 23-04 will amend the provisions for Short-Term Residential Rentals and Bed and Breakfasts. Bill 22-23 will reassign enforcement responsibility to DHCA; increase the maximum penalty; adjust the application process; and clarify the processes for challenges, suspensions, revocations, and appeals. ZTA 23-04 will limit the number of overnight guests regardless of age and remove language for owner-authorized agents.

## **PUBLIC HEARING**

A public hearing on both the bill and the ZTA was held on June 13, 2023. Several speakers testified, both in opposition and support. Written testimony reflected the testimony provided during the public hearing.<sup>1</sup>

Those in support testified that home rentals are not like hotels, so enforcement should be moved to DHCA. Testimony reflected that while many operate short-term residential rentals without problems, there have also been negative community impacts from some operators due to parking issues, increased traffic, and loud parties. Testimony expressed concern that short-term residential rentals drive out affordable housing, that poorly operated short-term residential rentals are disruptive to the community, and that the County has had issues with enforcement. Those in support noted that the bill and ZTA would provide the County with increased enforcement abilities and provide neighbors with more meaningful opportunities to object to proposed short-term residential rentals.

In opposition to the bill and ZTA, many testified that they benefit from operating short-term residential rentals because it provides additional income that allows residents to stay in the County, improve their homes, and age in place. In addition, testimony explained that short-term residential rentals benefit many visitors to the County, including traveling nurses and those who need to stay in the County for longer than a few days. Airbnb testified that a large portion of hosts are women or senior citizens. Those opposed testified that the bill and ZTA would unnecessarily limit tenant rights. Some testified that jurisdiction should stay with HHS because of health and safety concerns, such as those who rent their homes and have swimming pools. Testimony also asked to allow accessory dwelling units (ADUs) to operate short-term residential rentals.

## **SUMMARY OF IMPACT STATEMENTS**

### ***Racial Equity Impact Statement***

#### **Bill 22-23**

The Office of Legislative Oversight (OLO) found that the racial equity and social justice (RESJ) impact of Bill 22-23 is indeterminant. The impact statement notes the sharing economy industry has been characterized by racial inequities and disparities, because while the platforms provide increased access to goods and services, research suggests the benefits are not equally distributed amongst guests or hosts. OLO examined each stakeholder group and found that:

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<sup>1</sup> Written testimony can be found here: <https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20230613/index.html>

- homeowners could face increased costs from stronger enforcement, and that while the majority of homeowners in the County are white or Asian, BIPOC homeowners are cost-burdened at higher levels;
- constituents using bed and breakfasts and short-term residential rentals could benefit from stronger enforcement of health and safety protocols but could as a result face higher prices; and
- constituents living near bed and breakfasts and short-term residential rentals could benefit from stronger enforcement mitigating inconveniences, but it is unclear whether certain communities could be subject to more enforcement than others and whether racial and ethnic disparities in enforcement could emerge by community demographics.

#### ZTA 23-04

OLO could not discern the net impact of ZTA 23-04 on racial equity and social justice (RESJ) in the County because demographic data regarding the providers and the users of short-term residential rentals in the County was not available.

#### *Climate Assessment*

##### Bill 22-23

OLO anticipates Bill 22-23 will have no impact on the County’s contribution to addressing climate change as the Bill is proposing changes to existing laws governing bed and breakfast and short-term residential rentals to ensure County law enforcement of these rentals.

##### ZTA 23-04

The Planning Board anticipates ZTA 23-04 will have insignificant to no impact on community resilience and adaptive capacity, and that none of the changes proposed in ZTA 23-04 will alter the use in ways that would have significant greenhouse gas emission or carbon sequestration or drawdown-related impacts.

#### *Economic Impact Statement*

OLO found that enacting Bill 22-23 would have a neutral impact on economic conditions in the County in terms of the Council’s priority indicators. OLO predicted the bill would increase operating costs and decrease revenues for homeowners who operate bed and breakfasts and short-term residential rentals; and that the bill would increase rents for resident customers but that this negative impact would be mitigated by homeowners passing a portion of the higher costs to non-resident customers. OLO also noted that enhanced enforcement could prevent certain homeowners’ associations from banning short-term residential rentals which would decrease the market.

#### *Fiscal Impact Statement*

The Office of Management and Budget (OMB) found that under Bill 22-23 revenues are projected to increase by \$48,800 in FY24, with annualized revenues of at least \$218,000 beginning in FY25

and each year thereafter. OMB notes that this is a net change in expenditures and revenues, meaning the figures are offset by expenditure reductions DHHS is expected to see. The revenue figures assume no revenue from citation fines will be collected in FY24 as the program is initiated and new staff are hired. OMB expects increased enforcement to result in license applications increasing to 1,300 to align with the number of short-term residential rental properties that are estimated to be currently operating in the County. Under the strengthened enforcement provisions, DHCA expects to issue approximately 50 citations in the first full year and for citations to increase by one each year thereafter, generating \$1,000 in revenue per citation.

Expenditures are estimated to increase by \$270,100 in FY24, increasing to \$542,700 beginning in FY25 and each year thereafter. Expenditures are expected to increase to support additional staff, vehicle purchases, and other miscellaneous operating costs. DHCA expects to need two licensing staff, two inspectors, and one IT specialist which would create \$536,100 in new personnel costs annually. Operating expenditures are comprised of the miscellaneous operating supplies needed for the new positions (\$20,600 one-time and \$2,600 ongoing costs) and two vehicles to facilitate the Housing Code Inspectors' property inspections and enforcement work (\$113,800 one-time vehicle purchase and \$2,000 ongoing operation and maintenance costs).

### ***Planning Board Recommendation***

The Planning Board met on June 1, 2023, and unanimously recommended modifications to Bill 2-23. The Board unanimously did not support ZTA 23-04.

The Board supported most of the technical changes made in Bill 22-23, including reassignment to DHCA; amendment of the application requirements; and clarification of the processes for challenges, suspension, revocation, and appeals. However, the Board had major concerns about many of the policy changes such as increased penalties, removing owner-authorized residents, and limiting the number of guests without exceptions for children. The Board noted that it was unclear whether these changes would result in meaningful improvement in enforcement, or whether they would instead reduce flexibility for both hosts and guests. The Board did not support any of the changes in ZTA 23-04 for the same reasons.

## **BACKGROUND**

### **History of Short-Term Residential Rentals**

Before the passage of a bill and ZTA allowing short-term residential rentals, residential occupancy of a dwelling was only allowed on a monthly or longer basis. After introduction and public hearing on the original bill and ZTA in 2016, the Council asked the Planning Department to conduct additional public outreach. Three public meetings were held, including meeting with the relevant agencies. At the time, public testimony ranged from support for the bill and ZTA because of the additional income that could be generated; hesitancy from the hotel industry due to the competition caused; concern about the reduction of affordable housing; and opposition due to potential increases in noise, traffic, and crime. These discussions generated a new ZTA and bill, that were

passed by the Council in October 2017 with effective dates of July 1, 2018.<sup>2,3</sup> Many issues were addressed, including parking, the number of guests allowed, the number of rentals a year, and licensing provisions.

An applicant must go through the following steps to operate a short-term residential rental:<sup>4</sup>

1. Notify immediate neighbors, as well as any applicable homeowners' or condominium association.
2. Apply for a Maryland State Sales Use and Tax ID number.
3. Apply for the County's Room Rental and Transient Tax through the Department of Finance.
4. Complete the Short-Term Residential Rental Registration/Renewal Form.

From a zoning perspective, a short-term residential rental is allowed as a limited use in all zones except for the Industrial zones. It must satisfy the following standards:

1. Prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Dwelling Unit.<sup>5</sup>
2. Must be the property owner's or owner-authorized resident's primary residence.
3. If the property owner or owner-authorized resident is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 120 days in a calendar year.
4. The total number of overnight guests who are 18 years or older is limited to six.
5. The total number of overnight guests over 18 years of age per bedroom is limited to two.
6. One off-street parking space must be provided for each rental contract unless the online listing indicates that vehicle parking is prohibited.

#### **Intent of Bill 22-23 and ZTA 23-04**

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<sup>2</sup> On October 10, 2017, the Council passed Bill 2-16 (10/10/2017 Council Session, Item #6A) and, sitting as the District Council, passed ZTA 17-03 (10/10/2017 District Council Session, Item #4E).

<sup>3</sup> The Zoning Ordinance does not apply to: Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove. Municipalities may opt out of Chapter 54. Chapter 54 does not apply to: Chevy Chase Village, Chevy Chase, Chevy Chase, Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, and Washington Grove.

<sup>4</sup> Application information is currently found on DHHS' website, here:

<https://www.montgomerycountymd.gov/HHS/LandR/ShortTermResidentialRental.html>.

<sup>5</sup> Council has received requests to allow ADUs to be used for short-term residential rentals. ADUs were not originally included because of the conflict between allowing short-term residential rentals while not depleting the supply of affordable longer-term housing. Those who have made the request for this change describe a scenario where an ADU is created to care for an ailing relative, and the potential income that can be generated by creating a short-term residential rental in the ADU after the relative passes. Council Staff notes that the owner of an ADU could still obtain a rental housing license. A short-term residential rental only applies to residential occupancy of a dwelling unit for a fee for less than 30 consecutive days.

According to the County Executive, while most short-term residential rentals operate within the County’s regulatory framework, others “cause serious problems for neighboring properties and, in at least one case, potential threats to public safety.” This is confirmed in the Economic Impact Statement, which states that DHHS and DPS reported that only a small number of short-term residential rentals receive complaints. To address the complaints, Bill 22-23 and ZTA 23-04 include recommended changes from the County Attorney’s Office, DHHS, and DHCA to address the perceived shortcomings in County Law, particularly in enforcement. Of note, while much of the testimony centers around short-term residential rentals such as Airbnb or Vrbo, this section of the County Code also applies to bed and breakfasts.

MCPD reports that they do not have any datasets that separate out the complaints for short-term residential rentals, so cannot provide information on the number of complaints received related to short-term residential rentals. DPS reports that while they investigate complaints associated with illegal residential uses, any complaints regarding short-term residential rentals, including licensing issues, are sent to HHS. According to HHS, as of May 2023 (around the time of the public hearing) there were 1,158 advertised short-term residential rentals. However, only 153 had active licenses. There were 3 bed and breakfasts currently licensed. Complaints and inquiries are primarily through MC311. The County Executive’s Office testified that the County receives 2-3 complaints per week, generally for unlicensed or reoccurring problem properties.

**Provisions of Bill 22-23 and ZTA 23-04**

Some of the bracketed and underlined language in Bill 22-23 represents language that is being moved, not necessarily changes in the law. Therefore, to aid in discussion, Council Staff has created the below table to identify what provisions currently exist and how Bill 22-23 and ZTA 23-04 would change them.

Bill 22-23

Current Provision	New Provision
<b>Jurisdiction</b>	
- DHHS	- DHCA
<b>Application for a License</b>	
- Record of all overnight guests must be maintained and readily available for inspection.	<ul style="list-style-type: none"> <li>- Must maintain a permanent register with details on each visitor, including name, address, date and time of rental, and license plate number.</li> <li>- Must be kept for at least 3 years and be available for inspection.</li> </ul>
- Applicant is owner or owner-authorized agent	- Add definition for primary resident <sup>6</sup>

<sup>6</sup> Primary residency was always required. However, it was previously undefined. The new definition is “a person who regularly resides at the location designated for legal purposes of obtaining a driver’s license and filing tax returns or any other proof of occupancy approved by the Director.”

	- Applicant is the owner
- Total number of overnight guests 18 or older is limited to 6, with total number of overnight guests over 18 per bedroom limited to 2	- Total number of overnight guests limited to 2 per bedroom, and total number of guests must not exceed 6, regardless of age
- Designated representative lives within 15 miles of unit and is accessible for entirety of contract when primary resident is not present	- Designated representative must live within 15 miles of unit; be identified by name, address, and phone number; and be available to Department for entirety of contract
- “smoke detectors in all units and carbon monoxide detectors in all units using natural gas operate as designed”	- “smoke detectors (and carbon monoxide detectors where natural gas is used) operate as designed” <sup>7</sup>
- Applicant has not been found guilty of a violation of Chapter in 12 months	- Applicant has not been found guilty of a violation of Chapter in 36 months
<b>License Approval &amp; Renewal</b>	
- Director must accept self-certification of applicant after verifying compliance by reviewing available records	- Director must review application, including supporting documents provided, for conformance
- *current legislation is silent on inspections	- Director may inspect the property
- Director must approve or deny license within 15 working days of receipt of completed application	- Director must approve or deny license no earlier than 30 days and no later than 60 days after receipt of completed application
- Must issue license for term of 1 year renewable for one-year terms	- Must, if license approved, and subject to re-application, issue license for term of 1 year renewably for one-year terms - Must provide written notice to all parties entitled to notice of issuance of license and procedure to file appeal with BOA
- Challenge may be filed by: <ul style="list-style-type: none"> <li>o a resident or owner of real property located within 300 feet of a licensed or proposed license;</li> </ul>	- Challenge may be filed by any party entitled to notice, which includes: <ul style="list-style-type: none"> <li>o in a single-unit or attached unit, abutting and confronting neighbors;</li> </ul>

<sup>7</sup> Council Staff believes the intent of this change is to clarify the natural gas reference applies to the carbon monoxide detector, not the smoke detector, consistent with Section 26-8A which states: “The owner of each occupied single-unit, two-unit, and townhouse dwelling unit containing a fuel burning appliance or attached garage must install carbon monoxide detection and warning equipment.”



<ul style="list-style-type: none"> <li>○ the municipality in which the residence is located;</li> <li>○ any applicable homeowners association, condominium, housing cooperative; or</li> <li>○ the owner of the unit or the owner's rental agent, if the applicant is not the owner</li> </ul>	<ul style="list-style-type: none"> <li>○ in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit;</li> <li>○ the municipality in which the bed and breakfast or short-term residential rental is located; and</li> <li>○ any applicable homeowner's association, condominium, housing cooperative</li> </ul>
<ul style="list-style-type: none"> <li>- License must be suspended for any applicant receiving 3 complaints that are verified as a violation of the license or County Code within a 12-month period</li> </ul>	<ul style="list-style-type: none"> <li>- Director may suspend or revoke license if licensee violates Chapter or any other applicable law or regulation; has operated in a manner disruptive to the general peaceful enjoyment of the community, dangerous to the health and safety of the community, or is a nuisance because of noise or other activity; or has been convicted of violating any provisions of Criminal Law Article of Maryland Code while operating a rental</li> </ul>
<ul style="list-style-type: none"> <li>- Renewal or reinstatement of license must follow procedures established by Director</li> </ul>	<ul style="list-style-type: none"> <li>- Prior to suspension or revocation, Director may require licensee to appear before Director and show cause why license should not be suspended or revoked</li> </ul>
<ul style="list-style-type: none"> <li>- Any person aggrieved by license approval, denial, or revocation may appeal to BOA</li> <li>- BOA must hold hearing on appeal within 60 days of notice of appeal being filed, and must act on appeal within 30 days of hearing</li> </ul>	<ul style="list-style-type: none"> <li>- Any person aggrieved by license issuance, renewal, denial, or revocation may appeal to BOA within 30 days of Director decision</li> </ul>
<ul style="list-style-type: none"> <li>- Class A violation</li> </ul>	<ul style="list-style-type: none"> <li>- Class A violation, with maximum penalty of \$1,000 and each day a separate offense</li> </ul>

ZTA 23-04

<b>Current Provision</b>	<b>New Provision</b>
<ul style="list-style-type: none"> <li>- Owner or owner-authorized agent</li> </ul>	<ul style="list-style-type: none"> <li>- Owner</li> </ul>
<ul style="list-style-type: none"> <li>- Total number of overnight guests 18 or older is limited to 6, with total number</li> </ul>	<ul style="list-style-type: none"> <li>- Total number of overnight guests limited to 2 per bedroom, and total</li> </ul>

of overnight guests over 18 per bedroom limited to 2	number of guests must not exceed 6, regardless of age
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## ANALYSIS

### Jurisdiction

Bill 22-23 would move short-term residential rental and bed and breakfast licensing and enforcement from DHHS to DHCA. There are several factors to consider in deciding which agency should oversee licensing and enforcement. One question asked when the legislation was originally passed was whether these uses are more like hotels or more like housing. DHHS is in the business of licensing and inspection for commercial entities like hotels, but DHCA has the expertise for long-term rentals and ADUs.

A second factor to consider is which agency has the appropriate resources. Currently, there is no full-time DHHS position dedicated to this task. According to the Fiscal Impact Statement, DHHS estimated that the Senior Administrator of Licensure and Regulatory Services currently spends 150 hours annually on researching for approval of licensing, corresponding with complainants, answering licensing questions, and sending enforcement letters for violations. And that a field inspector spends a total estimated 25 hours annually verifying violations and an estimated additional 50 hours assisting in complaints and questions. If the bill were enacted as introduced, DHHS does not plan to delete any positions, but rather repurpose staff time to other functions. DHCA estimates that it will need two licensing staff, two inspectors, and one IT specialist were the bill to be enacted as introduced. Of note, DHCA already has subpoena power.

*Council Staff recommends licensing and enforcement be moved from DHHS to DHCA. Council Staff advises that if the Committee(s) do not wish to make this change, DHHS will need additional resources, such as licensing staff and inspectors.*

### Penalty

Bill 22-23 would keep the penalty for violation as a Class A violation. However, it would make the maximum penalty \$1,000 with each day of the violation being a separate offense. Under Sec. 1-19 of the County Code, a Class A civil violation is typically \$500 for the initial offense and \$750 for a repeat offense.<sup>8</sup> The maximum fine for a Class A criminal violation is \$1000. Planning notes that the penalty for failing to obtain a rental license is \$500 for the initial offense and \$750 for repeat offenses, consistent with Sec. 1-19 of the County Code, and that it is unclear – for example – why the penalty for failing to obtain a short-term residential rental license should be so much higher than the penalty for failing to obtain a rental license. Council Staff assumes the intent of

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<sup>8</sup> The Code states that “any violation of County law that is identified as a Class A, B, or C violation may be punished as a misdemeanor by a fine of *not more than* the amount shown below” (emphasis added), and that “the civil penalty must be in the amount shown below, unless a *lower amount* for a specific violation is set by an executive regulation adopted under method (1)” (emphasis added). However, state law permits civil fines of up to \$1,000 (Md. Code, Local Gov’t § 10-202). Further, line 45 of Bill 22-23 as introduced notes the fine may be increased “notwithstanding Section 1-19.”

this change is to discourage violations, since the County Executive’s Office testified that current penalties can be less than the cost of a single rental.

*Council Staff does not recommend increasing the maximum penalty to \$1,000. While Council Staff understands the need for additional enforcement, especially in an industry where the current fine is less than the cost of doing business, that same logic applies to failure to obtain a rental license. It would be more equitable to change both in a separate bill.*<sup>9</sup>

## **Registry**

County Code requires a record of all overnight guests be maintained and readily available for inspection. For short-term residential rentals and bed and breakfasts, the Code does not currently specify what information that record should contain. Bill 22-23 would place the same requirements for hotels on short-term residential rentals and bed and breakfasts. Those requirements for the registry are name, address, date and time of rental, license plate number, and that the record be kept for at least 3 years.

Unlike hotels, short-term residential rentals and bed and breakfasts are operated by individuals. Guests may have privacy concerns sharing certain personal information, such as an address.<sup>10</sup> For instance, there could be safety concerns if a guest has a negative interaction with a host.<sup>11</sup> One justification for the addition of the address may be that it would help MCPD or DHHS with enforcement issues. However, any enforcement matters would be tied to the host, not the guest since the penalty for violating Chapter 54 falls on the license-holder.

*While Council Staff agrees with requiring name, date and time of rental, license plate number, and that the record be kept for at least 3 years, Council Staff does not recommend requiring guests provide an address to the host for the registry.*

## **Owners vs. tenants**

Bill 22-23 and ZTA 23-04 would only allow a property owner to be an applicant. The County Executive’s written testimony explains that “a dwelling unit where the short-term residential rental is located must be the primary residence of the applicant. It is extremely difficult and time consuming to determine if this is the case. The legislation requires the applicant is the owner of the property and the property is that person’s primary residence as listed by the State Department of Assessments and Taxation.”

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<sup>9</sup> Another suggestion made has been to increase the application fee. Council Staff notes that fees should be limited to what is necessary to cover costs. In addition, if the application fee is too high, it may discourage applicants from applying for a license and instead operating illegally. However, proper enforcement would allow the County to bring those who operate illegally to be brought into compliance.

<sup>10</sup> Rental services such as Airbnb do not reveal this level of information. For example, apps encourage guests and hosts to exchange all messages via the app, rather than taking communications offline such as through personal email addresses. In addition, these apps require hosts to sign privacy agreements. Lastly, personal addresses of guests are not revealed since payment is done through the apps rather than directly.

<sup>11</sup> Council Staff acknowledges that in these instances, the guest obviously has the host’s address.

Planning does not support this change, noting that it will not allow short-term residential rentals to be offered by renters even if authorized to do so by their landlord. As noted in the Planning Staff report, 35% of the households in the County would be unable to participate because they are renter-occupied rather than owner-occupied dwellings. And as noted in the RESJ Impact Statement, the majority of homeownership in the County is by white or Asian residents, so limiting the economic benefits of short-term residential rentals to only homeowners could have racial equity and social justice impacts. If enforcement based on property ownership is a concern, Planning Staff recommends amendments that would better define how a renter receives authorization from the landlord. The Code is currently silent on how a renter must provide authorization.

*Council Staff does not recommend limiting short-term residential rentals to property owners. However, Council Staff agrees with Planning's recommendation to be clearer on how a renter must provide authorization from their landlord. One suggestion is requiring the owner's signature on the application form. This could include a disclaimer that if enforcement measures are taken, such as a lien, those actions would affect the owner directly.*

*Also, if the Committee(s) do not agree with the removal of renters, then notice to "the owner of the unit or the owner's rental agent, if the applicant is not the owner" should not be removed in Sec. 54-43.*

### **Number of guests**

The current number of overnight guests over the age of 18 for a short-term residential rental or bed and breakfast is 6, with the total number of overnight guests over 18 per bedroom being limited to 2. Bill 22-23 and ZTA 23-04 would keep those numbers but include all guests, regardless of age. According to the County Executive's written testimony, "Some larger homes can accommodate more guests, but this is not always the case, especially when multiple families stay together. We see examples of overcrowding with guests sleeping in areas of the home that lack adequate egress or life-safety equipment."

Planning does not support this recommended change, noting that it could be too restrictive for families traveling to the county. However, Planning did recommend two alternatives:

1. Limiting the number of overnight guests per bedroom to 2 regardless of age.
2. Providing an exemption for parties larger than 6 that are from the same immediate family unit.<sup>12</sup>

*Council Staff does not recommend this change to the total number of permitted guests. It could be over-restrictive because it does not consider the size of the home. For example, there are large homes in the County that may easily fit more than 6 total people, such as a 4-bedroom home. Further, this change restricts large families. For example, a family of four children and two adults*

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<sup>12</sup> Under Section 54-1 of the County Code, a household is defined as "a person living alone, or any one of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities: 1) any number of people related by blood, marriage, adoption, or guardianship; 2) up to 5 unrelated people; or 3) 2 unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship."

could not bring an additional relative or caretaker.<sup>13</sup> If number of guests is a concern, Council Staff does agree with Planning's recommendation to limit the number of overnight guests per bedroom to 2 regardless of age. It would also be helpful to reference what the requirements are for bedrooms under Chapter 26 (Housing and Building Maintenance Standards)<sup>14</sup> and Chapter 22 (Fire Safety Code). This would account for the size of the home, and ensure that guests are only sleeping in rooms that meet the County's safety standards for a bedroom.

### **Designated representative**

A designated representative within 15 miles of the unit, who is available as a point of contact when the primary resident is not present, is already required. Bill 22-23 would require that the representative be identified by name, address, and phone number; and be available to the Department when the primary resident is not present.

*Council Staff recommends approval of this change.*

### **Approval of licenses**

Bill 22-23 will increase the Director's authority to approve, deny, renew, or reinstate a license in the following ways:

- Rather than being required to accept the self-certification of the applicant after verifying compliance by reviewing available records, the Department will be able to inspect the property;
- Increasing the time to approve or deny a license from 15 working days of receipt of completed application to 30-60 days (this increase allows adequate time for neighbors to challenge the application); and
- May require licensee to appear before the Director and show cause why license should not be suspended or revoked.

*Council Staff generally recommends approval of these changes. However, Council Staff notes that the Department should provide guidance, such as on its website or on application forms, as to what the requirements for inspection will be. To avoid equity issues and to provide applicants with*

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<sup>13</sup> Council Staff notes that currently the 6 adults over the age of 18 provision may already be restrictive on families with adult children. For example, an immediate family made up of two parents and four adult children with spouses would not be able to stay in a short-term residential rental or bed and breakfast in the County.

<sup>14</sup> For example, Section 26-5 states: “**(b) Floor area, sleeping.** In every dwelling unit of 2 or more rooms, every room occupied for sleeping purposes by one occupant must contain at least 70 square feet of habitable space, and every room occupied for sleeping purposes by more than one occupant must contain at least 50 square feet of habitable space for each occupant. However, in a mobile home every room occupied for sleeping purposes by one occupant must contain at least 50 square feet of habitable space; by 2 occupants, at least 70 square feet of habitable space; and by more than 2 occupants, at least an additional 50 square feet of habitable space for each additional occupant.... **(g) Access to sleeping room.** The access to any sleeping room must not pass through another sleeping room.”

*proper notice, this should include when an inspection will be called for and what conditions the property must meet.*

## **Revocation or suspension of license**

Under current law, an application for a license will not be approved if the applicant has been found guilty of violating Chapter 54 in the last 12 months. Bill 22-23 recommends increasing this to 36 months.

*Council Staff recommends approval of this change.<sup>15</sup>*

Under current law, a license must be suspended if 3 verified complaints are received within a 12-month period. Bill 22-23 recommends instead allowing the Director to suspend or revoke the license for the following reasons:

- Violation of Chapter 54 or any other applicable law or regulation;
- Operating in a manner disruptive to the general peaceful enjoyment of the community;
- Operating in a manner dangerous to the health and safety of the community;
- Operating in a manner that is a nuisance because of noise or other activity; or
- Having been convicted of violating any provisions of Criminal Law Article of Maryland Code while operating a short-term residential rental or bed and breakfast.

Of note, the same language exists for suspension or revocation of a hotel license.

*While Council Staff has some concerns about the breadth of this language – for example, what and who determines whether the “general peaceful enjoyment of the community” has been disturbed – Council Staff recommends approval of this language since it is consistent with other language found in the Code. Further, Council Staff’s concerns are alleviated by the ability of a license-holder to appeal the suspension or revocation.*

## **Challenges**

Licenses are currently for 1-year terms and can be renewed by the Director. Bill 22-23 will require written notice be provided to the relevant parties when the license is issued or renewed, along with the procedures for filing an appeal. Challenges to an application may currently be filed by:

- a resident or owner of real property located within 300 feet of a licensed or proposed license;
- the municipality in which the residence is located;
- any applicable homeowners association, condominium, housing cooperative; or
- the owner of the unit or the owner’s rental agent, if the applicant is not the owner.

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<sup>15</sup> Of note, this could mean that if an applicant operates without a license, once caught they would not be able to get a license for 36 months. This would hopefully encourage those who are currently operating without a license to apply for one.

Bill 22-23 will instead allow a challenge to be filed by the same parties entitled to notice. This includes:

- in a single-unit or attached unit, abutting and confronting neighbors;
- in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant’s unit;
- the municipality in which the bed and breakfast or short-term residential rental is located; and
- any applicable homeowner’s association, condominium, housing cooperative.<sup>16</sup>

The only substantive change to those entitled to challenge an application is that a “resident or owner of real property located within 300 feet of a licensed or proposed license” will not be able to file a challenge to the issuance or renewal of a license.<sup>17</sup> Instead, the challenge by a neighbor would need to be from “in a single-unit or attached unit, abutting and confronting neighbors” or “in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant’s unit”, consistent with the parties entitled to receive notice.

*Council Staff recommends approval of this change.*

Anyone aggrieved by license approval, denial, or revocation may appeal to the Board of Appeals (BOA).<sup>18</sup> The BOA must hold a hearing on the appeal within 60 days of notice of the appeal being filed and must act on that appeal within 30 days of the hearing.<sup>19</sup> Bill 22-23 removes the requirement that BOA must hold a hearing within 60 days and act within 30 days of the hearing.<sup>20</sup>

*Council Staff recommends approval of this change, since the 30- to 60-day timeline is a quick turnaround for the BOA and effects its ability to schedule other equally important matters.*

This packet contains:

Bill 22-23

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<sup>16</sup> Bill 22-23 removes notice to “the owner of the unit or the owner’s rental agent, if the applicant is not the owner”, since the bill removes the ability of renters to operate a short-term residential rental or bed and breakfast. As noted above, Council Staff does not recommend this change.

<sup>17</sup> According to Google, the average city block is 330 by 660 feet. 300 feet is also the length of a football field, not including the end zone. Or, for an even more patriotic example, the Statue of Liberty is 305 feet from the ground to the top of the torch.

<sup>18</sup> Note that there is a difference between those who can file a challenge with the Director (the list of parties entitled to notice) and those who can file an appeal (any person aggrieved).

<sup>19</sup> Other administrative appeals allow time for summary disposition (at least 30 days before date of the hearing), prehearing conferences (3-4 weeks before the hearing), and a longer timeframe to issue decisions (45 days).

<sup>20</sup> Council Staff has not found any language that clearly stays an application during the appeals process. This means an applicant could choose to keep operating in a situation where they were granted a license and their neighbor appeals the issuance of that license. However, this is the case with many appeals, such as an appeal of a building permit.

ZTA 23-04	© 12
County Executive Transmittal Memorandum	© 16
County Executive Written Testimony	© 18
Legislative Request Report	© 20
Racial Equity Impact Statement for Bill 22-23	© 21
Racial Equity Impact Statement for ZTA 23-04	© 26
Climate Assessment for Bill 22-23	© 28
Climate Assessment for ZTA 23-04	© 31
Economic Impact Statement	© 34
Fiscal Impact Statement	© 38
Planning Board recommendation	© 41
Planning Staff report	© 43