



Briefing on Council Bill 44-20: Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments

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Description

Planning staff will brief the Board on its review of Bill 44-20: Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members – Amendments, specifically the bill’s provision to require racial equity and social justice impact statements for new Zoning Text Amendments (ZTAs).

Summary of Staff Recommendations

- Support the Office of Legislative Oversight’s (OLO) development of racial equity and social justice impact statements for ZTAs through the Planning Department’s collaboration with OLO to develop an impact analysis methodology and provide zoning data and other technical assistance for impact analysis of new ZTAs.
- Request the County Council amend Bill 44-20 to set the effective date of the bill’s requirement to create racial equity and social justice impact statements for ZTAs six (6) months after the effective date of Bill 44-20. This separate effective date would provide time for the Office of Legislative Oversight and the Planning Department to develop a tool to conduct the impact analysis.
- Express support for OLO receiving draft ZTAs prior to introduction to provide more time to conduct the racial equity and social justice impact analysis. OLO currently has a requirement to produce a racial equity and social justice impact analysis for Council bills within 21 days after introduction. Bill 44-20 makes no changes to this timeline, which then would apply to ZTAs upon adoption of the bill.

Action Requested

Planning staff requests:

- The Board to provide feedback on staff recommendations for how the Planning Department can support implementation of Bill 44-20’s requirement of racial equity and social justice impact statements for new ZTAs; and
- The Board to transmit comments on Bill 44-20 to the County Council prior to the Government Operations Committee work session on November 18th.

Background/Overview

[Bill 44-20](#) would amend the county's Racial Equity and Social Justice law enacted in 2019 to:

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

The County Council held a public hearing on Bill 44-20 on October 20th, and the Government Operations Committee will hold a work session on the bill on November 18th.

Planning staff's discussion today is focused solely on the bill's provision to require racial equity and social justice impact statements for new zoning text amendments. The bill's lead sponsor, Councilmember Navarro, noted the intent of this new requirement is to address the lack of inclusion of ZTAs in the existing law and to help ensure that zoning decisions undergo evidence-based assessments of potential impacts on Black and Latino residents and other communities.

The existing [Racial Equity and Social Justice Act](#) includes a requirement for the Director of the Office of Legislative Oversight (OLO) to create racial equity and social justice impact statements for bills introduced by the County Council no later than 7 days before the public hearing on the bill and no more than 21 days after a bill has been introduced. The Racial Equity Act also specifies the content of a racial equity and social justice impact statement, including the impact analysis, any recommended amendments that may promote racial equity and social justice, and a determination if a bill is likely to not have any racial equity and social justice impact.

Bill 44-20 would add zoning text amendments to OLO's existing requirement to produce racial equity and social justice impact statements for bills, with the same 21-day completion timeframe, prior to the Council's public hearing on a ZTA.

Planning staff from the Director's Office, Countywide Planning and Policy and Research and Strategic Projects conducted an internal review of Bill 44-20's requirement of racial equity and social justice impact statements for ZTAs and discussed how the Department can play a role in its implementation. Additionally, Planning staff reviewed a separate request from OLO in October for the Planning Department to take the lead in conducting racial equity and social justice analysis for new ZTAs and creating the impact statements, with support from OLO. OLO created an initial draft methodology for developing racial equity and social justice impact statements for ZTAs and suggested that the Planning Department could use or revise the tool or work with OLO to develop another tool to conduct this impact analysis for ZTAs. OLO made this informal request to the Planning Department given OLO's limited staffing and expertise in zoning matters, the Planning Department's subject matter expertise and existing role in evaluating and advising the Board on proposed ZTAs, as well as the Department's recent work to develop an equity in master planning methodology. OLO suggested joining its expertise in applying a racial equity and social justice lens to legislation to the Planning Department's expertise in zoning. Please note that this request is not part of Bill 44-20, and the County Council has not made any formal request or proposed legislative action to shift the racial equity and social justice impact statement responsibilities for ZTAs from OLO to the Planning Department.

OLO also identified concerns about being able to complete these new impact statements within the required 21-day timeline, which OLO noted is a constrained timeframe for this type of analysis. For the current requirement of racial equity and social justice impact statements for bills, OLO has made requests to the Council to obtain draft bills prior to introduction, so that OLO can start the impact analysis earlier and meet the 21-day deadline after introduction.

Planning staff met with OLO and the County's Chief Equity Officer to discuss these matters and ways for both agencies to work together to support the County's interest in understanding the racial equity and social justice impacts of ZTAs and to implement provisions of the Racial Equity and Social Justice Act. The outcomes of these internal reviews and consultations with OLO are detailed in the following two sections of this staff report.

Staff Recommendations

Based on staff review and consultations with OLO, Planning staff requests the Board's support for the following recommendations for how the Planning Department can support implementation of Bill 44-20's requirement to create racial equity and social justice impact statements for new ZTAs and collaborate with OLO in implementing the Racial Equity and Social Justice Act, which Bill 44-20 would amend.

As noted above, under Bill 44-20, OLO would be responsible for producing racial equity and social justice impact statements for zoning text amendments, as is currently required under the Racial Equity Act for introduced bills. The Planning Department can assist with implementation of this new requirement by providing the following types of support for OLO's racial equity and social justice impact analysis of new ZTAs:

- Holding a joint meeting with OLO when ZTAs are introduced to review the proposed changes and discuss what information or data would be needed for OLO to conduct the impact analysis;
- Answering questions related to zoning interpretation;
- Providing data on the number of zones, parcels or potential development projects that would be affected by the ZTA;
- Identifying and mapping the locations of the affected parcels or zones; and
- Assisting with accessing demographic or other data.

Planning staff currently already provide similar support in response to Council requests related to ZTAs. Additionally, this level of support is similar to how OLO currently partners with relevant County agencies when OLO conducts racial equity and social justice impact statements for bills.

Additionally, Planning staff and OLO jointly support Council consideration of the following recommendations to address concerns related to the timing of producing racial equity and social justice impact statements as part of the Council's legislative process:

- Request the County Council amend Bill 44-20 to set the effective date of the bill's requirement to create racial equity and social justice impact statements for ZTAs six (6) months after the

effective date of Bill 44-20. This additional timeframe would allow OLO and the Planning Department to jointly develop a tool to conduct a racial equity and social justice impact analysis for a new ZTA. This recommended amendment will be similar to the differing timeframes of the effective dates of the Racial Equity Act and its provision to require racial equity and social justice impact statements for introduced bills. The Racial Equity Act became effective on March 1, 2020, while the requirement of racial equity and social justice impact statements for bills became effective on August 1, 2020, to allow OLO time to develop a methodology for creating these impact statements.

- Express support for OLO receiving draft ZTAs prior to introduction to provide more time to conduct the racial equity and social justice impact analysis. OLO currently has a requirement to produce a racial equity and social justice impact analysis for bills 21 days after introduction, and Bill 44-20 would apply the same timeline for ZTAs.

OLO Request for Planning Department to Conduct RESJ Impact Statements for ZTAs

The Planning Department discussed internally with staff and senior management OLO's request for the Department to take the lead, with OLO's assistance, in developing racial equity and social justice (RESJ) impact statements for new ZTAs. Staff has advised OLO of its feedback on this request. The Department has identified the following actions that would need to take place in order to conduct these impact analyses for Zoning Text Amendments:

- The County Council would have to amend the Racial Equity and Social Justice Act to shift the assignment of creating racial equity and social justice impact statements for ZTAs from OLO to the Planning Department. This change is not proposed in Bill 44-20.
- The Planning Department would require funding from the County Council to add staff capacity to conduct racial equity and social justice impact analyses and produce impact statements for ZTAs. **The Planning Department does not have staff capacity to conduct this work on an ongoing basis.** The Department's lead staff expert on zoning matters is retiring and will leave the department in December. This position will not be refilled during FY21 because of the Department's hiring freeze under its savings plan due to the county's current difficult budget situation. Existing zoning-related work duties will likely be shared among multiple staff who have other job duties. Additionally, this type of impact analysis would require focused, in depth work to create a product that will be meaningful to advise the Council's deliberative process. It is important to note that OLO hired an additional staff person to expand its capacity to conduct racial equity and social justice impact analysis of bills.
- The Planning Department, the Board and the Council would need to resolve timing challenges for adding a racial equity and social justice impact review of ZTAs to the existing expedited timeframe for the Planning Department and the Board to conduct reviews of ZTAs. The Planning Department currently conducts an evaluation of ZTAs after they are introduced at the Council to ensure the Planning Board can provide comments on a ZTA to the County Council prior to the Council's public hearing. The current process is as follows:
 - The Planning Department receives a proposed ZTA typically one day after introduction.

- Planning staff distributes the ZTA to internal and some external staff for review and feedback within 2 weeks of receipt.
- Week 3: Montgomery Planning staff develops and posts a staff report for the Planning Board meeting.
- Week 4: The Planning Board receives a staff briefing and holds a public meeting on the proposed ZTA. Board comments are transmitted to the County Council prior to the Council's public hearing on the proposed ZTA.

Expanding the Planning Department's current ZTA review process to include conducting a racial equity and social justice impact analysis and producing an impact statement will require additional time to complete it prior to the Board's public meeting and transmittal of comments to the County Council, in advance of the Council's public hearing.

Planning staff requests the Board's feedback on OLO's informal request for the Planning Department to take responsibility, with OLO's assistance, for producing racial equity and social justice impact statements for ZTAs and on the above recommended needed steps identified by the Department.

Attachments:

- [Bill 44-20—Introduction and Public Hearing Council Staff Reports](#)
- [Racial Equity and Social Justice Act](#) (enacted 2019)
- Office of Legislative Oversight [racial equity and social justice impact statements for bills](#)