

## ZTA 22-02, DENSITY AND HEIGHT LIMITS, PARKING - BIOHEALTH

### Description

ZTA 22-02, as introduced, would amend provisions of Biohealth Priority Campuses to allow consolidation of utilities and facilities, and create parking standards. The ZTA would also allow Life Science, R&D, and Medical and Scientific Manufacturing and Production uses within certain geographies in the CR, EOF and LSC zones to convert residential FAR into commercial FAR and exceed mapped heights with Board approval.

ZTA 22-10

COMPLETED: 06-02-2022

MCPB

Item No. 10

06-09-2022

2425 Reedie Drive

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Wheaton, MD 20902



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## SPONSORS

### Lead Sponsor:

Councilmember Friedson

### Cosponsored by:

Council President Albornoz  
Council Vice President Glass  
Councilmember Hucker  
Councilmember Katz  
Councilmember Navarro  
Councilmember Reimer

## INTRODUCTION DATE:

March 15, 2022

## REVIEW BASIS:

Chapter 59



## Summary

- Planning staff does not support this ZTA as introduced. Staff has concerns the potentially large increases in building height allowed for certain uses is in conflict with our Master and Sector Plans, and raises compatibility concerns. In addition, the new parking waiver for Biohealth Priority Campus uses in the Parking Lot Districts is contrary to the intent of these districts, and many of the parking requirements within Division 6.2 already have existing waiver provisions.
- Since introduction of the ZTA, Planning staff has been working collaboratively with Council staff to find solutions to identified concerns. Councilmember Friedson's office has circulated a memo showing a revised ZTA that would be presented to the Planning, Housing and Economic Development (PHED) committee to discuss. Planning staff recommends the Board support this modified ZTA draft. The revised ZTA greatly reduces the geographic scope of the ZTA and potential building height increases, and removes the section on parking waivers.

## SECTION ONE

### BACKGROUND

#### RECOMMENDATION SUMMARY

Planning and Council staff have been collaborating since the introduction of ZTA 22-02 and have worked through a number of Planning staff's initial concerns. Planning staff recommends the Planning Board transmit a recommendation to the District Council in **support** of a revised ZTA the lead sponsor intends to propose during committee review.

#### RATIONALE FOR ZONING TEXT AMENDMENT 22-02

Zoning Text Amendment (ZTA) 22-02 was introduced on March 15, 2022 by Councilmember Friedson, with Council President Albornoz, Council Vice President Glass and Councilmembers Hucker, Katz, Navarro, and Reimer as co-sponsors. The ZTA introduction packet (Attachment 1) states that the ZTA would allow additional height and increased flexibility in design for urban biohealth facilities in recognition of their unique mechanical challenges. The introduced ZTA also adds parking requirements for Biohealth Priority Campuses where they were absent from the parking tables in the ordinance. The rapid growth of the life sciences industry has been an economic development success and this ZTA is one of multiple zoning or policy changes that have been considered by the Council in recent months to benefit additional growth in the life sciences sector.

## SECTION TWO

### OVERVIEW AND ANALYSIS OF THE INTRODUCED ZTA

#### BIOHEALTH PRIORITY CAMPUS STANDARDS

ZTA 22-02, as introduced (Attachment A), proposes changes to the code for two similar but distinctly separate uses in the existing code. Some of the changes are specific to the new Biohealth Priority Campus (BPC) use, recently created through ZTA 21-09 and adopted by Ordinance 19-27. The first change clarifies that facilities including utilities, required open space, and parking may be located on one or more properties inside the boundary of a Biohealth Priority Campus.

The introduced ZTA created a new section for BPCs on parking that would include three subsections. The first subsection would allow an application in a Parking Lot District (PLD) to provide fewer parking spaces than required after making adjustments allowed under Section 6.2.3.I if a waiver under the third subsection is approved. The second subsection conversely would permit an applicant to provide more than the maximum number of spaces allowed in a PLD if the excess parking is available to the public or if a waiver is approved under the third subsection. These waivers are largely redundant with waivers that already exist under Division 6 of the code.

The final amendment proposed by the introduced ZTA related to the BPC use is a change to the Vehicle Parking Spaces table under Section 6.2.4.B. This would add Biohealth Priority Campus as a new use in the table and assign corresponding values for the metric (1,000 SF of Gross Floor Area) and baseline minimums and maximums for vehicle parking. The proposed minimum and maximum parking would be consistent with parking requirements for the Life Sciences Research and Development use already in the table.

### **BUILDING HEIGHT FOR LIFE SCIENCES IN THE CR/EOF/LSC ZONES**

The other changes proposed by the introduced ZTA do not directly impact the Biohealth Priority Campus as a use, but rather modify provisions for development in the Commercial/Residential and Employment zones for applications with a Life Science, Research and Development, or Medical/Scientific Manufacturing use. These are the same uses that pertain to a BPC, but this portion of the ZTA would apply to applicants that are unable to meet the BPC size criteria of 150,000 SF of new space or 50,000 SF of expanded space for a single dedicated user and would include a large number of properties in the county. The changes proposed for both sets of zones are the same and would apply to any property in a CR, EOF, or LSC zone that is within a red policy area or an opportunity zone including land contiguous to these properties or properties opposite them if only separated by a right-of-way, or properties within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway (or Corridor Connectors).

As introduced, properties that meet the use and location criteria that are in land zoned for building heights of 100 feet or less would be allowed to exceed the maximum mapped building height up to 200%, and properties with a building height over 100 feet but less than 200 feet may exceed the maximum mapped building height to 150%. These properties would also be able to modify the mapped limits on Commercial FAR (C) and Residential FAR (R) to increase the amount of C and reduce the amount of R, so long as the application stays within the mapped total FAR. The ZTA also adds a provision that if an overlay zone would enact contrary or more restrictive standards, that the overlay zone standards would not apply.

### **SUMMARY OF PLANNING ANALYSIS**

Planning staff has many concerns with the ZTA as introduced, which fall into two main categories:

- **Master Plan Process.** A lot of careful thought and community coordination go into creating our Master and Sector Plans, which set the mapped building heights for the CR and Employment Zones. These take into account visual impacts as well as infrastructure.
- **Parking Waivers.** Parking requirements, especially in our parking lot districts, are a delicate balance between supply and demand, and granting waivers beyond those already allowed by the parking section of the code could have negative consequences.

Additionally, while making zoning exceptions for certain uses may seem like a plausible way to promote economic development, Planning staff is concerned that the introduced ZTA (as well as the draft ZTA revisions discussed in Section Three of this report) provides no certainty of the end tenant of

a building. Planning staff does not have any recommendation on how, through zoning, to guarantee the continued use of a structure for the intended biohealth use.

Staff did, however, have many suggestions to improve the introduced ZTA, most of which have been incorporated in the draft revisions to the ZTA circulated by the lead sponsor's staff. The sponsor intends to offer these revisions during the PHED committee's review of the ZTA, therefore Planning staff's more detailed comments and analysis focus on the proposed revisions.

### **RACIAL EQUITY AND SOCIAL JUSTICE (RESJ)**

Planning staff received the Office of Legislative Oversight (OLO) RESJ statement on ZTA 22-02 (Attachment C). Generally, it mirrored similar concerns expressed during the review of ZTA 21-09 for Biohealth Priority Campuses, namely noting inequities in the employment makeup and opportunities within the Biohealth industry. This report, however, did also highlight one of Planning staff's stated concerns about the introduced ZTA undermining the Master Planning process, breaking trust with communities and disadvantaging communities that are typically under-represented in public comment of development applications. It is worth noting the RESJ statement was based fully on the introduced ZTA text and is not updated to reflect the draft revisions that were shared by the lead sponsor's staff.

## **SECTION THREE**

### **OVERVIEW AND ANALYSIS OF THE DRAFT ZTA REVISIONS**

On May 26, 2022, the lead sponsor's staff shared a revised draft of ZTA 22-02 with members of the community and with Planning staff (Attachment B). This draft reflects the outcome of discussions between Planning and Council staff on ways to minimize many of Planning's concerns with the introduced text, while still providing flexibility and benefits to the biohealth and life sciences industry. The following sections look at the revised ZTA text, what changes it makes to the code, how it differs from the introduced ZTA.

### **BIOHEALTH PRIORITY CAMPUSES**

The first major change in the modified ZTA draft is the removal of all the sections that applied to BPCs, including all the sections related to parking waivers, properties allowed under the BPC plans, and parking standards for BPCs. **Staff supports removing the parking waiver section since the waivers already available under Division 6.2 are generous and could be applied to a BPC application.** Planning staff has no opinion about the removal of the other elements that related to BPCs from the revised ZTA.

### **LOCATION OF PROPOSED NEW CODE**

The next set of changes between the introduced and revised ZTA hinge on how the ZTA would allow for extra building height and flexibility to convert residential FAR to commercial FAR. The ZTA as

introduced created a new Section 5 under the Density and Height Allocation portion of the CR and the Employment Zones (Section 4.5.2. and 4.6.2.) that defined what properties qualified for additional flexibility and the amount of additional height for which they were eligible. The revised ZTA instead moves this text to the Optional Method Development sections (Section 4.5.4. and 4.6.4), as a new Subsection 5 under the Development Standards. **Staff has no opinion on this change and thinks either location in the code is equally effective for these provisions.**

#### **ADDITIONAL HEIGHT ELIGIBILITY**

More importantly, the content is also changed. The new section is structured with two subsections: one that sets the use and geographic criteria or eligibility and the other that establishes how to calculate additional height.

Under the use and location criteria, the revised ZTA kept the applicability requirements that a site be in a red policy area, opportunity zone, or within ½ mile of a planned or existing Bus Rapid Transit route or Corridor Cities Transitway (or Corridor Connectors) route. Added to the criteria, however, is a requirement for a site to have frontage on an arterial or higher classified roadway, that the application receive public benefits for Adaptive Buildings, and that the site must not abut or confront properties in an Agricultural, Rural Residential, Residential Detached, or Residential Townhouse zone that is vacant or improved with agricultural or residential uses. **Planning staff supports these new requirements, which lessen concerns over compatibility with adjacent residential properties and also limit height increases to sites where the additional height is less impactful.**

The Adaptive Buildings public benefit criteria are defined under Section 4.7.3.D.1 of the Code, and allow up to 15 points for buildings built with minimum 15-foot first floor height, and minimum 12 foot upper floor height, along with internal structural systems that can accommodate various types of uses with only minor modifications.

Planning staff does note the ZTA as first introduced was eligible to both Life Sciences, or Research and Development uses under Section 3.5.8 whereas the revised ZTA is only eligible to Research and Development under Section 3.5.8. Staff is unsure why this change was made and would **recommend adding Life Sciences back to the list of qualifying users to be consistent with the intent of this ZTA.**

Another positive change in the revised draft ZTA relates to the calculation of additional building height. The introduced ZTA created a two-tier system, where buildings under 100 feet would be allowed to double their height and buildings between 100 and 200 feet could apply a 1.5 multiplier to their mapped height. After discussions between Planning and Council staff, it was agreed that the areas mapped over 100 feet do not need extra height, and areas under 100 feet would more appropriately receive a 1.5 multiplier. When combined with the more restrictive location criteria, this revision to the introduced ZTA greatly reduces concerns about compatibility with adjacent residential development, or the possibility these provisions would substantially alter the intent of an area Master or Sector Plan. **Planning staff recommends supporting the new height increase calculation.**

Additional height provisions were added with the revised ZTA draft that would allow height averaging as another means of flexibility for biohealth buildings. The first of the two height averaging clauses is similar to how height averaging is allowed in other situations, allowing the height of individual buildings to vary as long as the average of each roof section still matches the mapped height. A new section that would allow height averaging across a split height property was also added, which is a new concept to the Zoning Code. This provision would not only allow height averaging of roof elevations within the same mapped height, but anticipates a multi building site that may have different mapped heights. The formula would allow height averaging between buildings and would allow the average height to apply sitewide and be based on the proportion of the property that falls within each mapped height. **Staff supports this concept as a creative way to provide additional flexibility to biohealth developments that may be spread across multiple buildings and multiple mapped height areas.** This may allow buildings in one portion of a site to be built higher than mapped, but in exchange for lower buildings on another portion of the site. The overall massing across the site would be unchanged.

## SECTION FOUR

### CONCLUSION

Planning staff was concerned with the unintended consequences of the ZTA as introduced but believes most of these concerns are addressed through the draft revisions to the ZTA distributed by the lead sponsor's staff. Planning staff recommends the Planning Board transmit comments to the District Council not supporting ZTA 22-02 as it was introduced but offering strong support instead for the draft modified ZTA language, with just a minor comment about Life Sciences being omitted from the draft revisions. Planning staff is happy to continue coordinating with Council staff on modifications to this ZTA that provide desired flexibility for the biohealth industry and to ensure the draft ZTA language is fully considered and incorporated into the final text.

#### Attachments

- A – ZTA introduction Packet for ZTA 22-02
- B – Draft ZTA 22-02 revisions, May 26
- C – Office of Legislative Oversight's RESJ Statement





Committee: PHED

**Committee Review:** At a future date

**Staff:** Livhu Ndou, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #Biohealth #Density #Height

AGENDA ITEM #11

March 15, 2022

**Introduction**

## SUBJECT

Zoning Text Amendment (ZTA) 22-02, Density and Height Limits, Parking – Biohealth

Lead Sponsor: Councilmember Friedson

Co-Sponsors: Councilmembers Hucker, Katz, Navarro, Council President Albornoz, Councilmember Glass

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

## DESCRIPTION/ISSUE

ZTA 22-02 will allow additional height and increased flexibility in density for urban biohealth facilities in recognition of the unique mechanical challenges of biohealth buildings. ZTA 22-02 will also allow consolidation of certain facilities and provide parking provisions for Biohealth Priority Campuses.

## SUMMARY OF KEY DISCUSSION POINTS

- ZTA 22-02 will amend the Biohealth Priority Campus provisions by: allowing the consolidation of facilities such as utilities, open space, and parking; and providing parking standards for the entire BPC.
- In the CR, LSC, or EOF zones, for Life Sciences, Research and Development, and Medical/Scientific Manufacturing and Production Uses in red policy areas or opportunity zones and within ½ mile of public transit, ZTA 22-02 will allow commercial FAR to equal the total FAR.
- In the CR, LSC, or EOF zones, for Life Sciences, Research and Development, and Medical/Scientific Manufacturing and Production Uses in red policy areas or opportunity zones and within ½ mile of public transit, ZTA 22-02 will allow 2.0 times the mapped height for buildings less than 100 feet and 1.5 times the mapped height for buildings over 100 feet with Planning Board approval.

### This report contains:

ZTA 22-02

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Ordinance No.:  
Zoning Text Amendment No.: 22-02  
Concerning: Density and Height  
Limits, Parking –  
Biohealth  
Draft No. & Date: 1 – 3/4/2022  
Introduced: March 15, 2022  
Public Hearing:  
Adopted:  
Effective:

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

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Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmembers Hucker, Katz, Navarro, Council President Albornoz,  
Councilmember Glass

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow additional height for certain scientific uses;
- allow greater flexibility in density for certain scientific uses;
- amend the use standards for Biohealth Priority Campuses; and
- generally amend the provisions for certain scientific uses.

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

Division 3.5.	“Commercial Uses”
Section 3.5.8.	“Office and Professional”
Division 4.5.	“Commercial/Residential Zones”
Section 4.5.2.	“Density and Height Allocation”
Division 4.6.	“Employment Zones “
Section 4.6.2.	“Density and Height Allocation”
Division 6.2.	“Parking, Queuing, and Loading”
Section 6.2.4.	“Parking Requirements”

**EXPLANATION:** **Boldface** indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

\* \* \* indicates existing law unaffected by the text amendment.

## ORDINANCE

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

**Sec. 1. Division 3.5 is amended as follows:**

**Division 3.5. Commercial Uses**

\* \* \*

**Section 3.5.8. Office and Professional**

\* \* \*

**E. Biohealth Priority Campus**

\* \* \*

**3. Use Standards**

- a. Residential FAR limits on the subject property may be reallocated to commercial FAR if the total FAR does not exceed the maximum total mapped FAR of the property and the building height does not exceed the maximum mapped height, including any increases in each allowed by this Chapter.
- b. A mechanical penthouse, and the roof structures listed in Section 4.1.7.C.3, may occupy a maximum of 50% of the roof area of any individual building.
- c. The subject property may utilize FAR averaging under Sections 4.5.2.B. and 4.6.2.B.
- d. Facilities serving a Biohealth Priority Campus may be consolidated and located on one or more properties inside the area subject to the Biohealth Priority Campus plan. Such facilities may include utilities, open space, and parking.

**4. Parking**

- a. In a Parking Lot District, an applicant may provide fewer parking spaces than required, after all adjustments are made under Section 6.2.3.I, only if a parking waiver under Section 3.5.8.E.4.c is approved.

- b. In a Parking Lot District, an applicant may provide more than the maximum number of parking spaces allowed provided the excess parking spaces are made available to the public and are not reserved, or if a parking waiver under Section 3.5.8.E.4.c is approved.
- c. The deciding body may waive any requirement of Section 6.2.5 if the alternative design satisfies Section 6.2.1.

\* \* \*

**Sec. 2. DIVISION 59-4 is amended as follows:**

**Division 4.5. Commercial/Residential Zones**

\* \* \*

**Section 4.5.2. Density and Height Allocation**

**A. Density and Height Limits**

- 1. Density is calculated as an allowed floor area ratio (FAR).
- 2. Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C or Section 4.5.2.D;
  - b. The number following the C is the maximum nonresidential FAR allowed, unless additional FAR is allowed under Section 3.5.8.D;
  - c. The number following the R is the maximum residential FAR allowed, unless additional residential FAR is allowed under Section 3.5.8.D, Section 4.5.2.C, or Section 4.5.2.D; and

- d. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 3.5.8.D, Section 4.5.2.C, Section 4.5.2.D, or Section 4.5.2.A.2.e.
- e. With Planning Board approval any Optional Method project in a CR zone that includes the provision of a major public facility under Section 4.7.3.A may add the height of any floor mostly used for above grade parking to the maximum height otherwise allowed, when the major public facility diminishes the ability of the applicant to provide parking at or below grade.
3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under Section 4.5.2.C, Section 4.5.2.D, or Section 4.5.2.A.2.e:

Zone	Total FAR (max)	C FAR (max)	R FAR (max)	Height (max)
CRN	0.25 to 1.5	0.00 to 1.5	0.00 to 1.5	25' to 65'
CRT	0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'
CR	0.5 to 8.0	0.25 to 7.5	0.25 to 7.5	35' to 300'

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.5.2.A.3.
5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the CR zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:

- a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and
- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.5.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.5.2.A.5. applies.

\* \* \*

### **Sec. 3. DIVISION 59-4.6 is amended as follows:**

#### **Division 4.6. Employment Zones**

\* \* \*

#### **Section 4.6.2. Density and Height Allocation**

##### **A. Density and Height Limits**

1. Density is calculated as an allowed floor area ratio (FAR).
2. Each GR, NR, LSC, and EOF zone classification is followed by a number and symbol: H, which is followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.6.2.C and Section 4.6.2.D; and

b. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 4.6.2.D or Section 4.6.2.A.5.

3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under Section 4.6.2.A.5, Section 4.6.2.C, and Section 4.6.2.D.

Zone	Total FAR (max)	Height (max)
GR	0.5 to 2.5	25' to 120'
NR	0.25 to 1.5	25' to 50'
LSC	0.5 to 2.5	35' to 200'
EOF	0.5 to 4.0	35' to 200'

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.6.2.A.3.

5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the LSC or EOF zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:

a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and



- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.6.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.6.2.A.5. applies.

\* \* \*

**Sec. 4. DIVISION 59-6.2 is amended as follows:**

**Division 6.2. Parking, Queuing, and Loading**

\* \* \*

**Section 6.2.4. Parking Requirements**

\* \* \*

**B. Vehicle Parking Spaces**

140

USE or USE GROUP	Metric	Agricultural, Rural Residential, Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area	Outside a Parking Lot District or Reduced Parking Area	
		Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
* * *					
Office and Professional					
Office	1,000 SF of GFA	2.80	2.00	3.00	2.25
Life Sciences Research and Development	1,000 SF of GFA	1.50	1.00	3.00	1.50
<u>Biohealth Priority Campus</u>	<u>1,000 SF of GFA</u>	--	<u>1.00</u>	<u>3.00</u>	<u>1.50</u>

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142           **Sec. 5. Effective date.** This ordinance becomes effective 20 days after the  
143   date of Council adoption.

Ordinance No.:  
Zoning Text Amendment No.: 22-02  
Concerning: Density and Height  
Limits, Parking –  
Biohealth  
Draft No. & Date: 2 – 4/25/2022  
Introduced: March 15, 2022  
Public Hearing: June 14, 2022  
Adopted:  
Effective:

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

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Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmembers Hucker, Katz, Navarro, Council President Albornoz,  
Councilmember Glass

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow additional height for certain scientific uses;
- allow greater flexibility in density allocation for certain scientific uses;
- ~~[[amend the use standards for Biohealth Priority Campuses; ]]~~and
- generally amend the provisions for certain scientific uses.

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

[[Division 3.5.	“Commercial Uses”
Section 3.5.8.	“Office and Professional”
Division 4.5.	“Commercial/Residential Zones”
Section 4.5.2.	“Density and Height Allocation”
Division 4.6.	“Employment Zones “
Section 4.6.2.	“Density and Height Allocation”
Division 6.2.	“Parking, Queuing, and Loading”
Section 6.2.4.	“Parking Requirements”]]
<u>Division 4.5.</u>	<u>“Commercial/Residential Zones”</u>
<u>Section 4.5.4.</u>	<u>“Optional Method Development”</u>

Division 4.6.  
Section 4.6.4.

“Employment Zones “  
“Density and Height Allocation”

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

*ORDINANCE*

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

1           [[Sec. 1. Division 3.5 is amended as follows:

2   **Division 3.5. Commercial Uses**

3   \*   \*   \*

4   **Section 3.5.8. Office and Professional**

5   \*   \*   \*

6   **E.    Biohealth Priority Campus**

7   \*   \*   \*

8           **3.    Use Standards**

- 9           a.    Residential FAR limits on the subject property may be  
10                reallocated to commercial FAR if the total FAR does not  
11                exceed the maximum total mapped FAR of the property and the  
12                building height does not exceed the maximum mapped height,  
13                including any increases in each allowed by this Chapter.
- 14          b.    A mechanical penthouse, and the roof structures listed in  
15                Section 4.1.7.C.3, may occupy a maximum of 50% of the roof  
16                area of any individual building.
- 17          c.    The subject property may utilize FAR averaging under Sections  
18                4.5.2.B. and 4.6.2.B.
- 19          d.    Facilities serving a Biohealth Priority Campus may be  
20                consolidated and located on one or more properties inside the  
21                area subject to the Biohealth Priority Campus plan. Such  
22                facilities may include utilities, open space, and parking.

23          **4.    Parking**

- 24          a.    In a Parking Lot District, an applicant may provide fewer  
25                parking spaces than required, after all adjustments are made  
26                under Section 6.2.3.I, only if a parking waiver under Section  
27                3.5.8.E.4.c is approved.

- b. In a Parking Lot District, an applicant may provide more than the maximum number of parking spaces allowed provided the excess parking spaces are made available to the public and are not reserved, or if a parking waiver under Section 3.5.8.E.4.c is approved.
- c. The deciding body may waive any requirement of Section 6.2.5 if the alternative design satisfies Section 6.2.1.

\* \* \*]]

**Sec. [[2]]1. DIVISION 59-4.5 is amended as follows:**

**Division 4.5. Commercial/Residential Zones**

\* \* \*

**Section 4.5.2. Density and Height Allocation**

**A. Density and Height Limits**

1. Density is calculated as an allowed floor area ratio (FAR).
2. Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C or Section 4.5.2.D;
  - b. The number following the C is the maximum nonresidential FAR allowed, unless additional FAR is allowed under Section 3.5.8.D or Section 4.5.4.B.5;
  - c. The number following the R is the maximum residential FAR allowed, unless additional residential FAR is allowed under Section 3.5.8.D, Section 4.5.2.C, or Section 4.5.2.D; and



- d. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 3.5.8.D, Section 4.5.2.C, Section 4.5.2.D, ~~[[or ]]~~Section 4.5.2.A.2.e. or Section 4.5.4.B.5.
- e. With Planning Board approval any Optional Method project in a CR zone that includes the provision of a major public facility under Section 4.7.3.A may add the height of any floor mostly used for above grade parking to the maximum height otherwise allowed, when the major public facility diminishes the ability of the applicant to provide parking at or below grade.
3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under Section 4.5.2.C, Section 4.5.2.D, ~~[[or ]]~~Section 4.5.2.A.2.e. or Section 4.5.4.B.5.:

Zone	Total FAR (max)	C FAR (max)	R FAR (max)	Height (max)
CRN	0.25 to 1.5	0.00 to 1.5	0.00 to 1.5	25' to 65'
CRT	0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'
CR	0.5 to 8.0	0.25 to 7.5	0.25 to 7.5	35' to 300'

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.5.2.A.3.
- ~~[[5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the CR zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:~~

- a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and
- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.5.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.5.2.A.5. applies.]]

#### **Section 4.5.4. Optional Method Development**

#### **B. Development Standards**

#### **5. Development of Certain Biohealth Uses**

- a. Additional height is permitted for any application where the primary use is Research and Development under Section 3.5.8 or Medical/Scientific Manufacturing and Production under Section 3.6.4.D, if:
  1. the application site is located within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or

opportunity zone only by a public right-of-way; or  
within ½ mile of a planned or existing Bus Rapid  
Transit route including the Corridor Cities  
Transitway;

2. the application site fronts on a street classified as  
an arterial roadway or higher classification;

3. the application site does not abut or confront a  
property in an Agricultural, Rural Residential,  
Residential Detached, or Residential Townhouse  
zone that is vacant or improved with an  
agricultural or residential use; and

5. the application achieves public benefit points for  
Adaptive Buildings under Sec. 4.7.3.D.1.

b. In order to achieve additional height under Section  
4.5.4.B.5.a, the following provisions apply:

1. A property with a mapped height of 100 feet or  
less may exceed that mapped height by 1.5 times  
the mapped height.

2. Building height for a portion of a building or  
buildings across an application site may be  
increased above the number following the H on the  
zoning map so long as the average height of all  
buildings is no greater than the maximum height  
allowed by the mapped zone.

i. Average building height is calculated as the  
sum of each area of each section of roof  
having a different height multiplied by that

height, divided by the total roof area. Height is measured at the midpoint of each roof section along each frontage.

ii. If the application site has more than one mapped height, the maximum height is based on the proportion of the application site within each mapped zone. It is calculated as the sum of site square footage within each mapped zone multiplied by the mapped height, divided by the total site area.

c. For properties that satisfy the requirements of Section 4.5.4.B.5.a., residential FAR may be reallocated to nonresidential FAR if the total FAR does not exceed the maximum total mapped FAR for the property.

\* \* \*

**Sec. ~~[[3]]~~2. DIVISION 59-4.6 is amended as follows:**

**Division 4.6. Employment Zones**

\* \* \*

**Section 4.6.2. Density and Height Allocation**

**A. Density and Height Limits**

1. Density is calculated as an allowed floor area ratio (FAR).
2. Each GR, NR, LSC, and EOF zone classification is followed by a number and symbol: H, which is followed by another number where:
  - a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.6.2.C and Section 4.6.2.D; and

b. The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 4.6.2.D or Section [[4.6.2.A.5.]]4.6.4.B.5.

3. The following limits apply unless additional total FAR, residential FAR, or height are allowed under [[Section 4.6.2.A.5, ]]Section 4.6.2.C,[[ and]]or Section 4.6.2.D.

Zone	Total FAR (max)	Height (max)
GR	0.5 to 2.5	25' to 120'
NR	0.25 to 1.5	25' to 50'
LSC	0.5 to 2.5	35' to 200'
EOF	0.5 to 4.0	35' to 200'

4. Zones are established at density increments of 0.25 FAR and height increments of 5 feet up to the maximums in Section 4.6.2.A.3.

[[5. For a Life Sciences or Research and Development Use under Section 3.5.8 or a Medical/Scientific Manufacturing and Production Use under Section 3.6.4.D in the LSC or EOF zone that is within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway:

a. with Planning Board approval, a property with a maximum building height of 100 feet or less may exceed the maximum building height allowed in the mapped zone by 2.0 times, and a property with a maximum building height of 100 to 200 feet may exceed the maximum building height allowed in the mapped zone by 1.5 times; and

- b. nonresidential FAR may be increased above the number following the C on the zoning map if the total FAR does not exceed the maximum total mapped FAR of the property, including any increases allowed under this Chapter, and the building height does not exceed the height allowed under Section 4.6.2.A.5.a.
- c. Where the provisions of any Overlay zone are contrary or more restrictive, Section 4.6.2.A.5. applies.]]

\* \* \*

#### **Section 4.6.4. Optional Method Development**

\* \* \*

#### **B. Development Standards**

\* \* \*

#### **5. Development of Certain Biohealth Uses**

- a. Additional height is permitted for any application in the LSC zone where the primary use is Research and Development under Section 3.5.8 or Medical/Scientific Manufacturing and Production under Section 3.6.4.D, if:
1. the application site is located within a red policy area or opportunity zone, including contiguous properties separated from the red policy area or opportunity zone only by a public right-of-way; or within ½ mile of a planned or existing Bus Rapid Transit route including the Corridor Cities Transitway;
  2. the application site fronts on a street classified as an arterial roadway or higher classification;

- 206                    3.    the application site does not abut or confront a  
207                    property in an Agricultural, Rural Residential,  
208                    Residential Detached, or Residential Townhouse  
209                    zone that is vacant or improved with an  
210                    agricultural or residential use; and  
211                    5.    the application achieves public benefit points for  
212                    Adaptive Buildings under Sec. 4.7.3.D.1.

213                    b.    In order to achieve additional height under Section  
214                    4.6.4.B.5.a, the following provisions apply:

- 215                    1.    A property with a mapped height of 100 feet or  
216                    less may exceed that mapped height by 1.5 times  
217                    the mapped height.  
218                    2.    Building height for a portion of a building or  
219                    buildings across an application site may be  
220                    increased above the number following the H on the  
221                    zoning map so long as the average height of all  
222                    buildings is no greater than the maximum height  
223                    allowed by the mapped zone.  
224                    i.    Average building height is calculated as the  
225                    sum of each area of each section of roof  
226                    having a different height multiplied by that  
227                    height, divided by the total roof area. Height  
228                    is measured at the midpoint of each roof  
229                    section along each frontage.  
230                    ii.   If the application site has more than one  
231                    mapped height, the maximum height is  
232                    based on the proportion of the application



233 site within each mapped zone. It is  
234 calculated as the sum of site square footage  
235 within each zone multiplied by the mapped  
236 height, divided by the total site area.

237 \* \* \*

238 **[[Sec. 4. DIVISION 59-6.2 is amended as follows:**

239 **Division 6.2. Parking, Queuing, and Loading**

240 \* \* \*

241 **Section 6.2.4. Parking Requirements**

242 \* \* \*

243 **B. Vehicle Parking Spaces**

244

USE or USE GROUP	Metric	Agricultural, Rural Residential, Residential, and Industrial Zones	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area	Outside a Parking Lot District or Reduced Parking Area	
		Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
* * *					
Office and Professional					
Office	1,000 SF of GFA	2.80	2.00	3.00	2.25
Life Sciences Research and Development	1,000 SF of GFA	1.50	1.00	3.00	1.50
<u>Biohealth Priority Campus</u>	<u>1,000 SF of GFA</u>	--	<u>1.00</u>	<u>3.00</u>	<u>1.50</u>

245 ]] \* \*

246           **Sec. 5. Effective date.** This ordinance becomes effective 20 days after the  
247   date of Council adoption.

This is a correct copy of Council action.

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Judy Rupp  
Clerk of the Council

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

<b>ZTA 22-02:</b>	<b>DENSITY AND HEIGHT LIMITS, PARKING - BIOHEALTH</b>
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## SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-02 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White business owners and employees. OLO anticipates a small impact of this ZTA on racial and social inequities. To improve racial equity and social justice, this statement offers a few recommended policy options for consideration.

## PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs 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 ZTA 22-02

The purpose of ZTA 22-02, Density and Height Limits, Parking – Biohealth, is to diminish current requirements for building height, density, and parking for biohealth facilities that locate in urban areas in the County. The underlying intent of ZTA 22-02 is to reduce building regulations for biohealth businesses that could grow the sector and advance economic development in the County.

Towards this end, ZTA 22-02 amends recent changes to the zoning code establishing Biohealth Priority Campuses to provide more building flexibility for facilities that locate on them and increases building height and density allocations for biohealth facilities that operate under the Life Sciences, Research and Development, and Medical/Scientific Manufacturing and Production uses.<sup>3</sup> More specifically, this ZTA allows the transfer of floor area ratios (FARs) for residential uses to commercial uses thus increasing densities for biohealth facilities beyond what is currently allocated on the zoning map for commercial uses in Commercial/Residential (C/R) zones.

If enacted, ZTA 22-02 would allow:

- Biohealth Priority Campuses to consolidate facilities for utilities, open space, parking and reduce parking space requirements.
- Higher building densities and height allocations for biohealth facilities located in C/R zones within a Red Policy Area<sup>4</sup> (or adjacent to it), within an Opportunity Zone,<sup>5</sup> or within ½ mile of a planned or existing Bus Rapid Transit route.<sup>6</sup> Increased building densities and height allocations established with this ZTA could supersede existing Overlay Zone requirements for building densities and height allocations.
- Higher building densities and height allocations for biohealth facilities located in Employment Zones. Increased building densities and height allocations established with this ZTA could also supersede existing Overlay Zone requirements for building densities and height allocations.

# RESJ Impact Statement

## Zoning Text Amendment 22-02

ZTA 22-02 was introduced on March 15, 2022.

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### LAND USE, ECONOMIC DEVELOPMENT, AND RACIAL EQUITY

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the historical context that shapes land use and economic development in Montgomery County today. To describe this historical context, this section describes the historical drivers of racial inequities in land use and economic development and available data on racial disparities, especially within the biohealth industry.<sup>7</sup>

**Inequities in Land Use.** The way land is used and regulated either helps or hinders people's access to opportunity. Throughout the 20<sup>th</sup> century, jurisdictions have used zoning to separate not only uses – like residential, commercial, and industrial – but also people according to wealth, class, and race.<sup>8</sup> More specifically, land use regulations have been used to exclude people of color and low-income residents from predominantly White and affluent residents in several ways. For example, by allowing single family homes or homes on large lots, both of which exclude more affordable housing.<sup>9</sup> This has resulted in the concentration of poverty, especially in BIPOC communities.<sup>10</sup> Because social determinants are so tightly connected to where one lives, the implications of zoning on inequality are large as where one lives determines where they go to school, their exposure to crime and policing, and where they can shop.<sup>11</sup> For homeowners, where one resides is perhaps the most important determinant of their family's wealth.<sup>12</sup>

Data show that many poor neighborhoods have disproportionately high people of color populations and lack access to jobs, good schools, and other opportunities necessary to help residents rise out of poverty.<sup>13</sup> The land use injustices and social inequities impacting localities are multi-faceted.<sup>14</sup> They manifest not only in housing segregation but also in disparities in exposure to pollution, health inequities, unequal access to green and blue infrastructure (e.g. parks, trees, well-functioning waterways), transportation infrastructure, and economic investment.<sup>15</sup> These inequities result from zoning and a variety of other government policies and private actions that include environmental laws, housing policies, transportation policies, restrictive covenants, housing-market discrimination, and redlining.<sup>16</sup>

Patterns of inequitable land use in Montgomery County manifest as racial and economic segregation by Council district, higher rates of unemployment, poverty, and housing burden among Black and Latinx residents, and as greater reliance on public transit and longer commutes for Black residents. More specifically, the data shows:

- Racial and economic segregation by Council district where 72 percent of District 1 (Bethesda, Poolesville, and Potomac) residents were White, average household income was \$205,600, and the poverty rate was 3 percent compared to 66 percent of District 5 residents (Burtonsville, Silver Spring, and Takoma Park) were BIPOC, average household income was \$102,500, and the poverty rate was 9 percent from 2011 to 2015.<sup>17</sup>
- Racial inequities in unemployment where 5 percent of Black residents and 4 percent of Latinx residents were unemployed compared to 3 percent of Asian and White residents in 2019.<sup>18</sup>
- Racial inequities in poverty where 13 percent of Latinx residents and 12 percent of Black residents lived in poverty compared to 6 percent of Asian residents and 3 percent of White residents in 2019.<sup>19</sup>
- Racial inequities in housing burden where 59 percent of Latinx renters and 54 percent of Black renters expended more than 30 percent of their household income on housing compared to 43 percent of Asian renters and 42 percent of White renters in 2019.<sup>20</sup>
- Racial inequities in public transit use where 21 percent of Black residents commuted to work via public transit compared to 14 percent of Asian residents, 13 percent of White residents and 11 percent of Latinx residents.<sup>21</sup>

# RESJ Impact Statement

## Zoning Text Amendment 22-02

- Racial inequities in commuting time where Black residents averaged 38 minutes commutes to work compared to 36 minutes commutes for Asian residents and 34 minutes commutes for both White and Latinx residents.<sup>22</sup>

**Inequities in Economic Development.** Historically inequitable policies have fostered racial and ethnic inequities in economic development among business owners and employees. As noted by the Federal Reserve Bank of Boston:<sup>23</sup>

“(T)he practices and policies that laid the groundwork for and built the U.S. were explicitly designed to ensure an absolute accumulation of intergenerational wealth and concentrated power for white people, particularly men. A legacy of land theft, slavery, racial segregation, disenfranchisement, and other exclusive policies against Black and Indigenous people and people of color produced a racialized economy that decimated these communities and intentionally barred survivors and descendants from building wealth, socioeconomic well-being, and resilience.”

Current inequities in policies and practices also adversely impact people of color as they consider starting and growing businesses. These include disparities by race and ethnicity in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks.<sup>24</sup> They also include disparities by race and ethnicity in access to credit with Black - and Latinx-owned businesses more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected.<sup>25</sup> Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.

Historic and current inequities in economic opportunity result in sizable disparities in business ownership, employment, and income by race and ethnicity. More specifically:

- Despite Black and Latinx firms each accounting for 15 percent of local firms in 2012 and Asian firms accounting for 14 percent of local firms, Black and Latinx firms each accounted for less than 2 percent of business revenue, and Asian firms accounted for 4 percent of business revenue.<sup>26</sup>
- Nearly two-thirds (64 and 62 percent) of White and Asian residents in Montgomery County were employed in management, business, science and arts occupations in 2017 compared to less than half of Black residents (45 percent) and only a quarter of Latinx residents were employed in such positions.<sup>27</sup>
- The median household income for White families in Montgomery County was \$119,000 in 2017 and \$109,000 for Asian families compared to \$73,000 for Black households and \$72,000 for Latinx households.<sup>28</sup>

**Inequities in the Biohealth Industry.** Systemic racism has also fostered racial inequities in health care and the biohealth industry. The nation’s history of inequitable health care by race predates its founding with the near genocide of Indigenous people due to their exposure to small pox and other diseases from European colonists and the inhumane treatment of enslaved Africans that made them more susceptible to disease and death.<sup>29</sup> Post slavery, health care services remained segregated by race and it was not until the 1960’s with the passage of Medicare and Medicaid that health care services were integrated.<sup>30</sup>

Racial inequities have also characterized the biohealth industry where historically the medical community has exploited Black people through experimentation.<sup>31</sup> Additionally, educational and occupational segregation continue to limit the participation of Black and Latinx people as professionals in Science, Technology, Engineering, and Mathematics (STEM) fields that include the biohealth industry. Nationally, between 2017 and 2019:<sup>32</sup>

- Black people accounted for 11 percent of all jobs, 9 percent of STEM jobs, and 6 percent of life science jobs.
- Latinx people accounted for 17 percent of all jobs and 8 percent of STEM jobs and 8 percent of life science jobs.



# RESJ Impact Statement

## Zoning Text Amendment 22-02

- Asian people accounted for 6 percent of all jobs, 13 percent of STEM jobs and 19 percent of life science jobs.
- White people accounted for 63 percent of all jobs, 67 percent of STEM jobs and 65 percent of life science jobs.

A study of personnel and executives in the biotech industry also finds an under-representation of Black, Latinx and Indigenous employees and executives. The 2020 survey of 18 biotech firms found that:<sup>33</sup>

- Black people accounted for 7 percent of biotech employees and 3 percent of executives;
- Latinx people accounted for 4 percent of biotech employees and 4 percent of executives;
- Asian people accounted for 18 percent of biotech employees and 14 percent of executives;
- Native Americans, Hawaiians and Pacific Islanders accounted for 0.4 percent of biotech employees and 0 percent of executives; and
- White people accounted for 65 percent of biotech employees and 78 percent of executives.

These racial and ethnic disparities in the biohealth workforce are significant because the industry offers high wages. In 2017, bioscience workers earned an average income of nearly \$99,000.<sup>34</sup> In Maryland, the average annual pay for biomedical positions was nearly \$70,000 with workers at the 25<sup>th</sup> percentile earning \$44,000 annually and those at the 90<sup>th</sup> percentile earning \$107,000 annually.<sup>35</sup>

The racial and ethnic disparities in the biohealth workforce are also significant because the industry is sizable. More than 800,000 people work in the biopharmaceutical industry in the U.S.; it is estimated that the biohealth industry supports another 4.7 million jobs across the country.<sup>36</sup> Of note, the Biohealth Capital Region of Maryland, the District of Columbia, and Virginia employs an estimated 75,000 workers and ranks fourth among U.S. biopharma hubs, behind Boston, San Francisco, and New Jersey/New York.<sup>37</sup> The United Therapeutic Corporation headquartered in Silver Spring, Maryland and the Research Training Park in North Carolina employs 950 people.<sup>38</sup>

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## ANTICIPATED RESJ IMPACTS

Understanding the impact of ZTA 22-02 on racial equity and social justice requires understanding the stakeholders most likely to be impacted by this zoning text amendment and their demographics. Since this ZTA is aimed at reducing building regulations and requirements for biohealth facilities, biotech firm owners, employees and residents located near biohealth facilities are the stakeholders most likely to be impacted by this ZTA as follows.

- **Biohealth Business Owners.** Available data on local business revenue suggest that White-owned firms predominate the biohealth industry and thus could disproportionately benefit from ZTA 22-02. While White-owned firms accounted for slightly more than half of all Montgomery County businesses in 2012, they accounted for more than 90 percent of local business revenue. If White-owned firms benefit more from ZTA 22-02 than BIPOC-owned firms, this ZTA could widen current racial and ethnic inequities in entrepreneurship.
- **Biohealth Workers.** Available data on occupations and the biohealth workforce from national and local sources suggests that Asian residents are significantly over-represented among local biohealth workers and thus could disproportionately benefit from growth in the local biotech industry fostered by ZTA 22-02. White people account for a majority of the biotech workforce and thus would benefit from biotech industry growth as well. Nationally, Asian people account for 18 percent of biotech positions compared to 6 percent of the overall workforce; White people account for 65 percent of biotech positions compared to 63 percent of the overall workforce. If Asian and White employees benefit more from ZTA 22-02 than Black, Latinx and Indigenous residents, this ZTA could widen current racial and ethnic inequities in biohealth employment

# RESJ Impact Statement

## Zoning Text Amendment 22-02

- **Residents Near Biohealth Facilities.** County residents whose communities abut biohealth facilities are the residents potentially most impacted this ZTA. Currently, the master plans, sector plans, and overlay zone districts impacting the zones subject to ZTA 22-02 have been shaped with community engagement.<sup>39</sup> Every master plan, sector plan, functional plan, or plan amendment is submitted to a full public hearing.<sup>40</sup> Planning staff also initiates community participation in the development of master plan staff drafts that can include the formation of master plan citizens advisory committees to ensure that master plans reflect residents' interests.<sup>41</sup>

OLO anticipates a negative impact of ZTA 22-02 on the residential neighbors of biohealth facilities because it potentially overrides master plans, sector plans, and overlay plans shaped by community engagement. This ZTA also does not establish a process for community engagement per biohealth facility request to utilize the height, density, and parking provisions that it authorizes. The demographics of which residents could be most adversely impacted by this ZTA, however, remain unknown as it is unclear where biohealth facilities will locate, relocate, or expand in the County due to this ZTA.

Taken together, OLO finds that ZTA 22-02 could have a net impact of widening racial and ethnic inequities in the County as available data suggests that the two groups to benefit the most from this bill – biohealth business owners and employees – are disproportionately White and Asian. To narrow racial and social inequities, ZTA 22-02 would have to yield greater benefits for BIPOC groups under-represented in the biohealth industry as business owners and employees. Overall, OLO anticipates a small impact of ZTA 22-02 on racial and social inequity.

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### RECOMMENDED POLICY OPTIONS

The County's 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>42</sup> For zoning text amendments, OLO offers recommended policy options rather than amendments to offset potentially racially or socially inequitable changes to the Zoning Ordinance.

Overall, OLO finds that ZTA 22-02 could widen racial and ethnic inequities because its provisions could exacerbate racial inequities in business revenue and employment in the biohealth sector. Should the Council seek to advance equitable growth in the biohealth industry that reduces racial and social inequities, the following policy options could be considered to require and/or encourage biohealth firms seeking to create or expand their facilities to:<sup>43</sup>

- **Report workforce and vendor data by race, ethnicity, and gender.** The rationale for public policies to support economic development is that their benefits exceed their costs to government. Yet, there is rarely any accountability for achieving favorable returns on public investments for economic development or equitable development that narrows gaps in outcomes by race and ethnicity. To track whether changes in the zoning code and/or other public policies enhance equitable economic development, the County Council could encourage and/or require biohealth firms to report data on their workforce and vendor demographics by race (Black, Asian, White, Indigenous, Other), ethnicity (Latinx), and gender (male, female, non-binary).
- **Invest in workforce development opportunities, particularly for BIPOC residents.**<sup>44</sup> To ensure that growth in the biohealth industry benefits a cross-section of communities and reduces disparities in the biohealth workforce by race and ethnicity, biohealth firms could be encouraged to enter into agreements to provide biohealth workforce development opportunities for underrepresented persons of color. Biohealth firms investing in biohealth workforce development programs could be encouraged to partner with community members, education institutions and non-profit partners to design and deliver programs. Career and technical education programs in secondary and post-secondary institutions, apprenticeships and targeted training could increase the pipeline of Latinx and Black residents into biohealth professions.

# RESJ Impact Statement

## Zoning Text Amendment 22-02

- **Invest in local small businesses, especially underrepresented BIPOC small businesses.**<sup>45</sup> To ensure that local small businesses inclusive of BIPOC businesses benefit from the expansion of biotech business opportunities, biotech firms could be encouraged to (a) partner with underrepresented BIPOC businesses to increase the success of such firms in the biohealth industry; and (b) provide opportunities to BIPOC businesses that offer spillover benefits for industry expansion. For example, local biohealth firms could be encouraged to support an industry eco-system analogous to the Opportunity Hub Initiative in Atlanta that promotes “inclusive high-tech innovation, entrepreneurship, and investment eco-systems” to foster BIPOC entrepreneurship in technology.<sup>46</sup>

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### 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.

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### CONTRIBUTIONS

OLO staffers Elaine Bonner-Tompkins, Senior Legislative Analyst, and Elsabet Tesfaye, Performance Management and Data Analyst, drafted this RESJ impact statement.

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<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 Council, Zoning Text Amendment 22-02, Density and Height Limits, Parking – Biohealth, Introduced March 15, 2022

<sup>4</sup> Red Policy Areas, also known as Metro Station Areas Policy Areas (MSPA), are one of the four areas within the Transportation Policy Area. MSPAs are characterized by high-density development and the availability of premium transit service (Metrorail, MARC). Montgomery County Planning Department

<sup>5</sup> Opportunity Zones are designed to spur economic development by providing tax benefits to investors. They are part of a federal tax code that allow investors to roll capital gains into Opportunity Funds that invest in businesses, equipment, and real property in select census tracts. Montgomery County Planning Department: Montgomery County Economic Indicators Briefing 2019.

<sup>6</sup> Bus Rapid Transit is a high-quality and high-capacity bus-based transit system that delivers fast, comfortable, reliable and cost-effective transit service. Montgomery County Planning Department, Transportation.

<sup>7</sup> Information in this section originally referenced in OLO RESJ Impact Statement for ZTA 21-09, Office and Professional – Biohealth Priority Campus, December 2, 2021

<sup>8</sup> Tyler Quinn-Smith, Zoning for Equity: Raising All Boats. Smart Growth America

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<sup>15</sup> Ibid

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<sup>17</sup> Leah Headey and Lily Posey, Racial Inequities in Montgomery County, 2011-15, Urban Institute, [https://www.urban.org/sites/default/files/publication/95386/2017.12.28\\_montgomery\\_county\\_finalized\\_7.pdf](https://www.urban.org/sites/default/files/publication/95386/2017.12.28_montgomery_county_finalized_7.pdf)

<sup>18</sup> National Equity Atlas, <https://nationalequityatlas.org/indicators/Unemployment#/?geo=04000000000024031>

<sup>19</sup> Ibid

# RESJ Impact Statement

## Zoning Text Amendment 22-02

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<sup>26</sup> Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019

<sup>27</sup> American Community Survey, 1 Year Estimates, 2019, Table S0201

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<sup>30</sup> Ibid

<sup>31</sup> Harriet Washington, Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present, Doubleday, 2007.

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