

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## EXPEDITED TAXATION – COLLECTION OF DEVELOPMENT IMPACT TAXES BILL 22-24:

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 22-24 will have a minimal impact on racial equity and social justice (RESJ) in the County. Changing the timing of when development impact taxes are imposed is not likely to affect existing racial and ethnic inequities and disparities in the County.

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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 inequities that have caused racial and social disparities.<sup>2</sup>

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### PURPOSE OF EXPEDITED BILL 22-24

Development impact taxes – also referred to as development impact fees or impact fees – are fees that local governments impose on new development. Localities charge impact fees to developers to help cover infrastructure and public service needs related to population growth.<sup>3</sup>

The County collects development impact taxes for transportation and schools. The Transportation Development Impact Tax is assessed on both residential and commercial projects and is used to fund improvements to enhance local transportation capacity. The School Development Impact Tax is assessed on residential projects only and is used to fund improvements to enhance the capacity of the public school system.<sup>4</sup>

Under current County law, development impact taxes and other related payments are due “6 or 12 months after the building permit is issued (depending on the type of building), or the final inspection of the building by the Department of Permitting Services (DPS), whichever is earlier.”<sup>5</sup> If enacted, Bill 22-24 would require these payments only at final inspection of the building by DPS, regardless of building type.<sup>6</sup> According to the sponsoring Councilmember, the intent of Bill 22-24 is to “reduce[] the overall cost of housing construction” by reducing “higher upfront housing construction costs” associated with paying impact taxes towards the beginning of a project.<sup>7</sup>

The Council introduced Expedited Bill 22-24, Taxation – Collection of Development Impact Taxes, on October 15, 2024.

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### DEVELOPMENT IMPACT FEES AND RACIAL EQUITY

Impact fees are a relatively new tool for local governments to pay for growth-related infrastructure costs. As described by researcher Susan Opp, “[h]istorically, the infrastructure needs of new growth were paid for by existing residents and property owners through some combination of sales, income, and property taxes.”<sup>8</sup> The use of impact fees first emerged in Florida in 1977,<sup>9</sup> and gained momentum in local governments across the U.S. through the 1980s.<sup>10</sup> In the County, impact fees for transportation-related costs were first adopted in 1986.<sup>11</sup> Today, transportation- and school-related impact fees are required for development projects throughout the County.<sup>12</sup>

In *Development Impact Fees as Planning Tools and Revenue Generators*, Opp further notes that the transition to impact fees has come with a shifting perception in communities that it is not “the local government’s responsibility to pay for new growth with the existing population’s tax dollars.”<sup>13</sup> Opp proposes “the revolt against the traditional ways of paying for new development” was driven by three events:<sup>14</sup>

1. Inflation of the 1970s, which substantially increased housing values and led to increased property taxes;
2. Federal retrenchment of the 1980s and 1990s, which led to more financial responsibility at the lower government levels; and
3. A general tax revolt against real property taxes that has occurred over the past couple of decades.

The revolt against local governments paying for new development has also coincided with shifting demographics in communities. For instance, in Broward County, FL – the first local government to adopt impact fees – the growth of the Latinx population has largely surpassed the growth of the total population since 1970.<sup>15</sup> Locally, the use of impact fees has also coincided with the growth of Black, Indigenous, and other people of color (BIPOC) in the County. Since the 1960s, the share of White people in the County has steadily decreased, while the share of BIPOC has grown to the point where in 2010, the County became majority-BIPOC.<sup>16</sup> Between 1980 and 1990 – the decade when the County first adopted impact fees – the County’s population grew by 177,974 people, 60 percent of whom were BIPOC.<sup>17</sup> The shift to impact taxes in the 1980s contrasts with the County’s approach during prior periods of rapid growth. For instance, between 1950 and 1960 – when the County’s population grew by 176,527 people, nearly all of whom were White –<sup>18</sup> the County assumed public infrastructure costs related to the influx of community members.

Research suggests that by imposing impact fees on developers, local governments effectively shift the cost of new public infrastructure from existing community members to new community members through increased housing prices.<sup>19</sup> For instance, one study of over 45,000 properties across 63 cities in Texas concluded that “[t]he imposition of impact fees are associated with an increase in property values that appears to negatively impact affordability, positively impact existing homeowners equity and increases the property taxes that cities collect.”<sup>20</sup> Aside from reducing housing affordability, impact fees could also have implications on the development of housing that is affordable at lower incomes. One study found that “[i]n desirable markets, builders tend to respond to high impact fees by ignoring lower-income households and focusing on more expensive housing, where the impact fee can be more easily passed on.”<sup>21</sup>

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As shown in Figure A (Appendix), the population of BIPOC community members is expected to continue growing in the County, while the population of White community members is expected to decline. As BIPOC become a larger share of the County's population, impact fees can perpetuate racial inequity by benefitting existing community members, who are more likely to be White, and burdening new community members, who are more likely to be BIPOC. Further, impact fees could also perpetuate racial inequity by reducing the development of affordable housing. Data on housing cost burden and median incomes in the County (Table A and Table B, Appendix) suggest that Black and Latinx community members have a higher demand for housing that is affordable at lower incomes.

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 24-24 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who would primarily benefit or be burdened by this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

Developers of commercial and residential properties would benefit from lower upfront costs, since development impact taxes would not be imposed until the end of a project. However, this benefit would be marginal – since impact taxes will eventually be due, the overall cost of development will not change. Thus, in the housing context, OLO assesses that changing the timing of impact taxes is not likely to meaningfully impact the supply of housing in the County more broadly and the supply of affordable housing specifically – factors that could impact racial inequities and disparities in housing.

OLO anticipates Bill 22-24 will have a minimal impact on RESJ in the County. As described in the previous section, development impact fees may perpetuate racial inequities by benefitting existing community members, who are more likely to be White, at the expense of future community members, who are more likely to be BIPOC. However, changing the timing of when development impact taxes are imposed is not likely to affect existing racial and ethnic inequities and disparities in the County.

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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>22</sup> OLO anticipates Expedited Bill 22-24 will have a minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments. Yet should the Council seek to improve the RESJ impact of this Bill, one recommended amendment can be considered:

- **Commission RESJ study of Capital Improvements Program.** A RESJ review of the County's Capital Improvements Program (CIP) could include a review of how CIP funding sources such as development impact taxes are currently impacting racial and ethnic disparities and how they could be designed to better advance RESJ. For instance, in 2022, the City of San Diego adopted the citywide Build Better SD initiative "to enable faster delivery of public spaces and buildings equitably and sustainably across San Diego."<sup>23</sup> As a part of this initiative, the City's Planning Department studied the origins of long-standing policies, documented disparities in public spaces, and intentionally engaged underrepresented community members.<sup>24</sup> Among other changes, the Build Better SD initiative has prompted changes to the City's impact fees; as observed by the Lincoln Institute of Land Policy:<sup>25</sup>

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“A key aspect of Build Better SD was changing the city’s system of collecting and spending neighborhood-specific development impact fees. These one-time fees...varied drastically across the city, and had to be spent in the neighborhood they were raised. Per-unit impact fees were up to 50 times higher in wealthy districts, discouraging denser growth in well-off areas while simultaneously concentrating reinvestment in those same places. The city has now shifted to a citywide fee structure, where impact fees are the same across every neighborhood and infrastructure investments can be prioritized for areas with the greatest need.”

### CAVEATS

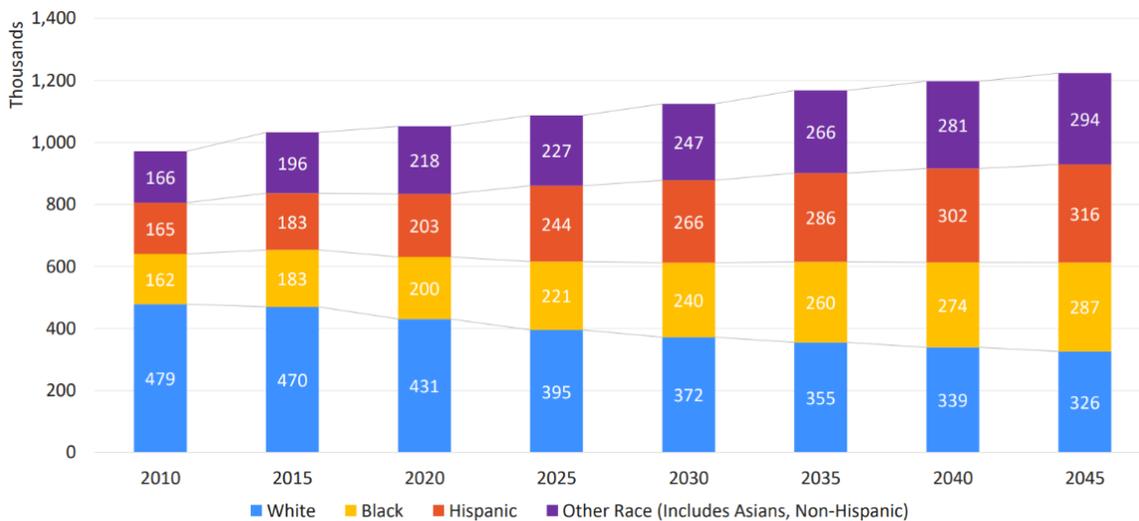
Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended 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

Figure A. County Population Projections by Race and Ethnicity from 2010 to 2045



Source: Montgomery Planning Analysis of State Data Center Data, Maryland Department of Planning.

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**Table A. Percent of Housing Cost Burdened Households by Race and Ethnicity, Montgomery County<sup>26</sup>**

Race or ethnicity <sup>27</sup>	Owner-Occupied Households	Renter Occupied Households
Asian	27.8	41.4
Black	39.3	57.6
White	19.7	50.4
Latinx	31.3	59.9
County	25.8	53.6

Source: [Table S0201](#), 2023 American Community Survey 1-Year Estimates, Census Bureau.

**Table B. Median Household Income by Race and Ethnicity, Montgomery County**

Race or ethnicity	Median Household Income
Asian	\$143,911
Black	\$86,359
White	\$160,756
Latinx	\$92,050
County	\$125,371

Source: [Table S0201](#), 2023 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> “[Fact Sheets: Development Impact Fees](#),” Federal Highway Administration, U.S. Department of Transportation.

<sup>4</sup> “[Development Impact Taxes](#),” Montgomery County Department of Permitting Services.

<sup>5</sup> [Introduction Staff Report for Bill 22-24](#), Montgomery County Council, Introduced October 15, 2024, PDF pg. 2.

<sup>6</sup> Ibid.

<sup>7</sup> Memorandum from Councilmember Evan Glass to Government Operations Committee, Introduction Staff Report for Bill 22-24, circle 4

<sup>8</sup> Susan Opp, “[Development Impact Fees as Planning Tools and Revenue Generators](#),” Center for Environmental Policy and Management, University of Louisville, 2007, pg 1.

<sup>9</sup> Ibid.

<sup>10</sup> “Fact Sheets: Development Impact Fees”

<sup>11</sup> Blaise DeFazio and Leslie Rubin, “[Private Development and Public Infrastructure](#),” Office of Legislative Oversight, November 27, 2018, pg.20.

<sup>12</sup> Development Impact Taxes

<sup>13</sup> Opp, pg. 1

<sup>14</sup> Ibid.

<sup>15</sup> “[Broward by the Numbers: Broward County Hispanic Population](#),” Broward County Urban Planning Division, April 2017.

<sup>16</sup> Janmarie Peña and Chitra Kalyandurg, “[OLO Report 2024-8: Community Engagement for Racial Equity and Social Justice](#),” Office of Legislative Oversight, March 12, 2024, pg. 14.

<sup>17</sup> OLO analysis of 1980 and 1990 Census data from [Table 51: General Characteristics of Persons by Type of Spanish Origin and Race for Counties: 1980](#), pgs. 206-207, and [Table 5, Race and Hispanic Origin: 1990](#), pg. 12, Census Bureau.

<sup>18</sup> “[How Montgomery County Grew in the 1950s](#),” Montgomery History.

<sup>19</sup> Jennifer Evans-Cowley and Larry Lawhon, “[The Effects of Impact Fees on the Price of Housing and Land: a Literature Review](#),” Journal of Planning Literature, February 2003.

<sup>20</sup> Jennifer Evans-Cowley, et. al., “[The Effect of Development Impact Fees on Housing Values](#),” Journal of Housing Research, 2009.

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<sup>21</sup> Evans-Cowley and Lawhon citing Huffman, et. al., “Who Bears the Burden of Development Impact Fees,” 1988.

<sup>22</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>23</sup> [Build Better SD](#), City of San Diego, CA.

<sup>24</sup> Jon Gorey, “[Five Ways Urban Planners are Addressing a Legacy of Inequity](#),” Lincoln Institute of Land Policy, May 16, 2023.

<sup>25</sup> Ibid.

<sup>26</sup> For Table A, ‘housing cost burdened’ refers to paying 30 percent or more of income on housing costs.

<sup>27</sup> For Tables A and B, estimates are not available for Native American and Pacific Islander community members.