



Committee: PHED
Committee Review: At a future date
Staff: Khandikile Mvunga Sokoni, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #Buildings #Demolition #Removal
#Construction

AGENDA ITEM #6
November 29, 2022
Public Hearing

SUBJECT

Expedited Bill 30-22, Buildings – Demolition or Removal

Lead Sponsors: Councilmember Hucker and Councilmember Riemer

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

Bill 30-22 would:

- (1) redefine the term demolish; and
- (2) generally amend the law regarding buildings and building permits.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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Racial Equity and Social Justice (RESJ) Impact Statement	© 7

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MEMORANDUM

November 23, 2022

TO: County Council

FROM: Khandikile Mvunga Sokoni, Legislative Attorney

SUBJECT: Expedited Bill 30-22, Buildings – Demolition or Removal

PURPOSE: Public Hearing – no Council vote required

Expedited Bill 30-22, Buildings – Demolition or Removal, lead sponsors Councilmember Huckler and Councilmember Riemer, was introduced on November 1, 2022. A public hearing is scheduled for November 29, 2022. A committee worksession has not yet been scheduled.

The bill would:

- (1) redefine the term demolish; and
- (2) generally amend the law regarding buildings and building permits.

BACKGROUND.

The purpose of Bill 30-22, according to the bill’s sponsors, would be to address situations where buildings can be substantially removed except for a small wall, yet enabling people to avoid the need for a demolition permit. On that site, a contractor can then rebuild what is for all practical purposes a “new home” which they can market and sell as such without having to obtain a permit for new home construction. Instead, the permit they do apply for is one for alternations or renovations. When this happens, the contractor is not required to provide a warranty for a new home. The sponsors of this bill seek to ensure that where a building is substantially demolished, a demolition permit will be required and any home rebuilt on that site will require a new construction permit.

Applying for a demolition permit triggers certain obligations on the part of the applicant including a requirement that water supply and other utilities are properly disconnected, compliance with safeguards to abate any pest control issues or any negative environmental impact (e.g. asbestos, lead, etc). These same safeguards do not apply to alteration permits. In addition, alteration permits do not cover stormwater management.

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) Impact Statement dated November 16, 2022. OLO concluded that this bill could have a minimal impact on racial equity and social justice (RESJ) in the County.

BILL SPECIFICS

Bill 30-22 would amend the definition of “demolish” so that it would mean not only the tearing down of an *entire* building or structure but also tearing down sixty-seven (67) percent or more of first story exterior walls of a one-family or two-family dwelling unit. Basement and cellar walls would not be considered exterior walls for purposes of measuring the sixty-seven (67) percent of wall removal.

By changing the threshold for requiring a demolition permit, a person seeking to substantially remove a building would have to go through the same process as someone tearing down the whole building thereby requiring the applicant to meet requirements regarding the disconnection of utilities, pest control, environmental and stormwater management measures. This would also ensure that when building the new structure, the applicant would have to apply for a new construction building permit which would in turn require that they must provide a new home warranty to the consumer who purchases that home.

This packet contains:

Expedited Bill 30-22

Legislative Request Report

Racial Equity and Social Justice (RESJ) Impact Statement

Circle

© 1

© 5

© 7

Expedited Bill No. 30-22
Concerning: Buildings - Demolition or Removal
Revised: 10/27/2022 Draft No. 1
Introduced: November 1, 2022
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Hucker and Councilmember Riemer

AN EXPEDITED ACT to:

- (1) redefine the term demolish; and
- (2) generally amend the law regarding buildings and building permits

By amending

Montgomery County Code
Chapter 8, Sections 8-27

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

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

1 **Sec. 8-27. Demolition or removal of buildings.**

2 * * *

3 (e) Permit requirement; conditions. A person must not demolish or remove a
 4 building or structure unless the Director has issued a permit to do so under
 5 this Section. Each demolition or removal permit must require the
 6 applicant to:

7 (1) before demolishing or removing a building or structure,
 8 exterminate any rodents or other pests in it;

9 (2) after demolition or removal, clear all construction and
 10 demolition debris;

11 (3) restore the established grade of the surrounding land, unless a
 12 sediment control permit is otherwise required; and

13 (4) at all times keep the site free from any unsafe condition.

14 (f) Bond or surety. Each applicant for a demolition or removal permit must
 15 file a performance bond, cash, certificate of guarantee, or surety with the
 16 Department, in an amount equal to the cost of demolition or removal, to
 17 assure the safe and expedient demolition or removal of the building or
 18 structure and clearing of the site. If the building or structure is not
 19 demolished or removed and the site is not cleared of all debris within the
 20 time specified in the permit, but not sooner than 60 days after the permit
 21 is issued, the Director may enter the property, demolish or remove the
 22 building or structure, clear the site of debris, and take action to forfeit the
 23 performance bond, enforce the guarantee, or otherwise reimburse the
 24 Department for its cost.

25 (g) Definitions. As used in this Section:

1 [(1) remove means to move a building or structure substantially
2 intact from or within a site; and]

3 [(2)](1) [d]Demolish means to tear down or destroy an entire
4 building or structure, or [all of a building or structure except a
5 single wall or facade.] sixty-seven (67) percent or more of first
6 story exterior walls of a one-family or two-family dwelling unit.
7 Demolish includes the conversion of an exterior wall into an
8 interior wall. Basement and cellar walls are not considered exterior
9 walls[.]; and

10 (2) Remove means to move a building or structure substantially intact
11 from or within a site.

12 **Sec. 2. Expedited Effective Date.**

13 The Council declares that this legislation is necessary for the immediate
14 protection of the public interest. This Act takes effect on the date on which it becomes
15 law.

Approved:

Gabe Albornoz, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Judy Rupp, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 30-22

Buildings – Demolition or Removal

DESCRIPTION: This Bill amends Chapter 8 redefine the term demolition to include removal of 67 per cent of first story exterior walls of a single-family or two-family dwelling.

PROBLEM: According to the bill’s sponsors, this bill would close out a “loophole” under which a building can be substantially removed except for a small wall, hence avoiding the need for a demolition permit. On that site, a contractor can then rebuild what is for all practical purposes a “new home” which they can market and sell as such without having to obtain a permit for new home construction. Instead, the permit they do apply for is one for alternations or renovations. When this happens, the contractor is not required to provide a warranty for a new home. The sponsors of this bill seek to ensure that where a building is substantially demolished, a demolition permit will be required and any home rebuilt on that site will require a new construction permit.

Applying for a demolition permit triggers certain obligations on the part of the applicant including a requirement that water supply and other utilities are properly disconnected, compliance with safeguards to abate any pest control issues or any negative environmental impact (e.g. asbestos, lead, etc). These same safeguards do not apply to alteration permits. In addition, alteration permits do not cover stormwater management.

OBJECTIVE: Require a demolition permit for tearing down 67 per cent or more of the first story exterior walls of a one-family or two-family dwelling.

COORDINATION: Department of Permitting Services.

FISCAL IMPACT: To be provided by Office of Management and Budget

ECONOMIC IMPACT: To be provided by Office of Legislative Oversight

RACIAL EQUITY & SOCIAL JUSTICE IMPACT STATEMENT: To be provided by Office of Legislative Oversight

EVALUATION: To be requested.

EXPERIENCE

ELSEWHERE: Inapplicable.

SOURCES OF INFORMATION: Eric Friedman, Director
Office of Consumer Protection
240.777.3636

George Muste, PE, Division Chief
Residential Construction & Fire Code Compliance
Department of Permitting Services
Division of Building Construction Services
240.777.6232

**APPLICATION
WITHIN**

MUNICIPALITIES: Varies. Applicable to municipalities governed by Chapter 8.

PENALTIES: Fines associated with violations as outlined in Sec. 8-22 of the Code.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED BUILDINGS – DEMOLITION OR REMOVAL BILL 30-22:

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 30-22 could have a minimal impact on racial equity and social justice (RESJ) in the County. Although this Bill could disproportionately impact White and Asian residents – who generally have more financial means to purchase homes – it is not likely to change existing racial disparities in homeownership.

PURPOSE OF RESJ IMPACT STATEMENTS

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

PURPOSE OF EXPEDITED BILL 30-22

The purpose of Expedited Bill 30-22 is to redefine the term “demolish” in the County Code so that it includes tearing down two-thirds or more of first story exterior walls of a one- or two-family dwelling unit. According to the Bill’s sponsors, a loophole in current law allows buildings to be substantially demolished without requiring a demolition permit. As explained in the Introduction Staff Report:³

“By changing the threshold for requiring a demolition permit, a person seeking to substantially remove a building would have to go through the same process as someone tearing down the whole building thereby requiring the applicant to meet requirements regarding the disconnection of utilities, pest control, environmental and stormwater management measures. This would also ensure that when building the new structure, the applicant would have to apply for a new construction building permit which would in turn require that they must provide a new home warranty to the consumer who purchases that home.”

The Federal Trade Commission explains that most newly built homes come with a builder warranty that covers items that are typically a permanent part of the home, like concrete floors, plumbing, or electrical work.^{4,5}

Expedited Bill 30-22 was introduced to the Council on November 1, 2022.

RESJ Impact Statement

Expedited Bill 30-22

HOMEOWNERSHIP AND RACIAL EQUITY

Government policies and practices have played a significant role in creating and sustaining housing inequities by race and ethnicity. As outlined below, Black and Latinx residents experience lower rates of homeownership and higher rates of housing insecurity as homeowners. Please refer to the RESJIS for Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees, for more on the government’s role in fostering racial segregation in housing and the racial wealth divide.⁶

Inequities in Homeownership. The possibility of homeownership has been placed out of reach for many Black, Indigenous, and Other People of Color (BIPOC) families due to inequitable housing policies and practices of the past.⁷ Slavery, sharecropping, Jim Crow laws, and the Homestead Act were government policies designed to build wealth among White residents by extracting resources from BIPOC.

Government policies reinforcing housing segregation through homeownership continued with the New Deal as the Federal Housing Administration provided government-subsidized financing to White residents and developers to purchase or build homes in White-only enclaves.⁸ While the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market “have never been remedied and their effects endure.”⁹

As a result of inequitable government policies and practices, access to wealth (which families often rely on to make a down payment for their home) varies significantly by race and ethnicity.¹⁰ The racial wealth gap in the Metropolitan Washington Region is sizable: White households had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.¹¹ Further, BIPOC residents still experience discrimination in the housing market due to predatory lending practices and bias in the real estate market.¹² As such, disparities in homeownership by race and ethnicity persist in Montgomery County where:

- 75 percent of White and 73 percent Asian or Pacific Islander households reside in owner-occupied units, compared to 50 percent of Latinx households and 41 percent of Black households.¹³
- 31 percent of Black and 33 percent of Latinx homeowners were cost-burdened, spending more than 30 percent of their income on housing, compared to 18 percent of White and 26 percent of Asian or Pacific Islander homeowners.¹⁴
- The average value of home mortgages carried by White households was \$410,000, compared to \$391,000 for Asian households, \$328,000 for Black households, and \$308,000 for Latinx households.¹⁵

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Expedited Bill 30-22 on RESJ in the County, OLO recommends the consideration of two related questions:

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

RESJ Impact Statement

Expedited Bill 30-22

For the first question, OLO considered the demographics of potential homebuyers, as they would reap the benefits from increased warranty coverage on newly constructed homes but also bear the increased costs of such homes redefined as demolitions.

Generally, White and Asian residents are best positioned to purchase homes in the County, which is evidenced by existing homeownership disparities. As previously mentioned, families often rely on wealth to make a down payment on a home. Table 1 lists the median net worth of Washington Metropolitan Area residents by race and ethnicity, as estimated by the Urban Institute from 2014 survey data. Table 1 suggests that Black and Latinx households have low levels of wealth available to make a major purchase, in contrast to White and Asian households. Further, as noted in Table 2, White and Asian residents have higher median incomes, which also makes homeownership more attainable.

Table 1: Household Median Net Worth by Race and Ethnicity, Washington Metropolitan Area

Race and ethnicity	Median Net Worth
White	\$284,000
Black, US	\$3,500
Black, African	\$3,000
Latinx	\$13,000
Chinese	\$220,000
Korean	\$496,000
Vietnamese	\$423,000
Asian Indian	\$573,000

Source: Urban Institute, "The Color of Wealth in the Nation's Capital" (adapted from Table 12)

Table 2: Median Household Income by Race and Ethnicity, Montgomery County, Maryland¹⁶

Race and ethnicity	Median Household Income
Asian	\$121,323
Black	\$78,246
Native American	\$88,828
White	\$131,602
Latinx	\$79,981

Source: 2020 American Community Survey (Table S1903)

While White and Asian residents are more likely to benefit from increased home warranty coverage, they are also most likely to bear the higher costs of new homes that could result from this Bill. The increased cost of new homes likely offsets some of the benefits of this Bill for homebuyers. It is unclear whether the benefits of this Bill for homebuyers exceeds the costs.

For the second question, OLO considers how the Bill could affect existing disparities in homeownership. Potential homebuyers – who are more likely to be White or Asian – could benefit from increased warranty coverage on newly constructed homes. However, this benefit would likely be offset at least partially by an increase in the cost of homes. Further, the changing benefits/costs to potential homebuyers from this Bill would likely not affect structural factors that drive the homeownership gap between Black and Latinx residents and White and Asian residents.

Taken together, OLO anticipates Expedited Bill 30-22 could have a minimal impact on RESJ in the County. Although this Bill could disproportionately impact White and Asian residents – who generally have more financial means to purchase homes – it is not likely to change existing racial disparities in homeownership.

RESJ Impact Statement

Expedited Bill 30-22

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁷ OLO finds Expedited Bill 30-22 could have a minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

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

CONTRIBUTIONS

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

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ Expedited Bill 30-22, Buildings – Demolition or Removal, Introduced November 1, 2022.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221101/20221101_9B.pdf

⁴ “Warranties for New Homes,” Consumer Advice, Federal Trade Commission, May 2021.

<https://consumer.ftc.gov/articles/warranties-new-homes>

⁵ A warranty is a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period of time.

⁶ Racial Equity and Social Justice Impact Statement for Expedited Bill 30-21, Office of Legislative Oversight, Montgomery County, Maryland, September 9, 2021. <https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill30-21RESJ.pdf>

⁷ Misha Hill, et al, “Taxes and Racial Equity: An Overview of State and Local Policy Impacts,” Institute on Taxation and Economic Policy, March 2021. https://itep.sfo2.digitaloceanspaces.com/ITEP_Taxes-and-Racial-Equity-State-and-Local-Policy-Impacts-2.pdf

⁸ Ibid

⁹ Richard Rothstein, *The Color of Law: A Forgotten History of How Government Segregated America*, 2017

¹⁰ Hill, et al, “Taxes and Racial Equity: An Overview of State and Local Policy Impacts”

¹¹ Kilolo Kijakazi, et al, “The Color of Wealth in the Nation’s Capital,” The Urban Institute, November 2016.

<https://www.urban.org/research/publication/color-wealth-nations-capital>

¹² Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermine Black Homeownership*, 2019

¹³ “Percent Owner-Occupied Households by Race/Ethnicity: Montgomery, MD (2019)” National Equity Atlas, Accessed November 13, 2022. <https://nationalequityatlas.org/indicators/Homeownership#/?geo=0400000000024031>

¹⁴ “Housing Burden by Tenure, Severity, and Race/Ethnicity: Montgomery, MD (2019)” National Equity Atlas, Accessed June 13, 2022. https://nationalequityatlas.org/indicators/Housing_burden#/?geo=0400000000024031&rentown01=2

¹⁵ Jupiter Independent Research Group, OLO Report 2019-7: Racial Equity Profile Montgomery County, Office of Legislative Oversight, July 15, 2019. https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/OLO2019-7-6_20_19.pdf

¹⁶ Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups within this table.

¹⁷ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council